



‘The Property Ombudsman, Christopher Hamer, says gas safety checks are vital to protect tenants.’

Paragraph 2e of the TPO Code of Practice imposes an obligation upon letting agents to ensure that they advise a potential landlord of the need to comply with the requirements of the various pieces of safety legislation and obligations that apply to rented property. Having recently reviewed a number of cases where the Complainant tenants were concerned about the provision of the gas safety certificate, I thought it would be helpful to highlight best practice in such an important area.

Both agents and landlords have an ongoing responsibility to ensure that a let property is maintained to a safe standard. I would expect an agent to ensure that they advise the landlord of the relevant safety regulations and their responsibilities under the law. There are differing obligations dependent on whether the Property is let furnished or unfurnished. I would advise all agents to ensure that in particular they are fully aware of, and comply with, the Gas Safety (Installation and Use) Regulations 1998, the Electrical Equipment (Safety) Regulations (1989 and 1994), the requirements of Portable Electrical Appliance Testing (PAT) and all obligations in respect of furnishings and upholstery.

The gas safety regulations are particularly stringent and many tenants are, quite rightly, aware of the requirements as they apply to the annual safety certificate. Both the landlord and agent can remain responsible for breaches in compliance if they knowingly let a tenancy proceed where the property has not had the required safety checks. Apart from putting lives at risk, it is a criminal offence for a property to be let with no current gas safety certificate. The Health and Safety Executive (HSE) gives gas safety a high priority and



‘A full management contract should specify all the landlord and agent’s responsibilities.’

will take the appropriate action to ensure compliance with the regulations; this could result in a substantial fine and/or a custodial sentence.

A landlord has a number of duties under the Gas Safety (Installation and Use) Regulations 1998. An agent providing a management service needs to ensure that the management contract clearly specifies who is responsible for carrying out the maintenance and safety check duties, and keeping associated records. If the contract specifies that the agent has responsibility then the same duties under the Regulations that apply to a landlord apply to the agent.

If the agent is instructed on a tenant find only basis, the responsibility to obtain the

safety certificate remains with the Landlord but best practice dictates that the agent has sight of the certificate before the tenancy commences, keeps a copy on their branch file and advises the Landlord on an annual basis when the certificate needs updating. If the agent is appointed to provide a full management service, I expect to be provided with a complete branch file indicating that they have ensured that all requirements concerning the gas safety certificate are complied with.

There may be problems if the tenant prevents access for a gas safety check. In such cases the landlord or agent, depending on who has the responsibility to arrange the check, has to show that they

took all reasonable steps to comply with the law. The HSE recommends the following best practice in these circumstances and strongly advises that a record be kept of all correspondence with the tenants, specifically:

- leaving the tenant a notice stating that an attempt was made to complete the gas safety check and provide your contact details;
- writing to the tenant explaining that a safety check is a legal requirement and that it is for the tenants own safety.
- giving the tenant the opportunity to arrange their own appointment.

HSE inspectors will look for at least three attempts to complete the gas safety check, including the above suggestions; however the approach will need to be appropriate to each circumstance. It would ultimately be for a court to decide if the action taken was reasonable depending upon the individual circumstances.

It would appear to be a good idea to

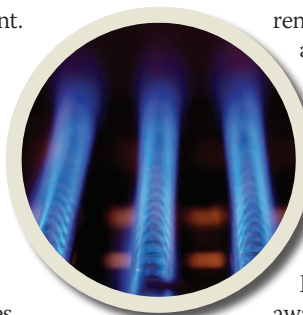
include arrangements for access in the tenancy agreement. The Electrical Equipment (Safety) Regulations Act 1994 (amended 1996) and the Plugs and Sockets (Safety) Regulations apply to all landlords and their managing agents when supplying electrical equipment. It is important to ensure that all electrical appliances and fittings within the property are safe and in good working order. Unlike gas regulations, there is no law that says a landlord must have an electrical safety certificate. But, should any electrical fittings or appliances within the Property cause harm to a tenant the landlord could be held liable. The tenant could sue for damages and/or bring the landlord before a court for negligence under the regulations.

Best practice would be to carry out safety tests annually or whenever a new tenant moves in. I would not expect a landlord or agent to let a property where

the electrical safety report shows items that are unsafe to use or require repairs. Instruction books should be provided on how to operate the electrical appliance as this provides further safety information

for the tenant. It should also be remembered that a landlord or agent cannot hand over responsibility to the tenant to check electrical items for safety, or to add any extra clauses within the tenancy agreement to such effect.

It will be evident from this brief overview, which I hope has created an awareness of the issues, that safety is an extremely important obligation and I would recommend that all letting agents ensure that they thoroughly acquaint themselves with all applicable legislation and ensure that all parties are aware of their ongoing responsibilities. ☺



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