



LETTING MANSES AND OTHER HOUSES

(Amended December 2015)

The following notes are matters which Congregations should consider if they are considering letting out their Manse (or other residential property) during a period of vacancy or for any other reason.

Type of Occupation

The Congregation requires to decide the type of tenancy they wish to create. There are 3 types of tenancy/occupation which may be considered.

1. An assured tenancy. Under this type of tenancy the tenant has security of tenure (as does the tenant's widow or widower after the tenant dies). This means that possession of the property can only be recovered on very limited grounds. It is not recommended that such a tenancy is created unless it is anticipated that a property will be permanently vacant and it is not desired to sell it.
2. A short assured tenancy. This tenancy must be for at least 6 months in the first instance. In addition an AT5 form must be given to the Tenant before the tenancy is created. Usually the lease is drawn so that the tenancy can be continued for a further period of 6 months or alternatively on a month to month basis as desired. The landlord has the absolute right to require the tenant to leave when the agreed letting period ends. This type of tenancy is recommended where a Manse is to be vacant for a period of 6 months or more. Providing the statutory procedure is adhered to it is possible to serve notice to quit and regain control of property so that it may be occupied by a Minister.
3. A caretaker arrangement. A caretaker arrangement is not a tenancy and the normal rules of tenancy do not apply. Normal tenancy provisions will not apply but the provisions with respect to multiply occupancy licences do. No rent is charged under a caretaker arrangement. The "caretaker" however pays council tax and the cost of electricity, gas etc used.

Ecclesiastical consents

In all cases where it is anticipated that the tenancy created is to last for more than one year, Presbytery consent will be required. A Determination of the General Trustees approving the let is required where the property is held in their name. Where the house is under Assembly Control, the consent of the General Trustees is only required where the lease proposed is to be an assured tenancy.

Letting Procedures

Where the house is held in name of the General Trustees, the General Trustees' staff will handle the leasing arrangements and early contact should be made with the Secretary of the Trustees. In other cases, it is recommended that a solicitor be instructed. The Law Department will be very happy to act.

Tenant Checks

It is recommended that where a tenant is identified by the Congregation rather than through an agency or the General Trustees, checks should be made as to their financial standing and any previous history as tenants. If the property is locally vested, the Law Department can assist in obtaining references.

Multiple Occupancy

In any case where a property is to be occupied by 3 or more unrelated persons, it is necessary to apply to the Local Authority for a Multiple Occupancy Licence. There are strict conditions as to room sizes and the facilities – particularly safety features - which must be available. The property requires to be inspected by the Local Authority and there is a fee for the licence. The General Trustees' policy is not to approve multiple occupation leases.

Registration of Landlord

In all cases where a residential property is to be let - with the exception of a caretaker arrangement - and title is held in the name of local trustees, the trustees as owners will require to register as Landlords. This should be done at an early stage as the Registration Number is now required for any advertisement offering the property for let. If the property is to be managed by Management Agents rather than by the Financial Board of the Congregation, the Agents will also require to be registered. The General Trustees are already registered and therefore the Congregation will not require to register if the house is held in the General Trustees' name.

The Local Authority requires to be satisfied that the Landlords are "fit and proper people" to be Landlords. Congregations, as charities, receive 100% discount on the fees which would otherwise be payable for Landlords Registration. Registration lasts for 3 years. Landlords who fail to register are guilty of a criminal offence and rent payments to them may be suspended.

The Standard of the Property

These days there is considerable statutory input into the way in which tenancies are conducted and what must be provided by the Landlord.

Failing to comply with legislation and good practice could result in a Landlord losing their registration as a Landlord on the ground of not being a fit and proper person. The following are matters which will require to be dealt with:-

- (a) An Energy Performance Certificate will require to be obtained for the property and placed on display within the property.
- (b) If there is gas central heating or any gas appliance, a gas safety check must be carried out every 12 months by a Gas Safe registered engineer. A record of the check has to be delivered to the tenant within 28 days of it being carried out and the records require to be kept for 2 years. A gas safety certificate must be given to Tenants by the time the Tenancy commences.
- (c) **It is now mandatory that at the start of each new tenancy (where an electrical check has not been carried out in the previous five years), and at least once every five years during the course of a tenancy, an Electrical Installation Condition Report Certificate and a Portable**

Appliance Test Certificate be obtained. The certificates require to be signed by a qualified and accredited electrician.

- (d) A fire and smoke detector and alarm require to be fitted:
- ✓ In the room which is most frequently used by the occupants for general daytime living purposes
 - ✓ In every circulation space
 - ✓ On each floor where there is more than one floor
 - ✓ In every kitchen
- All alarms must be mains powered and interlinked.
- (e) A Carbon Monoxide detector must be installed where there is a gas boiler or other gas appliance within the property.
- (f) The house must meet what is known as the “Repairing Standard” prior to and throughout the period of the tenancy. The Landlord is obliged carry out all necessary work prior to the start of the tenancy and if any work becomes necessary the landlord must carry out the work.

The Private Rented Housing Panel can settle Landlord/Tenant disputes with respect to repairing standards.

The Landlord is responsible for keeping the following parts of the property in reasonable repair and working order:-

- the structure and exterior of the house.
- the water supply, gas and electricity etc.
- the fixtures and fittings supplied with the tenancy.

In addition:-

- the property must be kept in a wind and water tight condition reasonably fit for human habitation.
- any furnishings within the property, supplied by the landlord, must be capable of being used safely for the purpose for which they are designed.
- satisfactory provision must be made for detecting and giving warnings of fires.

It is a criminal offence if the Landlord fails to comply with a Repairing Standards Enforcement Order issued by the Panel.

After 1 May 2013, at the commencement of any tenancy a Tenant Information Pack must be issued to the Tenant in the form set by the Scottish Government.

Deposits

It is an offence to charge a Tenant additional sums (“key money”) either to secure the tenancy or in connection with items such as preparation of the lease. A deposit of a sum not more than two months’ rent can be collected at the start of the tenancy to cover damage done, rent arrears etc.

As of 2 July 2012 any Landlord receiving a deposit has a period of 30 days within which to pay that deposit to the scheme administrator of a deposit scheme approved by the Scottish Ministers and provide the Tenant with written information about the operation of the scheme as set out in the Tenancy Deposit (Scotland) Regulations 2011. At the end of the Tenancy the Landlord will require to apply to the scheme administrator for repayment of all or part of the deposit. The Tenant can also apply for the return of the deposit. Where the amount to be repaid cannot be agreed the matter will be adjudicated by a dispute resolution process provided by the scheme free of charge. No interest will be paid on the deposit monies.

Where a dispute arises as to whether or not deductions should be made before the deposit is repaid there will be an Adjudication. It will be necessary to submit evidence to show why an amount should be deducted. If the issue is unpaid rent this is relatively straight forward but if the issue is the state of the property it will be necessary to provide evidence as to the condition of the property at the start of the tenancy and then again at the end. The Landlords only get one shot at this which means that a full condition survey should be carried out at the start of the tenancy, especially where the property has been recently refurbished or new equipment such as a boiler or cooker installed. A written record of the condition should be made before the tenancy commences.

Insurance, Council Tax etc

Property insurance should be in place and the insurers advised that the property is being let. The tenant should be made aware that they will be responsible for insuring any contents belonging to them.

<http://www.cosic.co.uk/component/content/article/37-news/156-the-church-insurance-scheme-is-commended-at-the-general-assembly-of-2014>

The Financial Board of the congregation are responsible as Landlords for ensuring that the Local Authority is advised of the Tenant's occupancy for the purpose of Council Tax Assessment. *It is important to keep the Authority advised of any periods of vacancy between Tenants, failing which the congregation may lose its right to a Council Tax rebate.*

At the start of any tenancy, gas and electricity meters should be read and the suppliers advised of the change in the person responsible for payment for the service. The telephone provider, if there is one, must be advised of the position. At the end of the tenancy it is important that meter readings are taken and all service providers advised of the change in the circumstances.

At the start of the tenancy someone from the Congregation should be appointed to show the tenant round the property and in particular to show them where stop cocks and meters are located.

The Tenant should be advised who to report repairs to.

It is appreciated that the letting of a property can be a complex matter and the above is only a brief outline of some of the necessary considerations. If you are thinking of letting the property and wish to discuss any matter further, you should contact the Law Department or, if the property is held in the name of the General Trustees, the Secretary to the General Trustees Department who will be able to provide further guidance on the letting of Manse properties.