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Recent analysis tips Bedfordshire and Hertfordshire as a region for major economic growth, something we have sensed for a while now.

- Current proposals estimate 50,000 new jobs in Bedfordshire over a 20 year period from 2001-2021 (including 12,600 in the south incorporating Luton and Dunstable).
- London Luton airport is set to expand from 7.5 million passengers in 2004 to 31 million passengers by 2031.
- Stevenage is ripe for regeneration. Its position between London and Cambridge makes it a likely target for players in the biotechnology and R&D fields.
- Hemel Hempstead is also primed for expansion with brownfield development and redevelopment of the town centre.

We, at Taylor Walton, located in the heart of the region, are well placed to service the legal needs of those taking up those opportunities - including you. Please call me to discuss your specific requirements.

Angela Thomas
Head of Department

What is a 'Tenancy Deposit Protection'?

From 6 April 2007, all new deposits taken by landlords of Assured Shorthold Tenancies ("ASTs") will be protected by a scheme called Tenancy Deposit Protection ("TDP"). The aim is to ensure good practice, so when a residential tenant pays a deposit and is entitled to get it back, this will now happen. Landlords will choose between two types of scheme:

Custodial scheme:

- The landlord pays the deposit into the scheme;
- If there is a dispute at the end of the tenancy, the scheme will hold the disputed amount until the dispute resolution service / Court decides what is fair.

Insurance based schemes:

- The landlord retains the deposit and pays a premium to the insurer;
- If there is a dispute at the end of the tenancy, the landlord pays the disputed amount into the scheme until the dispute is resolved;

- If the landlord fails to comply, the insurer will ensure the return of the deposit to the tenant (if he is entitled to it).

What happens if a deposit is not protected by the landlord?

Currently, a landlord can obtain an order for possession of an AST at the end of the tenancy providing it gives the tenant two months' written notice, known as 'notice-only'.

Under TDP, the landlord cannot regain possession of the property using the usual 'notice only' grounds if the deposit has not been correctly safeguarded and must pay the tenant three times the deposit, by way of a penalty.



For more information on this topic contact Helen O'Callaghan on 01582 731161 or helen.ocallaghan@taylorwalton.co.uk



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Beware - Repair

When entering into a "full repairing and insuring" commercial lease, the repair obligation is one of the most important clauses to consider in order to ensure that your position, whether as Landlord or Tenant, is protected.

The precise wording of the obligation must be carefully negotiated and understood as liability for repairs is one of the most common areas of dispute between Landlord and Tenant. The recent case of Janet Reger International Limited v. Tiree Limited clearly highlights this issue.

Janet Reger had a lease of premises consisting of a ground floor and basement for use as offices and retail space. In 2003, the basement started showing signs of damp. For a period of two years the Landlord acknowledged the damp problem and whilst it did not refuse to carry out remedial work neither did it take any steps to rectify the problem.

In 2004, Janet Reger had to move out of the premises and the cause of the problem was identified as the damp proof membrane in the flooring not being linked into the damp proof course in the walls. The damp proof course was, therefore, not continuous and allowed the water to penetrate.

The repair covenant in the lease stated that the Landlord should "use

reasonable endeavours to repair, renew and maintain the structure." As the damp proof membrane was in the floor, and this was deemed part of the structure, Janet Reger commenced proceedings against the Landlord to rectify the problem.

Janet Reger alleged that the Landlord was in breach either of its express covenant to repair the structure or of an implied obligation to remedy any defective part of the structure which would cause damage to the premises which Janet Reger was under an obligation to repair.

A tenant must show that the subject matter of the covenant (i.e. the structure) has deteriorated in order to prove an obligation to repair. The Landlord argued that it had no liability as the structure of the premises, such as brickwork, had not been affected. Janet Reger's main challenge was to convince the judge that the damp proof course had deteriorated.

The judge found in favour of the Landlord; holding that the damp proof course had not actually deteriorated rather it had been defectively installed.

The judge held that Janet Reger would be responsible for the repairs as it was required under the lease to "put and keep the premises in good repair and condition". He held that the word

"condition" adds something to the meaning of the word "repair". The damp arising from the lack of an effective damp proof course was a feature of the "condition" of the property and had to be rectified under the tenant's repairing covenant, despite the fact that the premises themselves were not in disrepair.

The judge also dismissed the implied obligation argument stating that the Court would be slow to imply any terms into a complex and highly negotiated legal document such as a lease.

If you have any queries on matters relating to your repair obligations, whether as a landlord or tenant, then contact Georgina Lunn or one of our other specialist solicitors for advice.



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