

eBook 5

Buy to Let Problems

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Buy to Let Problems

About this eBook

Thank you for downloading this eBook, which accompanies the fifth episode of the Buy to Let Show, the only programme which gives you all the information you need, whether you are thinking about buy to let for the first time, or are an existing investor and landlord.

The show was created with the support of Direct Line for Business and some of the top finance, legal, health and safety experts in the country as well as successful property investors and landlords.

Whether you are already investing or are thinking about buy to let, these eBooks and the show will make sure you are equipped with all the resources you need, as well as information about companies or organisations that can help you at every stage.

In the first four eBooks of this series, we considered whether buy-to-let is still a viable investment, looked at financing and insuring your property, helped you choose a property to rent out and explained how to let a property legally and safely.

In this book, we focus on what happens when the tenancy doesn't go to plan. We will go through some of the problems which can occur when letting a property and, most importantly, help you to avoid them.



View the shows



Download the eBooks



EXPERT TIP

It's really important to get things right at the start of a tenancy because that stops problems at the end. Referencing your tenant, knowing who your tenant is, knowing their history and employment background, and the previous tenancies they've had is key, so it's worth spending time on referencing as landlords will reap the rewards at the end of the tenancy.

STEVE HARRIOTT
tenancydepositscheme.com



Meet the experts from this show



KATE FAULKNER, PROPERTYCHECKLISTS.CO.UK

Contact via Propertychecklists.co.uk

Kate Faulkner is widely regarded as one of the UK's leading independent property experts. She divides her time between consumer education and consulting with the renting and letting/property investment sector, from high street agents to government departments. She has written several property books, including the Which? Essential Property Guides, and is regularly featured on TV and radio as an expert property market commentator.



CHRISTINA DIMITROV, DIRECT LINE FOR BUSINESS

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Christina is the business manager at Direct Line for Business, where her focus is on improving the customer proposition. With a background in strategy consulting and e-commerce, she has spent five years working in consumer insurance across different products.



PAUL SHAMPLINA

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Submit a call back form

The founder of Landlord Action, Paul has acquired a reputation as "The Landlord's Friend" and in 2015 co-wrote a book for landlords. He regularly appears on TV and radio, including Channel Five's hit series, Nightmare Tenants, Slum Landlords, with the third series due out in 2017. Paul also co-hosted the The Property Hour with Clive Bull on LBC Radio.



STEVE HARRIOTT, TENANCY DEPOSIT SCHEME

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Steve Harriott is the Chief Executive of the Tenancy Deposit Scheme (TDS), which runs tenancy deposit protection schemes across the UK. It currently protects around 1.4m tenancy deposits with a value of more than £1.5bn. TDS also deals with tenancy deposit disputes and in 2016-17 resolved more than 15,000 disputes free of charge to tenants and landlords.



What problems can landlords face?

The top five problems faced by landlords are



Failing to carry out referencing correctly



Tenants moving people in or swapping tenants without landlord/agent approval



Damage to a property



Late payment of rent



Not paying the rent at all and refusing to leave

Referencing

Referencing should not be taken lightly, no matter how keen you are to get a tenant in your property and start earning income. As Vanessa Warwick of Property Tribes said in our first show of the series: “The best way never to experience a bad tenant is never to let one step over the threshold of your property in the first place.”

If you are using an agent, check how they reference; some will do very little, some will do a lot and it's one of the reasons why some cost more than others.

If you wish to carry out referencing yourself, be aware it's not just about ordering a 'cheap' reference check online, there is much more work required. These are some of the documents which need to be examined:

BANK STATEMENTS

Ideally, you (or your agent) should look at three months' bank statements to see their typical monthly income and outgoings, whether their current rent is paid on time and if they have incurred bank charges. The statements will also help you decide the best date to take the rent, often just after pay day.

OFFICIAL DOCUMENTS

You (or your agent) should always check you have been given genuine documents – if they are unfamiliar, because they are from abroad, for instance, you can check online. Take copies, as these will help you trace a tenant if they abscond.

REFERENCES

You (or your agent) will need to contact the tenant's employer for a reference – or their previous employer if they are new to the job. If they are self-employed, ask to see at least two years' accounts, or confirm their income from the Inland Revenue. In addition, contact the previous landlord for a reference.



SCOTLAND AND WALES

If you self manage a rental property in Wales, you have to be trained. In Scotland, you have to prove you are a 'fit and proper person'.

You, or your agent, will also need to carry out:

- ! Financial credit checks
- ! A search for any County Court Judgements, bankruptcy and insolvency action
- ! Electoral roll validation and previous aliases

RIGHT TO RENT

In England, all tenants over 18 must be checked to ensure they can legally rent in this country, by checking a birth certificate with a council tax bill, or biometric residence permit. If you are using a letting agent, find out who will be taking responsibility for this vital check. If it is the agent, ask for this in writing.

You, or the agent, should ask to see original documents, in the tenants' presence, and make copies to keep on their file as you will need these if you are asked to prove that you have carried out the checks. Record the date of the check.

If you knowingly rent your property to someone who is here illegally – or have “reasonable cause to believe” they are not allowed to rent in the UK – you can get an unlimited fine or be sent to prison.



NOTE: You must check all tenants, not just those you believe are not British citizens. Failure to do so is against the law. Find out more at [gov.uk](https://www.gov.uk)

Guarantors

If your tenant requires a guarantor – who agrees to pay the rent if the tenant cannot – you must apply the same referencing checks to the guarantor as you do to the tenant. You should also make sure the guarantor understands their obligations and can afford to pay any missed rent if the tenant cannot.



USE A PROFESSIONAL

The easiest and safest way to reference your tenants is to use a professional referencing service, such as one offered by a quality letting agent. They will have the experience to recognise when documents are genuine and will know what to look for, saving you time and stress.

EXPERT TIP

To find tenants I use an agency – purely because they have everything in place to do the credit referencing and the checks required. This, for me, is more cost effective than doing it myself. As soon as they've moved the tenant in, I take over, managing all the day-to-day running of the tenancy then, at the end of the tenancy I'll do the checkout and then hand it back to the agency to find a new tenant.

RACHEL HUDSON, LANDLORD
[inventorygenius.co.uk](https://www.inventorygenius.co.uk)





Letting a property through a quality agent makes it easier to find a fully referenced tenant and means you will be letting legally and safely. Belvoir have created this checklist to help you choose the best agent in your area.

- Only consider letting agents who are members of either NALS, SafeAgent or ARLA/RICS such as Belvoir.
- Become a tenant first and put 'renting a property in.....' into a Google to see which agents are top.
- Research via property portals which agents market and let similar properties to yours.
- Ask how the letting agent keeps up to date with latest letting rules and regulations.
- Find out what they do to keep you up to date with BTL eg newsletters, seminars or workshops.
- Find out how your property will be marketed.
- Ask what the agent's average void period is.
- Research the different services letting agents offer including:
 - Tenant find
 - Let only
 - Full management
- Understand in detail what each of the different services includes, for example tenancy agreement.
- Ask how often periodic checks will be carried out under full management.



- Ask how often periodic checks will be carried out under full management.
- Work out all costs of letting a property through the agent including:
 - Set up fee
 - Management fee
 - Other fees
- Compare costs over a 6-12 month period and include charges to re-letting a property and for EPCs, gas and electric safety certificates.
- Check the terms of business with a legal lettings specialist.
- Find out how long it will take for the tenant's rent to hit your bank account.
- What other services are offered, for example, seminars, workshops, help with legal issues or property?



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Contact Belvoir here



**Visit the website at
belvoir.co.uk**

Tenants moving people in/swapping

If your tenant re-lets the property to another tenant without your permission, it is a breach of their tenancy agreement. Your property will also be in the hands of somebody who has not undergone the necessary checks on their background and, crucially, the Right to Rent checks which determine if the tenant is legally allowed to rent in the UK.

In addition, damage – malicious or accidental – is more likely as many illegal sub-lets are overcrowded. You only have to watch a few episodes of Paul Shamplina's **Nightmare Tenants, Slum Landlords** to see how easy it is to end up in a mess over sub-letting.

Ensuring your tenants are thoroughly referenced – ideally by a quality letting agent – can help to prevent issues such as illegal sub-letting.

If you have your property managed by a letting agent, they will carry out regular inspections of the property; if you self-manage, ensure you carry out inspections yourself so you can see if anything looks amiss. You should also try to build up a good relationship with the neighbours as they can be your 'eyes and ears', reporting any unusual activity, as well as spotting property problems – such as loose roof tiles – which your tenants may not be able to see.

If you suspect illegal sub-letting, it's worth taking a look at ads for rooms to rent in your area, as you may find your own property is being advertised, which will be useful evidence if you need to go to court to evict your tenant.

Illegal sub-letting is grounds for eviction, but it is discretionary, which means the presiding judge or magistrate will make a decision based on the evidence provided.



Paul Shamplina, of Landlord Action, in Channel 5's Nightmare Tenants, Slum Landlords.

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Three ways to prevent illegal sub-letting

1 Referencing

2 Good relationships with neighbours

3 Regular inspections

SOME FACTS ABOUT SUBLETTING

- ! One in six tenants let out part or all of their property to somebody not on the tenancy agreement. **(Source: Direct Line for Business)**
- ! Around a third of tenants who sublet do so illegally and deliberately **(Source: Direct Line for Business)**
- ! According to a Residential Landlords Association (RLA) survey, London landlords are most at risk of illegal subletting, with 48% of properties there being sublet. **(Source: RLA)**
- ! Under the Right to Rent rules in England, the landlord can be fined £3,000 per tenant for renting to somebody in the country illegally, even if the tenant named on the contract has sublet the property without knowing they are breaking the law.
- ! Having people living in your property who are not named on the tenancy agreement could break the terms of your mortgage and invalidate your insurance.
- ! If your tenant sublets to several people, your property could fall under or exceed your local authority's definition of a House in Multiple Occupation (HMO) and require you to get planning permission, a license and additional safety checks.
- ! It is difficult to evict tenants if you don't know who they are.

Spot the signs

- 1** A single person looking to rent a large property with more rooms than they need.
- 2** A tenant who insists on paying a large amount of rent up front.
- 3** Obstructing visits by the landlord or agent.
- 4** Suspicious activity reported by neighbours or complaints about changes to the building.
- 5** Seeing the property, or rooms in the property, advertised on sites such as AirBnB.

EXPERT TIP

We have a massive problem with sub-letting at the moment – you rent out the property to A and B, then C and D move in. You've got to make sure all those people are on the tenancy agreement. Viewings are really important, as are regular inspections and having a good relationship with neighbours is really important. If you rent out to three people and then you end up with 15 people in there, you need to know about it sooner rather than later. And because of the Right to Rent rules which came in last year you've got to make sure you don't have any illegal immigrants living in your property.

PAUL SHAMPLINA
landlordaction.co.uk



Damage to a property



Accidental damage can happen to anyone, but if you have a good tenant with whom you have built up a good working relationship, they will report or repair the problem. Periodic inspections should pick up any unreported issues



Malicious damage is another matter and, in this case, you may consider serving an eviction notice. Eviction on these grounds is discretionary, so you will need evidence that the damage was caused by the tenant – this is where a detailed inventory becomes invaluable.

Landlord insurance, is essential as, in the case of malicious damage, retaining the deposit will not cover the cost of repairs, and may also be combined with non-payment of rent. However, not all insurance products offer this cover, so do double check.



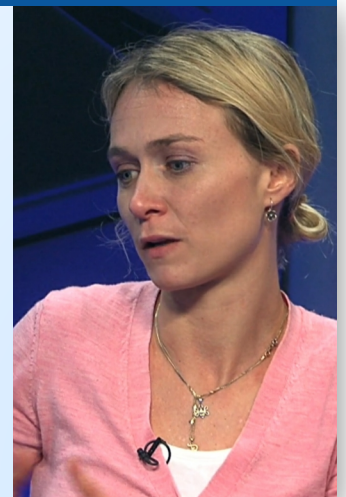
What you can do to avoid the effects of damage

- 1** Take out landlord insurance, to include malicious damage
- 2** Carry out – or ensure your agent carries out – an inventory at the start of the tenancy and a check at the end
- 3** Carry out – or ensure your agent carries out – regular inspections
- 4** Carry out – or ensure your agent carries out – mid-term inventory checks
- 5** Ensure tenants understand their responsibilities

EXPERT TIP

The majority of insurance claims are accidental damage, such as a leak. Less frequent, but quite scary if it happens to you, is malicious damage by tenants, but there is also insurance cover for that. There is cover for public liability if, for example, a leak has caused damage to a neighbouring property. Tenants not paying can have a massive impact but you can get insurance against that, too – it can even help you with the costs of the eviction process and the costs of repairing the property for the next tenant. Your insurer will check if you have done your due diligence, if you have referenced the tenant and therefore checked the risk.

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Late or non-payment of rent

This – along with a lack of contact – is an important early warning sign that something is amiss.

The easiest way to stay on top of rental payments is to employ the services of a letting agent to manage the property. They will then keep on top of rental payments on your behalf. You'll still need monitor the payments going into your account but, if there are any problems with the tenant, your agent will deal with them.

If you decide to manage the property yourself, remember that, just as with accidental damage, late payments can happen to anyone, usually due to a bank error. The key is to stay on top of the situation by always checking your bank account on the day the payment is due. If payment hasn't arrived, leave it a couple of days and check again before contacting the tenant. If they are hard to track down, or don't return your calls, alarm bells should start to ring.

When you do speak to the tenant, the key question to ask is if the financial difficulties are temporary or permanent. If it's a short-term problem, you may be able to come to an arrangement with the tenant until the situation improves.

If it's a long-term problem, you can ask them to leave. If they refuse, or if non-payment is combined with malicious damage, you can begin eviction proceedings once a tenant is two months in arrears. This is one month and a day after the first missed payment, as rent is payable in advance.

If you can prove breach of contract through your payment records, the tenant is likely to be ordered to leave your property, as non-payment of rent is mandatory grounds for eviction.

Ways to protect yourself from non-payment of rent

- 1 Take out landlord insurance which covers non-payment of rent
- 2 Keep accurate and up-to-date records of payments
- 3 Check payments have been received and, if not, follow up
- 4 Find out if problems are temporary or long-term
- 5 If the problems are temporary, work with tenants if you can

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EXPERT TIP

If they don't pay up, you need to find out why – but you can't bang on the door at night and start harassing them. Don't get what we call 'landlord rage'. You need to speak to the tenant; if they're avoiding you, maybe call in the evening on a phone number they don't recognise.

PAUL SHAMPLINA
landlordaction.co.uk



Case studies

Landlord Rachel Hudson (pictured) has been renting out properties for 20 years, but has only experienced problems with non-payment of rent a handful of times. Below are two different scenarios encountered by Rachel when the tenant couldn't pay the rent:



1

SERVING A NOTICE

I had a tenant who was two months in arrears so I immediately contacted them to try to see if I could arrange with them to stay, if they could afford to catch up with the rent but they openly said no, they couldn't pay and weren't going to leave.

I handed the case over to a solicitor. I use a legal company because it's their area of expertise. The documentation has to be so precise and if you get anything wrong the case can be thrown out. Because I don't deal with rent arrears very often, I always hand over to solicitors as it's more cost-effective.

2

FINDING A COMPROMISE

I had one case where the tenants rang me up because they'd both unfortunately lost their jobs the month previously. They rang to say they'd both found new jobs but they didn't have any money for the rent that month.

What we agreed was that they'd pay an extra £50 on top of their rent for the next few months, which they did. I never automatically think I'll evict them because if they're great tenants and they've hit a bad time – like we all can – I will try to help. That one worked out well and, in fact, they're still in the property today.

EXPERT TIP

If you're reasonable with tenants, they'll be helpful and they won't try to hide things from you. If you encounter problems with payments, speak to the tenants first because it could just be that the circumstances are temporary and you can actually sort something out. If not, you do have to go the other route which unfortunately isn't a nice route.

RACHEL HUDSON, LANDLORD
inventorygenius.co.uk





It's never good when a tenant gets behind on the rent, and is often a sign of worse problems to come. But how do you chase payments, and is it worth the effort? We have compiled this checklist to help you decide on the best course of action.

- The first job is to calculate what the tenant actually owes you:
 - In rent arrears – have a clear rent statement or schedule, to minimise dispute
 - For damage caused to the property – inventory and photographic or video evidence
 - For items included on the inventory but not in the property they have left.
- If the tenant is in arrears over the last few months, double check they haven't missed other payments since the start of their tenancy.
- If the tenant is still in the property, find out whether the arrears are an oversight or the tenant needs some help with financial assistance, for example, you may be able to help them claim housing benefit.
- If the tenant isn't responding to calls/letters, then serve them with a Section 8 or Section 21 Notice – speak to a legal expert to find out which will be more appropriate for yours/your tenant's circumstances.
- Think about assets the tenant may have that you can seize such as a motor vehicle, computer equipment or other items in lieu of cash.
- If the tenant has left, make sure you have an address for them so you can apply to the court for arrears.
- If the tenant has moved out, don't forget you can't just throw their stuff away, you have to keep it for six months but under new rules you can now recover the property once they haven't been back for four weeks.
- Find out as much as you can about the tenant as you can such as:
 - Identity provided (driving licence, passport)
 - Date of birth
 - Next of kin details
 - Place of work
 - If they are on social media such as Facebook, Twitter.

- Speak to work or other references to see if they know where the tenant is living.
- Find out if they are in arrears for any other payments, such as utility bills.
- If you have to go to court, make sure you are fully prepared, especially if you are taking the tenant to court yourself. You/your legal company will need:
 - Copy of the ASTA
 - Evidence of registered deposit
 - Copies of any notices, proof of service of any notices
 - Proof of ownership of the property
 - Evidence of any arrears.
- Try to secure one of the following if you go to court:
 - Attachment of earnings order
 - Warrant of control where Bailiff will collect monies or levy on goods
 - Third Party Debt Order – application made to freeze the tenants bank account.
- If you haven't time to investigate the tenant and guarantor, then contact a tracing agent or legal company to do this for you. Look for one which offers 'no trace no fee'.
- To find a good tracing and recovery company:
 - Ensure they specialise in this area and have a department dealing with cases daily
 - Find out what percentage of their cases are successful
 - Ask if they don't find the tenant or secure any money, will they still charge and if so how much?
 - Are they just able to find the tenant or do everything, include taking the tenant to court for you?
 - Find out the minimum and maximum the whole procedure would cost.
- Remember, even if you can't recover rent arrears, it is possible to place a County Court Judgement on the tenant so they can't cause problems for other landlords and companies.



**Call Propertychecklists.co.uk
on 01652 641722**



**Visit the website at
Propertychecklists.co.uk**



The importance of the inventory

As with all problems, prevention is better than cure so carrying out a thorough inventory of your rental property is vital, as this will be your evidence of the condition of the start of the property. You will need the inventory at check-out as evidence:



If you wish to retain some or all of the deposit



If you wish to evict a tenant on grounds of malicious damage

An inventory should be highly detailed and note, with photographs, every mark, scratch and stain on walls, cupboards and carpets, room by room. Every item included in the property – such as fridge, cooker and any furniture – should be listed, with its condition. It should also include meter readings and details of the external condition of the property and any outbuildings.

Reports can run into huge numbers of pages and each page should be initialled by both landlord and tenant. It's a painstaking task, which most landlords feel happier leaving to the professionals. Choose an inventory company who is a member of:



The Association of Independent Inventory Clerks (AIC)



ARLA Inventories



The inventory is a vital step in any tenancy. It sets out the condition of the property in detail, which can be used at the end of the tenancy to provide a comparison. If damage has occurred, or the property is not as clean as it was at the start, you will need the inventory as evidence if you wish to make a claim. To help you through the inventory process, we have created this checklist with the help of Inventory Genius.

- If you employ someone, check they have a robust method of carrying out an inventory.
- Ideally make sure they are members of AIIIC or APIP.
- If you prefer to do the inventory yourself, don't create your own, make sure you have a good system to help you, such as Inventory Genius.
- Make sure the inventory has:
 - Information about furnishing status, ie furnished, part-furnished or unfurnished
 - Names and/or number of tenants (this helps with inspections and when checking for fair wear and tear)
 - The correct and full property address
 - The property type eg terrace, flat
 - The date the inventory was carried out
 - Preambles at the beginning which are easy to read and understand especially regards to cleaning conditions.
- Include the property address on each page.
- Carry out the inventory on the day of move in, or the day before.
- Make sure you clearly word everything – someone has to be able to read and understand it without you being there.
- Be specific, if there are scratches, don't say 'a few' say two or three.
- If you have evidence an item or decorations carried out to the property are new insert the date.
- Take photos of problem areas and use a pen to highlight where the problem is.
- Make sure the outside walls and floors are safe, eg no loose tiles or bricks.

- Inspect all walls, ceilings and fixtures and fittings, check for scratches, knocks and marks.
- Check for stains, rips and joins in flooring and carpets.
- Look for signs of damp and mould, especially in bathrooms and around windows.
- Make sure electric and gas appliances, plumbing, lights etc switch on and work.
- Check the doors and windows open, close and lock.
- Look carefully at kitchen worktops for burn marks, scratches and stains.
- Are all the white goods, sinks, taps, bathtubs, working okay and are they clean?
- Check outside and in the garden for the condition of things like fences/gates.
- Know and note if the tenant is going to be responsible for it.
- Make a note via a time stamped photograph and in writing, of meter readings, both on check in and check out, make a note of where they are.
- Ask the tenant to sign each page of the inventory to prove they have read it.
- Make sure you carry out the inventory check out with the tenant there to sort any disputes at the property.



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**Call Inventory Genius
on 01332 653888**



**Visit the website at
inventorygenius.co.uk**

Rights and responsibilities

As well as ensuring appropriate background checks and a thorough inventory are carried out, it is a good idea to make tenants aware not just of their rights but of their responsibilities, as outlined here, courtesy of Hunters estate agency. Full details should be included in your tenancy agreement.



LANDLORD'S RIGHTS

- To receive the agreed rent on the date stated
- To grant/refuse permission to sub-let/take in lodgers
- To grant/refuse permission to smoke in the property
- To grant/refuse requests to keep pets
- To access and inspect the property, with notice (except in an emergency).



TENANT'S RIGHTS

- To be protected from unfair eviction/unreasonable rents
- To live in the property in 'quiet enjoyment'
- To live in a safe property in a good state of repair
- If an AST, to have their deposit protected in a government-scheme, and returned at the end of the tenancy
- To be given at least 24 hours' notice of an inspection, and that visits are convenient and while the tenant is present
- To know who their landlord is.



LANDLORD'S RESPONSIBILITIES

- To provide the tenant with a copy of the tenancy agreement
- To take meter readings on the first day of the tenancy and test smoke alarms
- To provide the tenant with prescribed information such as EPCs, gas safety certificate and the government's 'How to Rent' guide
- To maintain the property in good working order
- To provide safety certificates from qualified experts to show gas and electrical items are in a safe condition
- Ensure all furniture/fixtures meet fire safety regulations
- Ensure smoke alarms and, if required, carbon monoxide alarms are fitted to the required standard
- To respond in writing to repair requests within 14 days
- To carry out most repairs and deal with issues raised by the tenant within a fair timeframe
- To be clear if any appliances or furniture that have been supplied will be replaced
- To keep floors, paths and stairs in good repair and free from tripping hazards
- To ensure the property can economically be kept at a reasonable temperature (between 18° and 21°C)
- To ensure that delivery of utilities (gas, electricity and water) is safe and in working order
- Give the appropriate notice to the tenant to leave the property or regain possession
- To return the deposit to the tenant in accordance with the tenancy scheme it is protected in
- To secure the correct licence for the property if applicable.



TENANT'S RESPONSIBILITIES

- To look after the property in a way that avoids damage
- To pay utility bills on time
- To maintain fixtures, fittings and amenities, eg change light bulbs, test smoke alarms etc
- To report any maintenance required
- Normally, garden maintenance and mowing the lawn
- The actions of their visitors
- To secure the property when unoccupied and advise the landlord/agent if it will be empty for more than two weeks
- To ensure waste is properly disposed of
- Not to act in an antisocial manner, eg through loud music or unruly behaviour
- Not to cause damage to neighbours' property
- To give proper notice when they wish to end the tenancy
- To pay for damage if caused by the tenant, or resulting from refusal to grant access for inspections
- Be aware that it is their responsibility to insure their own contents and, if required, liability for damage to the property
- To keep the property clean and tidy, including cleaning windows, unless agreed otherwise
- In most cases, manage any rodent infestations, including paying for pest control if required
- To manage condensation by ventilating the property
- To pay for replacements if keys are lost, or for the locks to be changed, if required
- To seek permission before decorating or making changes
- To pay the rent, even if claiming Housing Benefit or Universal Credit, as the tenancy agreement is between the landlord and the tenant, not the local authority.

Periodic checks

If you employ a letting agent to manage your property, they will visit the property to carry out periodic checks – or inspections – for you. If you decide to self-manage, it's important that you do them yourself. These visits are not just so you can check up on your tenant and your property, they are useful to help you iron out any difficulties your tenant may be having, and to forge a good working relationship.

Quarterly inspections are the norm; any more could be seen as harassment and the tenant would have a legitimate complaint. You may wish to drop down to twice-yearly inspections with a tenant who has been in the property for a while and not caused any problems.

Reasons for carrying out checks include:



To find out if repairs are needed, or if there are problems with damp or mould



To find out if the tenant is having any difficulties, eg with the heating system



To check for damage or other issues, such as sub-letting or illegal activity



To chat to the tenant and find out their future plans

You must give 24 hours' notice – or whatever is stated in your tenancy agreement – in writing. It's a good idea to do this in more than one way, eg via email and a phone call, and the appointment must be convenient for the tenant, ie outside of their working hours.

Visits can be carried out by you or your letting agent although, even if you perform the checks yourself, it is a good idea to be accompanied by your agent.

Whoever carries out the visit, make sure the tenant is present, as this keeps the process transparent and nobody can be accused of any wrongdoing.



The only time you may enter the property without giving notice is in an emergency situation, such as fire or flood.

Refusal of access

If a tenant refuses access, whether to you, your letting agent or to your legal company, even if you are flexible about the time, you must not enter the property.

Record all contact you have with the tenant, as you may need this as evidence later.

However, by refusing reasonable requests for access, the tenant loses the right to complain about repairs not being carried out, or about any personal injury resulting from lack of maintenance, eg a broken handrail.

Ultimately, if your inability to access the property to perform repair work results in ongoing damage, you may be able to claim damages from the tenant.

Continuing to refuse access is a breach of their tenancy agreement and you may begin eviction proceedings. The court will make a decision based on the evidence you can provide, so it's important that you record all attempts to gain access to the property, and the tenant's refusal.



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EXPERT TIP

Having the right landlord insurance is a good preventative measure so if you do have to claim, you're covered. Again it comes down to the inspections, making sure you have a robust inventory going in, making sure you do your mid-term inventory check, make sure you get access, good photographic evidence, and also explaining to the tenants their responsibilities in renting.

PAUL SHAMPLINA
landlordaction.co.uk



Ending a tenancy

Most tenancies end well and it is rare that your legal company/letting agency will have to serve a notice. However, problems do occur. You may need to sell the property to gain access to the capital, or you may have a problem tenant who needs to be removed because they are not paying rent or have caused malicious damage.

There are two ways you can end a tenancy:



SECTION 21 NOTICE

When nothing has gone wrong, you simply want your property back, you can serve a Section 21 notice.



SECTION 8 NOTICE

You serve a Section 8 notice if the tenant has breached the tenancy agreement and you wish them to leave the property.

Section 21 notice

You do not need to provide a reason for serving a Section 21 Notice, although you must wait until the end of the initial fixed term and you must give the tenant at least two months' notice.

In most cases, this will run smoothly and amicably, especially if you have treated your tenants well and maintained a good working relationship with them.

A Section 21 notice will not be valid if...



It is still within the initial fixed period of the tenancy.



You have not protected the tenant's deposit in a government-approved scheme and provided the prescribed information.



You have not provided the tenant with a valid EPC, Gas Safety Certificate and the **How to Rent** booklet (for tenancies which began after October 2015).



The tenant has made reasonable maintenance requests which you ignored, and has subsequently reported you to the local authority.



You don't complete it correctly.



If you use a letting agent, they will manage any notices for you. However, if you manage your property yourself and do not have experience in the area of notices, we highly recommend you take legal advice.

Section 8 notice

By carrying out stringent referencing, you drastically reduce your chances of ever needing to serve a Section 8 Notice, which applies if a tenant has broken the terms of the tenancy agreement.

All paperwork has to be completed correctly, down to the finest detail, as any minor error can cause it to be invalid, and you will have to start again, which wastes time and means your problems are prolonged, costing you more money. For this reason, it is best left to the professionals, either through a letting agency or a fixed-fee eviction specialist such as Landlord Action.

Examples of when a Section 8 notice can be served



Non-payment of rent



Malicious damage



Illegal activity



Nuisance behaviour or noise



Sub-letting

Applying for a possession order

In many cases, simply serving a notice will cause a tenant to pay any missed rent or leave the property, but if they don't do so by the deadline you have set, you can apply for a possession order. This will be decided in court and you can wait up to 10 weeks for your case to be heard – which means it is important you do not allow problems to linger as this will only prolong the time you are without rent, or allow damage to become worse.

If the court grants a possession order, they will order the tenant to leave the property by a certain date, usually 14 days later. If they don't leave by this point, bailiffs can be sent to remove them. You will need to meet the bailiffs at the property, with a locksmith, so you can have the locks changed once the tenant has left.

Rent recovery

Your landlord insurance may cover you for any lost rent but, if not, it's worth weighing up the costs of recovering any outstanding debt as, in some cases, the costs of pursuing it will outweigh any gains. If you do decide to pursue the debt, there are various recovery options available but, again, this is best left to experienced professionals.



Evicting a tenant is a complex legal procedure which is best left to the professionals, unless you have experience in this area. If paperwork is not completed accurately and precisely, your case may be thrown out and you will have to start from scratch. To provide an insight into the process, the experts at Landlord Action have compiled this checklist.

- The first thing you need to work out is why you are evicting the tenant – if you don't, you may end up evicting them with the wrong paperwork, resulting in the need to start the whole process again.
- The second step is to go through the terms and conditions of the contract you have with your tenant. This will have clauses which explain why and how your tenant can be evicted.
- If you haven't evicted a tenant before, it is wise to get it right first time, especially if they are not paying the rent or are damaging your property – look for a fixed fee service such as Landlord Action.
- Make sure if you are choosing a legal company to evict a tenant they are authorised by the SRA (like Landlord Action) and able to carry out all services from issuing notices to evict through to collecting unpaid rent.
- Most tenancy agreements these days are Assured Shorthold Tenancy (AST) agreements. This means you would evict a tenant through a Section 21 (non-fault based possession) or a Section 8 (which allows you to seek possession under specific grounds, such as rent arrears or anti-social behaviour).
- If you have taken a deposit from the tenant, you can only serve notice to quit if you have legally protected their deposit in one of the government schemes, such as the Tenancy Deposit Scheme.
- If you just want the property back and your tenant has lived there for more than the six-month fixed time period given by an AST, then you just need to send them a Section 21 notice. This does not require you to give any reason as to why you have asked them leave, but will require you to give them two months' notice.
- If you signed a tenancy agreement or renewal agreement with your tenant after 1st October 2015, you must now comply with parts of the Deregulation Act 2015 in order to be able to serve a valid Section 21 notice.
- You must be able prove that you provided your tenant with an EPC, Gas Safety Certificate and the government's 'How to Rent' guide prior to the start of the tenancy. Any non-compliance with this requirement renders a section 21 notice ineffective.

- There is now a new Section 21 notice (prescribed form 6a) which combines the two former Section 21 notices (Section 21a periodic and Section 21b fixed-term) into a single use notice for both fixed-term and periodic tenancies. The old Section 21 notices can only be used on tenancies which started prior to 1st October 2015.
- From 1st October 2015, you can no longer serve a Section 21 notice within the first four months of the contractual term of the tenancy.
- A Section 21 notice now also has a lifespan. Once a Section 21 notice has been given under a fixed term AST or a periodic AST, possession proceedings must be started within six months of the date the notice was given. Failure to do this will result in the possession notice becoming invalid and a new one being required.
- In some cases, it is possible to get 'accelerated possession' – this can be within 14 days, or take as long as 42 working days, but this depends on your circumstances and it is worth taking professional advice. You can call Landlord Action on 020 8906 3838 and discuss whether this is possible.
- If you use a Section 8 notice, you can issue this at any time and, depending on why it is being issued, the tenant will need two weeks to two months to quit.
- The notice to quit is important. It must be in writing and give the tenant at least two months from the date it is served until the date you want the tenant to leave. This date must be **AFTER** the six months fixed tenancy term offered by an AST. Check to see if the tenancy falls under the rules of the Deregulation Act or not.
- If your tenant decides not to leave, you will have to apply to the courts. This can cost hundreds of pounds and take a few months, so be prepared for a battle. However, they may just leave before/on the court date.
- If the tenant doesn't give a reason or a defence as to why they should stay, then the court will grant you possession and give a date for the tenant to leave.
- If the tenant does not leave by the date given, you must then apply for a bailiff to be present to ensure the tenant leaves.
- The bailiff is the one person who can remove the tenant and their belongings. In some cases, if the tenant has vacated the property but left their belongings, then it is wise to hold them in storage for a reasonable time period. Take photographic evidence and an inventory of their belongings, as well as written evidence that you tried to contact them, so they have no claim against you.



**Call Landlord Action on
020 8906 3838**



**Visit the website at
landlordaction.co.uk**

When can you withhold the deposit?

If you can prove via the inventory that the tenants have caused loss or damage to the property beyond the realms of 'fair wear and tear' you may have grounds to withhold some or all of the deposit.

'Fair wear and tear' is defined as the normal decline in condition of a property or its contents over the period of the tenancy and must be taken into account before requesting to withhold some or all of the deposit.

Common reasons for deductions



Rent arrears



Damage to the property or contents



Redecoration



Cleanliness – the oven is one of the most common areas of dispute



TDS CHARITABLE FOUNDATION

TDS Charitable Foundation exists to help landlords and tenants find out how to exercise their rights and responsibilities and its website features a huge amount of resources, all available free to landlords and tenants.

Kate Faulkner has worked with the TDS Charitable Foundation to produce a series of reports and surveys on the private rented sector which are designed to increase knowledge on the private rented sector in England and to promote best practice. You can [download the reports here](#).

Another source of advice to both tenants and landlords about deposits is the Tenancy Deposit Scheme's free helpline on 0300 037 1000.

EXPERT TIP

I think it's important that landlords understand the concept of 'fair wear and tear'. Clearly, if you've had a carpet that's been down for 10 years, and it gets a bit damaged at the end of that 10 years, you can't really claim for a brand new carpet. That's also quite important because over time furniture and fittings do deteriorate and it's only reasonable that the landlord gets some recompense if they're damaged but you won't get back the full cost of renewal.

STEVE HARRIOTT
tenancydepositscheme.com





In addition to providing deposit protection, the Tenancy Deposit Scheme (TDS) provides fair and impartial adjudication on deposit disputes. Of all the deposits protected, fewer than 1% will be sent to TDS for a dispute. The key to a successful tenancy is open communication between the landlord, and being well prepared from the beginning.

Each case is unique and is dependent on the evidence provided so there is no sure-fire method for the retention of part/all of a tenant's deposit. The burden of proof will always lie with the landlord as the money belongs to the tenant and is held in security against the tenant's obligations under the tenancy agreement

There are preparatory actions landlords should be taking when they enter into a rental agreement, allowing them to protect their property and set themselves up for the best possible chance of a successful tenancy.

BEFORE THE TENANCY

Inventory

- Ensure your inventory accurately displays cost, age, condition and cleanliness of each item
- Ensure the inventory lists walls, carpets and in-built items, not just furniture

Tenancy agreement

- In the tenancy agreement there should be a clause which states that the tenant should maintain the condition of the property
- Include a clause stating who is responsible for paying utility bills during the tenancy
- If using an insured scheme, include a clause outlining who will retain any interest on the deposit at the end of the tenancy
- The tenancy agreement should include a provision for using the deposit to recuperate costs such as:
 - rent arrears
 - redecoration
 - damage
 - gardening
 - removal of tenants' items
 - replacement of landlord's items
 - bills (eg, utility, council tax, water)

- cleaning
- key replacement
- The tenancy agreement can include specific clauses relating to a particular tenancy, for example to allow a specific pet, with a clause about additional actions tenants should take to clean. This should be created in a specially negotiated clause, and signed separately
- The tenancy agreement should be supported with a check-in/check-out report which allows the condition of the property to be compared. Digital photos are useful but the written and signed report is key

DURING THE TENANCY

- Make it very clear to tenants that damage must be reported immediately, where possible, or within a certain time frame, eg 48 hours. This can prevent smaller issues developing into larger issues
- Take preventative measures such as installing extractor fans and opening windows to help prevent damp

AT THE END OF THE TENANCY

- Some landlords find it useful to do an inspection a few days prior to the check-out. This provides an opportunity to remind tenants of their cleaning responsibilities
- During check out, be sure to mark the condition and cleanliness of each item; just as in the check-in/inventory, this allows you to compare the conditions from the start of the tenancy to the end accurately
- Remember:** Cleanliness is not subject to fair wear and tear; if an item was marked as clean at the start of the tenancy then it should be returned in the same state.

Making deductions from the deposit

- Should you need to recover costs from the deposit, you should do so in a timely manner
- Deductions should be clearly laid out, and sent to the tenant directly
- If, after discussion, the tenant and landlord are unable to agree on deductions then a dispute can be raised
- If the amount of money in dispute is greater than the deposit amount, you may choose to take the matter to court or continue with the free Alternative Dispute Resolution (ADR) service offered by your deposit protection scheme. If you choose to use ADR, ensure you include the full extent of your claim – do not limit it to the amount of the deposit
- TDS provides a useful [Deductions Template](#) to members, available on the website

Dispute resolution

If you need to make a deduction from the deposit, as long as your deductions are clearly reasoned and fairly costed, many tenants will not dispute your claim. However there will be occasions where dispute resolution is your only option.

- Ensure you have evidence to support your claim.
- Consider the fairness of the claim. TDS's golden standard for alternative dispute resolution is that the claims be:
 - Reasonable** – this means not claiming for an entire new kitchen for one broken cupboard door, or not claiming for an entire carpet because of one small stain.
 - Reasonable** – the amount of money that you are claiming should be reasonable for that item. The amount should reflect an accurate cost.
 - Reasoned** – this means providing accurate evidence and a clear argument that will allow the adjudicator to see clearly that damage/negligence has occurred and the value of repairs/replacement.
- The onus of proof lies with the landlord, as you must prove all of the following:
 - You have suffered a loss
 - The loss was caused by the tenant or someone they were responsible for
 - The tenancy agreement permits this loss to be recovered from the tenant's deposit
 - You have evidence that allows the amount of loss to be quantified (worked out in monetary terms)
- Understand that adjudicators will not allow 'betterment'; a claim may be rejected, or the amount adjusted, if they feel that the money requested would put the landlord in a better position than they would have been in, had the damage/negligence not occurred.



Call the Tenancy Deposit Scheme on 0300 037 1000



Visit the website at [tenancydepositscheme.com](https://www.tenancydepositscheme.com)



If you treat your tenants well, and have carried out thorough referencing, problems should be rare. However, issues do occasionally arise, and the experts at Belvoir reveal the five most common five common tenant complaints and how you can prevent or resolve them.

Communication

Clear and concise communication with your tenant is vital and helps resolve complaints at speed – and, in some cases, even prevents them from occurring in the first place.

A good level of communication, by phone, email or face-to-face, will help each party understand their own responsibilities, plus the other's expectations. It will also enable both of you to deliver key messages about the property.

Poor communication can quickly lead to misunderstandings and wrong assumptions. It can lead to frustration too, particularly if a tenant reports a problem but fails to hear from their landlord with reassurance that something will be done to resolve it.

It's a good idea to back up all communication with a paper trail, perhaps via email, so you have a written record that you can refer to at a later date if necessary.

Maintenance

Outstanding maintenance issues which aren't rectified can affect a tenant's quality of living and, in extreme cases, their safety. Aim to rectify maintenance issues at speed. This may involve chasing contractors, plus making sure work has been done to a satisfactory standard. Before work begins, demonstrate transparency to your tenant about expected timescales and possible disruption.

Be realistic: for instance, if a tenant asks for an upgrade of a bathroom suite that is functional and operational but a little outdated, don't make any promises unless you are willing to commit to the work.

Replacing deteriorating window frames, clearing blocked guttering and securing loose roof tiles can all help prevent bigger problems, complaints and bills occurring later.

Rent increases

Before suggesting a rise, research the rental market thoroughly to make sure your expectations are realistic. Speak to your local letting agent as they will be able to guide you on appropriate prices, plus

advise you on how to approach an increase with your tenant. Some complaints about rent increases actually arise from how the message is delivered rather than the increase itself.

Always be honest and open with your tenant and explain why you are suggesting the increase, plus give factual market examples to back up your decision.

Remember, also, that retaining a good tenant has its own value. If a price increase is likely to overstretch a good tenant and shorten their stay with you then negotiation is advisable as long as your property isn't falling too far behind current market value.

Failing to respect privacy

You may own the property but, for the duration of a tenancy, it is someone else's home so popping in unannounced is likely to cause upset and lead to complaints. A tenant has the right to privacy and quiet enjoyment of the property.

Some visits will be required, of course, including quarterly inspections. Make sure these inspection visits are arranged in advance, with at least 24 hours' notice in writing and make sure the tenant understands the purpose of the visit and its likely duration before it takes place.

Not taking complaints seriously

If a tenant makes a complaint, listen to it carefully and respond promptly. Ignored complaints rarely disappear. Instead they are more likely to lead to frustration for a tenant – and what sometimes starts as a small issue can escalate into a big problem unnecessarily.

Reassure a tenant that you have heard the complaint and let them know how you are going to resolve it and when. Always be transparent about your intentions and timescales. If you really can't resolve their complaint, be honest about that too, and explain why.

Once a complaint has been dealt with, make sure the tenant is happy with the outcome and ask them to confirm that their complaint has now been resolved adequately and in full.



Contact Belvoir here

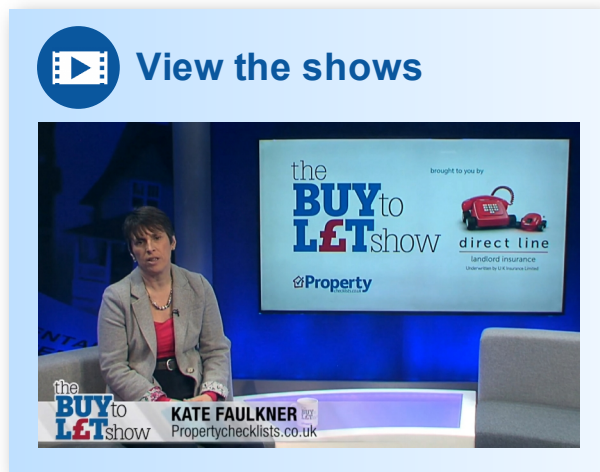


**Visit the website at
belvoir.co.uk**

Where next?

There are six eBooks in this series, which accompany the six episodes of the Buy to Let Show. They are:

1. **Is Buy to Let a Wise Investment?**
2. **Financing and Insuring a Buy to Let**
3. **How to Choose a Buy to Let**
4. **Letting a Property Legally and Safely**
5. **Dealing with Tenancy Problems**
6. **How to Plan an Exit from Buy to Let**



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