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MONEY BOX LIVE

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LEWIS: Hello. The demand for rented accommodation is growing and it's not being met. Well that should be good news for landlords, but with the shortage of mortgages and little capital growth on housing, is buying to let still a good investment? And what about tenants? It's okay if you can afford the rising cost of renting a home, but with unemployment up this month and wages all but frozen in many places, finding the cost of a decent rented home can be a challenge. There were reports this month of an increase in the number of tenants struggling to pay their rent; and cuts in state help with rent from private landlords called local housing allowance, which start in April, can only make things worse for tenants and their landlords. So today's Money Box Live is all about renting and letting. Whether you're a new buy-to-let landlord, a tenant wanting to know your rights, or either - landlord or tenant - worried about the new housing allowance restrictions or puzzled about deposit protection, whatever your question, ask Money Box Live now: 03700 100 444. With me today to answer your questions are Marveen Smith, who's a partner in solicitors PainSmith; John Gallagher who's Principal Solicitor at the housing charity Shelter; and David Salusbury, Chairman of the National Landlords Association. And our first question is from Neil in Fulham. Neil, your question?

NEIL: Yeah, as from 6th April 2007, there's a requirement from parliament for private landlords to register deposits attained from tenants and to register them via an insurance scheme. There are two schemes: one was a custodial scheme whereby a company held the deposit on the tenant's behalf; and the other scheme still allowed

the tenant to hold the deposit, but the deposit had to be registered. However there were two cases in the High Court last year - one was Draycott versus Hannells; and a second court - Tiensia versus Vision Enterprises - which seem to have overturned the law.

LEWIS: Okay, is that your question, Neil?

NEIL: My question is does a private landlord still have to register a tenancy on creation of an assured shorthold tenancy? And ...

LEWIS: Okay, well we'll keep that in mind and just ask Pamela in Shepperton for her question, which I think is very similar. Pamela, your question?

PAMELA: Yes, hello. I'm a landlady. I'm 70 and I have been renting on and off as a means of income actually for over 30 years. I had a tenant who left and damage was discovered before he finally left. He left the property and went up to Scotland, although his tenancy was still in place as it were. I found out that he'd sort of sub-let one of the rooms in as much as he'd allowed somebody to stay over there three days a week, and I've discovered damage had been caused to a newly stripped and polished floor in the centre where the friend had walked over it in stiletto heels. So although I allowed him to use his deposit as his last month's rent, I kept back £400 towards the refurbishment, which is going to be about £1200, and he's taking me to court in March and claiming £3,800 back, I think. I want to know ... I believe, I've been advised that I can be charged three times his complete deposit even though he's received two thirds of it back.

LEWIS: Okay, well let's deal with both of those and try and explain what the law is and this new court case, which I understand was very recently. And let's start with Marveen Smith. Marveen, just explain the rules as they now are in England and Wales about deposits?

SMITH: The rules in England and Wales are that a landlord where it's an assured shorthold tenancy must protect the deposit with one of three schemes - either one

insured scheme or two custodial schemes. And the act originally stated that if it wasn't protected within 14 days of the tenancy starting or the deposit being taken, the landlord could be taken to court by the tenant and penalised for three times the deposit, plus the deposit itself.

LEWIS: So that's the law. But there has been a court case that's made that slightly weaker or different in some way?

SMITH: There's been two court cases. One - Draycott versus Hannells, as the gentleman mentioned. Another one - the Tiensia case in the Court of Appeal. And there the judges decided that if the deposit was protected before the actual court hearing during the tenancy - so if the tenant finds out it's not protected, goes to court and says "I want three times the deposit", the landlord's obviously warned of that in advance, you'll get the court papers, and if he protects and serves the information before then, then he will not suffer the penalty.

LEWIS: Okay, so this is about the penalty for not obeying the law, but the law remains the same?

SMITH: The law is exactly the same.

LEWIS: But there's not that much pressure on landlords to obey it, David Salusbury, if they can now say well we'll wait for the tenant to take us to court?

SALUSBURY: Well of course that is the theory and there have been just these two cases so far. But, nevertheless, the law is the law and our organisation would say to landlords ...

LEWIS: The National Landlords Association.

SALUSBURY: Indeed, would say to landlords that they should always comply with the law and protect the deposit. One has to remember why we have tenancy deposit

protection, and the benefit of it is - we believe - that it does introduce a third party into this potential area of very hot dispute at the end of a tenancy. There is a third party ready to intervene in the event of a dispute. So it is important for instance, I'd say to Pamela, that she needs to check on the status of the deposit which appears to be in some dispute at the moment; and if it isn't protected, she ought to go and do it very quickly indeed.

LEWIS: Is your deposit protected, Pamela?

PAMELA: No. I knew it was advisory. I didn't know it was mandatory. I didn't know I had to do this. I thought it was simply being advised because I had gone for so long without any problem whatsoever returning deposits.

LEWIS: Yes. Well the law changed, didn't it?

PAMELA: Yes.

LEWIS: John Gallagher, what would you advise to Pamela in this case?

GALLAGHER: I think in Pamela's case, she has made some attempt to return the deposit and there does seem to be an issue about the £400. In all these cases, of course, it often results in one claim being made by a tenant and then a counter claim being made by the landlord for the damage that has apparently been caused. In relation to the deposit itself and the claim for three times the deposit, there is a difficulty I think about protecting a deposit once the tenancy has come to an end because the tenancy deposit schemes, I understand, won't generally accept deposits in that case. So I think Pamela can argue that it isn't actually open to her to protect and she shouldn't be in a worse position than the landlord whose tenancy is still running.

LEWIS: But, Pamela, when you took out this tenancy, was the law in place then that said you had to protect it?

PAMELA: It would have been in place, yes, because it was after ... I think the law was made in 2007 and this all finished about a year ago, so it would have been just within that period.

LEWIS: So Marveen Smith, does that put Pamela in a difficult position?

SMITH: Yes it does because the recent court cases had nothing to do with tenancies that had finished and, as such, it's still strict interpretation: you must protect the deposit. So I'm afraid, Pamela, you could be vulnerable to three times the deposit.

PAMELA: Even though I returned two thirds of that deposit? There's only £400 remaining of the £1300 deposit.

SMITH: It would be up to the court to decide.

LEWIS: I'm sorry about the bad news, Pamela. And, Neil, did we answer your question on court cases?

NEIL: I have a supplementary question.

LEWIS: Okay, brief if you would because we've got lots of callers.

NEIL: Does the registration only apply to ASTs or does it apply to other schemes such as the Rent a Room Scheme?

LEWIS: ASTs being Assured Shorthold Tenancies.

NEIL: Yeah.

SMITH: It only applies to an assured shorthold tenancy.

NEIL: Brilliant. That clears up my point very nicely. Thank you very much indeed.

LEWIS: Neil, thanks. And thanks to Pamela. And, Marveen, just before we leave deposits, we've had a number of emails about them too. We're talking about England and Wales here. What's the law in Scotland?

SMITH: Well actually there isn't legislation. However there's a consultancy process going on at the minute. I believe it's going to apply to all tenancies out there and not just short assured tenancies, as they're called in Scotland, and they're going to make the regulations much tighter and try and close all the loopholes that have resulted in England and Wales.

LEWIS: And just very briefly, Cherie emailed us to say she's bought a property to let. She understands she has to have the deposit to protect it. She can choose between these three agencies, David?

SALSBURY: Yes, indeed. There are three. As Marveen pointed out, there are three government authorised tenancy deposit protection schemes - two insurance based and the default custodial scheme.

LEWIS: Okay. So you have to do that, Cherie. And just briefly for Sally who's emailed us. 'I'm a buy-to-let landlord.' She evicted two tenants. Deposits were lodged with the Deposit Protection Service. They left owing rent arrears. She doesn't have a forwarding address. She tells me she can't get the money back from the Deposit Protection Service. Marveen?

SMITH: Yes, she can. She needs to swear an Affidavit - that's a sworn statement in front of a solicitor - showing she's tried to contact the former tenants. Then she sends the statement to them. They will adjudicate and they will decide how the deposit's to be released.

LEWIS: Okay, thanks for those emails Sally and Cherie. And we move to our next caller, Laura, who's calling us from South West London. Laura?

LAURA: Hello.

LEWIS: What's your question?

LAURA: Well I'll try and be brief. It's slightly convoluted.

LEWIS: Please do because we've got lots of people waiting.

LAURA: Okay. Basically I'm a single mother on benefits. I'm planning to go back to work in a year when my child's old enough to qualify for a free education. I am a private tenant with a private landlord, so I didn't go through an estate agent or anybody. I've got a terrible damp problem in the flat - I mean really out of control damp problem. Obviously I'm worried about my daughter's health. And I cannot get my landlord to do any work on the property at all. He's fobbed me off now for almost a year. The obvious thing would be to move, but I find myself trapped myself in this position. Because I'm on housing benefit all properties in the area are now above the housing benefit cap and actually no agent in this area will take anybody on housing benefit, so it's virtually impossible for me to move. I was lucky on the one hand because he was a private landlord and that was why I got this place in the first place, but obviously I don't know how to get him to do anything and I'm sort of stuck here now.

LEWIS: Okay, let's deal with the damp problem first. We'll talk about the housing benefit changes in a moment, I think. But John Gallagher from Shelter. John?

GALLAGHER: Unfortunately, Laura, this is quite a common problem, and the problem with dampness is it's often due to poor ventilation or some kind of design defect. But I think your main remedy is to actually go to the local authority's environmental health office. They will send somebody round to inspect and they can serve what's called an improvement notice on your landlord, which requires him to make whatever improvements are needed to eradicate the damp and stop it happening again.

LEWIS: How bad does it have to be though for that to happen?

GALLAGHER: There's what's called a hazard rating system whereby the authority will measure what sort of effect it's having on your health and especially the health of your child. And if it's what's called a category one hazard - that's quite serious dampness - the authority is bound to serve a notice. If it's under that level, they may serve a notice, and they normally will.

LEWIS: And the fact there's a young child there might have an effect on that?

GALLAGHER: Absolutely, that's right.

LEWIS: And David Salusbury, how do you react to this? You're responsible for all landlords now you're on Money Box Live from the National Landlords Association. Some landlords are a bit lax about this kind of thing. Is that true?

SALUSBURY: Well clearly based on what has been said, there would appear to be a problem with this particular property and we would not support landlords as a general proposition who let substandard property. Without knowing the facts, it is difficult to have a judgement by this, but I couldn't really improve on the advice we've just heard John give. A discreet approach to the local authority, certainly in the first instance, might be appropriate.

LAURA: Can I ...

LEWIS: Laura, yes of course.

LAURA: Can I just butt in there? You said a discreet approach to the local authority, which is actually what I tried to do. The local authority won't come to the property without informing the landlord first ...

LEWIS: And you fear ...?

LAURA: ... so there's no such thing as a discreet approach because obviously the first thing they do before they even come to the property is contact the landlord, and obviously I'm worried at that point he'll then serve me notice. I think that the moment I cause any trouble here, he will serve notice; and then once I've moved out, he will paint over it and get somebody else in, which is I think what he's been doing for many years here.

LEWIS: Marveen?

SMITH: I think one of the first things you should think of doing is going down to your local authority and seeing if they will re-house you in social accommodation. And one of the things you should also consider is going to your doctor to get a medical report on your daughter and take that down to help.

LAURA: Yeah, I've done that. Yeah, I'm actually waiting for that to come. But, again, if I went to the local ... sorry, I sort of have done some of this stuff. So I did go to the local authority. Again the local authority will only re-house us once he has got a court order and evicted me with bailiffs. Then they'll start to help. They won't help until that's happened.

SMITH: They would have to help at that point, and he can use procedure and then they would have to re-house you.

LEWIS: That's pretty precarious though, isn't it, because we know there's a lot of local authorities - I don't know which one this is in Laura's case - but they'll just bung you in bed and breakfast for 3 years ...

LAURA: Exactly, exactly.

LEWIS: ... which is not a very nice place to be.

SMITH: I agree.

GALLAGHER: Right, it's not a very enticing prospect at all. I think Laura's situation encapsulates the dilemma that is in the private rented sector now because of course being no security of tenure, tenants are very vulnerable to eviction by landlords if they complain about them. The only thing one can say about that is that possibly that's better still than living in an unhealthy environment; that actually having the improvement notice served and waiting for the landlord to do the work and risking the consequences may be better than actually remaining there.

LEWIS: And David Salusbury, you suggested a discreet approach to the local authority. Laura says well the landlord will be told and I could be out on my ear.

SALUSBURY: Well the initial approach would be discreet. I didn't assume that the response of the local authority would be discreet. And Laura's quite right - the local authority cannot just go into the property and inspect it without the landlord becoming aware or being notified. I do appreciate that she finds herself in a bit of a bind here or in even a big bind, but I think, as we've heard, there probably in the end will be no option other than for her to accept that one way and another she may have to move out of that property. It may be that the property cannot be rectified and put right without her moving out anyway, depending on the extent of the damp.

LEWIS: Laura, I hate to leave you because I think we can't really help.

LAURA: *(laughs)* I know, I can't be helped.

LEWIS: You've tried several of the things. I mean John Gallagher from Shelter says this is a problem many, many people are facing, and I'm very sorry about it. You also mentioned the changes in housing benefit and the fact that it's very hard to get alternative rented accommodation. You have tried to do that, presumably?

LAURA: Definitely. Well see this is the thing because obviously I know really the best thing for me is to move out, but if I want to stay in this area that is virtually impossible. Just the area that I live - I live in South London, I'm sort of within Central South London - so the house prices are very ... rental prices are very expensive here.

And actually in the year that it's been since I moved into this flat, the prices have gone to the point where now they are over the housing benefit cap and I think I'd be crazy to you know move into a place that was putting you know so much pressure on me financially as a single mother, you know, because I will be going back to work and then I have to pay the rent myself.

LEWIS: Well you are faced with a very difficult dilemma and I'm not sure if we've helped or not, but at least we've exposed the problem perhaps to people who weren't aware of it. And we've also had an email. John, I'll just talk about this because we can talk about the changes to housing benefit, local housing allowance which start in April. This is from Jane. This is about her daughter. Live in rented flat, the two of them, with a baby. They get some housing benefit. Their contract finishes in July. And they understand that the local housing allowance will be reduced in Barnet from 2011, October 2011, she says. How can they plan their move? Just explain to us what these changes are from April because they're quite severe, aren't they?

GALLAGHER: They are. The main change will be the rate of the local housing allowance, which is the rate at which housing benefit is paid, will be reduced to reflect the lowest 30% of rents in the private rented sector, so in other words housing benefit will only really pay for three properties out of ten.

LEWIS: At the moment it pays the medium, half-way.

GALLAGHER: Half-way, the medium bit in the spectrum between high and low rents. And in addition to that, there is to be a cap on the higher rents - sorry, according to the number of bedrooms in a property - which will probably only affect properties in London but will affect a lot of properties there. The problem is that this will obviously create shortfalls between the rent that people have to pay under their contract and the amount that they're getting under local housing allowance, and that is inevitably going to lead to greater homelessness.

LEWIS: And David Salusbury, representing the landlords, the government's theory is that if they reduce the rent that will be paid through housing benefit, your members

will bring their rents down to that level. Is that going to happen?

SALSBURY: Well I suspect they're saying that (if indeed they are saying that) more in hope than in expectation because the feedback we're getting from our members is very mixed on that. Some landlords will be able to accommodate the reduced rent and will continue with the tenancies, albeit at a reduced rent. Some will do that and they've told us. Others, however, are saying that they simply will not be able to cover their costs and they may have to rethink their business plan, and that is a euphemism if you will for going out of business.

LEWIS: The alternative though is because there's such a demand for rented accommodation, they'll start letting it out at an even higher rent to people who can pay it out of their salaries?

SALSBURY: Well that might well be an option open to some in areas of high demand; but in areas of low demand with a very high proportion of tenancies relying on benefit, then that option is probably going to be less available to them.

LEWIS: Okay, so difficulties ahead for both sides, I think. And just quickly an email which we can probably have a very quick answer to. This is from Graham who says, 'Regarding agents' renewal fees, can you tell me if an agent can charge a fee every year to renew a contract?' That's an assured shorthold tenancy contract, presumably. Marveen?

SMITH: Yes he can and it's been decided in the Court of Appeal. And as long as the tenancy agreement has ... sorry the terms of business has great clarity, yes he can charge.

LEWIS: So every year, apart from your rent, you also have to pay to renew your agreement with the landlord?

SMITH: No, no, no.

LEWIS: This is the landlord.

SMITH: That's terms of business. That's his commission, isn't it?

LEWIS: Oh right. Right, I see.

SMITH: And it's commission he pays the agent.

LEWIS: I see.

SMITH: Although he is expected by the Office of Fair Trading, the agent would be expected by the Office of Fair Trading to reduce the fees on an annual basis.

LEWIS: Right, okay. So I hope that answered your question, Graham. I got a bit confused there, but I hope you didn't. Let's move onto our next caller swiftly. Ian from Southend.

IAN: Oh good afternoon.

LEWIS: Your question, Ian. Sorry to keep you waiting.

IAN: That's alright. Hopefully quite a straightforward one. I want to know can you rent out a property with an old fuse board - i.e. a pull-out fuse, so if it blows it's kind of a wire.

LEWIS: What, rather than a circuit breaker you mean?

IAN: Yes.

LEWIS: Probably not a very good idea, but can you legally Marveen again?

SMITH: Well you have to make sure that anything in your property is safe and the house is fit for human habitation, and I suspect the safe might be a bit iffy with the untested fuse board. However, I hate to say that the only legislation specifying you have to have means-tested wiring applies to a house in multiple occupation and private property.

IAN: Because what I wanted to do, I wanted a new fuse board fitted but the electrician instructed me that if I did then there are several other tests and I'd probably need the whole thing rewired. So obviously I want to do the right thing, but it's going to cost me another £600 or £700.

LEWIS: Well that's understandable. And is there not a rule about having gas and electricity tested in rented properties, John?

GALLAGHER: There is a very specific rule in relation to gas. There's an obligation to have a gas safe engineer inspect the boiler and other installations every year and produce a certificate. There isn't the same obligation strangely enough in relation to electricity. As far as Ian's dilemma's concerned, I think because there is a general duty to ensure the health and safety of people who rent from him, I'd strongly advise him to get this work done.

LEWIS: And David Salusbury?

SALUSBURY: I wouldn't be quite so strong with my advice to get the work done, but I would be strong in having it checked to ensure that it is safe. Just because it does not comply with the latest standards does not mean it is unsafe. So have it checked, and then if it is safe and it's outside the category of those properties which must be checked according to prescribed standards through the auspices of the local authority, I would go ahead and let the property.

LEWIS: Okay, two different pieces of advice there, Ian. I hope that's helped you. You certainly understand the legal position now. Thanks for your call. And another landlord is calling us. Kim From Hertfordshire. Kim?

KIM: Hello there.

LEWIS: What's your question?

KIM: Yes, I'm a landlord and I actually have a tenant who is not paying, hasn't paid for 2 months. I've now served a Section 8, but I am being told by Landlord Action that it could be 6 months to a year before I get them out. The tenant has assaulted me twice, so I'm now not living on the premises because I'm living in fear.

LEWIS: Right.

KIM: He forged my signature on a tenancy agreement and you know breached the tenancy agreement by sub-letting, and it's proving that the tenancy agreement isn't worth the paper it's written on.

LEWIS: Well this all sounds pretty awful. Marveen Smith?

SMITH: Well I think the main thing is if the tenant is not paying rent, you take swift action and start court proceedings as quickly as possible. Now you've got a lot of sub-issues. The tenancy agreement, I think it's worthwhile getting a very good tenancy agreement from the very beginning and you can get that from professional bodies or good solicitors and that would protect you more.

KIM: The fact is I have got a good tenancy agreement. The tenant has breached it by sub-letting; and because it's their son they're sub-letting to, the solicitor tells me that there's nothing I can do.

SMITH: So are we saying the son lives now and not the original person you rented to?

KIM: No, the parents are there and their 15 year old daughter. But now their 22 year old son has moved in without my permission and is not on the tenancy agreement.

And when I try to take it further, I'm just told, "I'm sorry, the tenant can do that within the law."

SMITH: Yes he can, but the person is not a sub-tenant. The son is a licensee. And what happens is if you go to court, the bailiff would come and evict the tenant and evict the son and daughter at the same time.

KIM: I absolutely agree with that. The problem with the eviction process is that I'm already thousands of pounds in debt and in danger of losing my house to repossession. It's going next week before the court and I'm told that Edmonton County Court is 3 months for the judge to give a date. If the tenants then don't choose to go out by that date, you can then put bailiffs in place. And apparently the law now is that even with bailiffs, they can't put their foot in the door. They have to be invited in.

LEWIS: Kim, it's a very complicated and obviously very distressing case for you. Just let me get a quick comment from David Salusbury.

SALUSBURY: Well I think you have to go for a Section 21 notice and be prepared to follow it through.

LEWIS: What does that mean, briefly?

SALUSBURY: It means you want possession of the property. And you should be eligible or able to use what is called the fast track procedure, but I say that advisedly because the time it will take you will depend on where in the country you actually live. It's almost a postcode lottery with the court system. But that is the only way to secure possession.

LEWIS: And all these delays have been causing Kim difficulties because she's not getting rent, she can't pay the mortgage.

SALUSBURY: Indeed, indeed. Regrettably this is not an uncommon story and the

only way to deal with it is to cut your losses.

LEWIS: Which would mean what?

SALUSBURY: Go for possession as hard as you can and as firmly as you can and make sure you have the proper advice behind you to do that. And perish the thought, but you could get such advice from the National Landlords Association.

LEWIS: Indeed. Kim, we're going to have to leave your question there. I'm sorry you're having such great difficulties. Let me just read another quick email. This is from a lady called Caroline who says, 'I'm interested in letting out my two bedroom flat. I have a mortgage and was wondering if I needed to inform my building society that I'll be letting out the property?' A very quick answer, I think. Marveen?

SMITH: Yes, definitely.

LEWIS: Though of course it might mean her mortgage will become much more expensive.

SMITH: Oh yes.

LEWIS: And now very briefly we're going to go to Jonathan in Rugby. Can you be very brief, Jonathan, because we're a bit close to our time out?

JONATHAN: I'll be as brief as I can. Good afternoon. Over the Christmas period, I suffered from frozen pipes and a burst pipe. I was without water in total for nine days. I wrote to the managing agent saying I want to be compensated for this because it was a breach of their duty of care to leave me in that situation and she's come back to me and said that it was my fault because I didn't have the central heating turned up high enough because I only stay there Monday to Friday.

LEWIS: Sure. Okay, let me just get a comment from John Gallagher on that.

GALLAGHER: Two separate issues there, Jonathan. First of all, the landlord is only liable, only responsible if he hasn't attended to the repairs within a reasonable period. Obviously over Christmas, it can be quite difficult to get pipes repaired. The same question as to whether you yourself were responsible by not draining the system, that depends I think on how long you were away. I don't think you would necessarily be liable under that, but it is a possibility.

LEWIS: Okay, thanks for that Jonathan. We have to stop there - I've just looked at the clock quickly - because that is all we have time for. So my thanks to David Salusbury, who's the Chairman of the National Landlords Association; John Gallagher who we just heard from, Principal Solicitor of housing charity Shelter; and Marveen Smith of solicitors PainSmith. Thanks to you for all your calls and emails. I'm sorry we couldn't get round to all of them. You can find out more about renting and letting from our website: bbc.co.uk/moneybox. You can also download a podcast of the programme and in a couple of days you can read a transcript to check up on all those things you didn't note down at the time. Just before I go, have you had any problems with a trader charging VAT when they were not registered? I've had some responses already to my Twitter, which is Paul Lewis Money. You can message me there if you have, or contact moneybox@bbc.co.uk. I'm back at noon on Saturday with Money Box and here to take more of your calls on Money Box Live next Wednesday afternoon.