

Is a signed rental mandate absolutely necessary?

The answer is an emphatic 'yes' from Peter Mennen, head of legal at TPN, your mandate is precious and important, and landlords should be careful who they entrust it to - agents should take measures to protect it.



Peter Mennen, head of legal at TPN, and Paul Stevens, CEO of Just Property

It may seem like unnecessary paperwork to busy agents who are used to doing business based on a handshake, and there are landlords who may question what they get out of signing a mandate with one agent, but this is the only way an agent can legally secure their commission.

Further, as Paul Stevens, CEO of Just Property highlights, the Estate Agency Affairs Board Code of Conduct expressly states: "No estate agent shall offer, purport or attempt to offer any immovable property [for sale or] to let or negotiate in connection therewith or canvas a purchaser or lessee therefor, unless he has been given a mandate to do so by the [seller or] lessor of the property" and that "all terms of such mandate... are in writing".

Different contracting parties requires different agreements

When asked why people can't add a section to the lease that covers the mandate, Stevens clarifies that "a lease agreement is between the landlord and the tenant; a mandate is an agreement between the agent and the landlord". "As each of these are between two different contracting parties, two different agreements need to be signed," confirms Mennen.

It is wise to have both placement (sometimes called 'procurement') and management covered in the mandate signed by a prospective landlord. The Consumer Protection Act (CPA) applies to leases too, and agents are literally leaving money on the table if they don't cover procurement. If a tenant vacates the property early, as tenants often do, the agent can be forced to find a replacement tenant without a placement fee included unless it is covered in the mandate.

According to Mennen, a landmark decision came in 2015 where the Rental Housing Tribunal ruled that the outstanding procurement commission may be deducted as part of an early cancellation penalty from the tenant's deposit. This means that where a tenant cancels early, the landlord may recover, pro-rata, the commission for the remaining balance of the lease, which is argued as part of damages/ losses suffered by the landlord.

CPA applies to leases

The tribunal further ruled that an agent is entitled to retain a portion of the deposit to be assigned towards the reasonable cancellation penalty on behalf of the landlord. This ruling confirms that the CPA applies to leases and it is the first ruling to deal with penalties and a claim for damages relating specifically to an estate agent's commission.

"A well-drafted rental mandate protects the agent against landlords who may claim this amount for themselves," says Stevens. 'This ruling could only be made because the agent had secured their relationship with the landlord in the form of a signed mandate agreement.'

While you may not be able to control the unpredictability of a business relationship in the rental market or the economy for that matter, with the right mandate, specifically drafted to protect your income, can greatly diminish the risk and so secure your commission. "While rental mandates might seem like unnecessary admin to some agents, they are actually required by law and form protection for you and your agency. As agents, we look after our landlords and our tenants. We must look after ourselves too," Stevens concludes.

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