



Legal Aspects Relating to Residential Letting & Management (LARLM)

Sample Questions and Answers

propertymark
QUALIFICATIONS

LEGAL ASPECTS RELATING TO RESIDENTIAL LETTING & MANAGEMENT (LARLM) SAMPLE QUESTIONS AND ANSWERS

In studying this unit, the student will learn about the general legal concepts surrounding the letting and management of residential property and this will be contextualized to cover some of the specific issues that might arise.

Questions, and answers where provided, are correct as at time of publishing.

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ASSESSMENT INFORMATION

Assessment Method	Short essay style exams 2 hours
Availability of assessment	Set times of the year as identified within the qualification page on the Propertymark Qualifications website

Examinations are manually marked by an examiner and moderated by an experienced and qualified moderator.

The pass mark for each unit is **45%**.

The successful achievement of all units will result in either a final certificate showing a Pass or Distinction Grade.

In order to obtain an overall grade of Distinction, you need to achieve an **overall average mark of 70% across all examinations**.

SCENARIO 1

Last week, Tom signed an agreement for a new tenancy of a two bedroom flat. The agreement was signed in his parents' home and the letting agent took the paperwork away to draw up a formal tenancy. The agent has just emailed Tom a copy of the agreement and he has noticed the following clauses:

The rent shall be £650 (six hundred and fifty pounds) per calendar month, or any part thereof, payable in cash, at the agent's office, on the first Monday of each month, except for when that Monday is a Bank Holiday when rent will be due to be paid on the Friday immediately preceding the usual rental date.

In the event of any rental payment being outstanding for more than ten working days, Bank Holidays being classed as a normal working day for the purposes of this clause, the landlord shall be entitled to charge additional rent at the rate of 5%, plus all costs associated with the collection of the arrears.

No deposit at the start of the tenancy is required, but at the end of the tenancy the landlord will arrange for the property to be thoroughly cleaned and redecorated as considered necessary and the tenant shall pay the cost of the work within 10 working days of receipt of the bill.

Any rights to 'set-off' or deduction are hereby excluded.

In the event of any dispute the matter will be referred to arbitration.

Question 1

Advise Tom as to whether it is now too late for him to back out of the agreement and if it is or he decides to go ahead anyway, what type of tenancy he is entering into?

Answers may include:

- The tenancy would be an assured shorthold tenancy because:
 - o no notices are served
 - o this is the default tenancy
- Contract is made off-premises so consumer (Tom) has a 14 day cooling off period during which he can reject the contract
- The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013

Credit can be given by markers for any other valid answer(s).

SCENARIO 1 (CONTD.)

Question 2

If Tom goes ahead with the tenancy, would all terms in the lease be binding on him? If not, why?

Answers may include:

- Unfair Contract terms (need for fairness, plain-language, good faith)
- Recognition that the Consumer Rights Act 2015 applies and that an unfair term is not binding on a 'consumer' (including a tenant) unless it is exempt from the fairness requirement
- As a result of the Consumer Rights Act 2015, terms requiring rent to be paid before it falls due, classing bank holidays as working days, requiring the tenant to reimburse the landlord for professional cleaning and exclusion of set-off are likely to be unfair and therefore not binding on the tenant
- Term re late payment of rent will be unenforceable. Where rent has been outstanding for 14 days or more, interest charged cannot exceed an annual percentage rate of 3% above the Bank of England's base rate for each day that the payment is outstanding (Tenant Fees Act 2019).
- Consider Redress Scheme (Ombudsman) instead of arbitration

Credit can be given by markers for any other valid answer(s).

SCENARIO 2

Ann runs her own lettings and management company as a sole principal. She does not believe in paperwork and prefers a more informal personal approach. She makes an oral agreement with Christine, under which she agrees to find a tenant for Christine's house and manage the letting while Christine is working away on a fixed term employment contract. The terms agreed are:

- A fee of £350 for finding a suitable tenant
- An advertising budget of £250
- An additional fee of 7% of the annual rental income for managing the letting
- Authority to spend up to £750, without the need to contact Christine, for any repairs, redecoration, or cleaning

An old friend of Ann's carries out routine maintenance, repair, and gardening work to all the properties she manages. He also does work for her personally, e.g., maintenance and repairs to her own house and office. He does not charge for this private work because of the regular repeat business he gets looking after Ann's clients' properties.

The local property paper is edited by Ann's brother and she receives a discount on the cost of advertising, but she charges her client's the full cost.

Question 1

Comment on the validity of this agreement and whether or not it provides all of the information Ann should have given to Christine.

Answers may include:

- Best practice is that Terms of Business should be in writing even though an oral contract will be valid and enforceable
- Fees should state whether VAT is charged (and the total inclusive fee should be quoted)
- Reference to redress and tenancy deposit scheme
- Reference should be made to the length of the agency agreement and process for the termination of the agreement
- Whether an inventory will be provided and dealing with references

Credit can be given by markers for any other valid answer(s).

SCENARIO 2 (CONTD.)

Question 2

Explain the law regarding Ann's business practices regarding maintenance and repair and advertising.

Answers may include:

- Agent's common law duty to:
 - o act honestly
 - o to make 'full account' to the client
 - o not to make a secret profit
- Ann must disclose the fact that work is done free or at a discount and obtain Christine's approval

Credit can be given by markers for any other valid answer(s).

SCENARIO 3

Fawltly Towers is a purpose-built block of flats. Basil, who is planning to buy one of the flats, would like to carry out several alterations, including the removal of internal walls to make a larger open plan living space and the installation of more effective modern double-glazing and heating systems. On completion of this work, he intends to rent it out to supplement his pension. He does not have a very large deposit and was hoping to get an ordinary home buyers' mortgage from a local building society. He has asked Manuel, the agent for advice.

Question 1

Explain what advice Manuel should give regarding the funding of the purchase and the proposed alterations and sub-letting.

Answers may include:

- That an ordinary home-buyers mortgage will not be appropriate
- That this is about obtaining the necessary consents and permissions from others with an interest in the flat
- The terms of the head tenancy and whether it allows alterations and sub-letting
- That if the head tenancy permits alterations, the landlord cannot unreasonably withhold consent
- The mortgagee's possible grounds for refusing consent
- The conditions that might be attached to the giving of any consent e.g., type and length of tenancy

Credit can be given by markers for any other valid answer(s).

SCENARIO 3 (CONTD.)

Question 2

Assuming Basil carries out the alterations and sub-lets without permission, what remedies, if any, would the freehold landlord and the mortgagee have?

Answers may include:

Identification and explanation of:

- Freehold landlord remedies
 - o Damages
 - o Injunction
 - o Possible forfeiture, but need to follow Section 146 procedure
- Mortgagee's remedies
 - o Damages
 - o Possible demand for repayment of loan in full
 - o Possible re-possession

Credit can be given by markers for any other valid answer(s).

SCENARIO 4

Dev, a letting agent, arranges to meet a new tenant at a furnished property to carry out the initial check-in. The house belongs to a new client who inherited the property from his late mother and has decided to let it out to supplement his pension. The current proposed letting was agreed by one of Dev's colleagues who is currently away on holiday. The mattresses and furniture are in reasonable condition but of a style from the early 1990s. He also notices what appears to be a new kettle and toaster in boxes on the work surface in the kitchen. Both boxes are in a foreign language that Dev does not immediately recognise. Dev decides to delay the check-in and arranges for the tenants to meet him at his office the next day. No references have been taken up on the tenants.

Question 1

What must Dev do before the letting of the house can go ahead?

Answers may include:

- Explaining the provisions of:
 - the Furniture and Furnishings (Fire) (Safety) Regulations 1993
 - Electrical Equipment (Safety) Regulations 1994
- Refer to the carrying out of property safety tests and ensuring proper labelling of furniture and equipment to ensure that there are no safety hazards
- Mention of:
 - references
 - right to Rent (in England)
 - EPC
 - EICR (not compulsory in Wales but good practice)

Credit can be given by markers for any other valid answer(s).

SCENARIO 4 (CONTD.)

Question 2

What would the possible consequences have been if Dev's young colleague had not been on holiday and had dealt with the check-in, allowing the tenants to move into the house?

Answers may include:

- The criminal liability and penalties for failing to comply with the safety regulations
- The breach of duty to provide proper and adequate information on the files and any sanctions from the professional body for failure to comply
- Possible negligence claims for failing to take up references
- Indicate inability to serve Section 21 notice without provision of EPC, Gas Safety Certificate and How to Rent Guide

Credit can be given by markers for any other valid answer(s).

SCENARIO 5

Letem Avit and Co., a lettings and management company, are advertising a small, terraced house to let on an AST. The lettings particulars clearly state that the premises have recently been completed refurbished and redecorated throughout. This information was given to the agents by the owner of the property, Mr Smith. In fact, the only work Mr Smith had arranged to be done was for the walls in the back living room to be papered, covering extensive cracking and damp to the plaster, and a coat of paint was applied to a rotten window frame in the front bedroom. The paint was so thick it also concealed a gap between the frame and the wall. Letem Avit and Co. receive a number of applications for the tenancy, including one from a family from Romania, a group of three students joining the local university and a young newly married couple. The applications from the Romanian family and the students are placed on file and references are taken up on the young couple, who eventually sign a tenancy agreement for six months. The Romanian family and the students have complained that their applications were not taken seriously, and the young couple have now discovered defects in the property and are saying they would not have signed the agreement at the level of rent agreed had they had known about them.

Question 1

What action, if any, can the Romanian family and the students take against Letem Avit and Co. and what defence, if any, would the company have?

Answers may include:

- Recognition that this is about discrimination.
- Identification of protected characteristics, specifically age and race
- Reference to prohibited conduct, particularly direct and indirect discrimination
- Defences e.g., occupation by students may lead to HMO
- Romanian family may be required to have a UK guarantor or be able to demonstrate financial viability
- If a breach of Equality Act 2010 action will be in County Court

Credit can be given by markers for any other valid answer(s).

SCENARIO 5 (CONTD.)

Question 2

What action, in contract law, might the young couple be able to bring to Letem Avit and Co. and what possible remedies are available?

Answers may include:

That this is potential misrepresentation

- o Identify different types of misrepresentation e.g:

- o innocent misrepresentation

- o negligent misrepresentation

- o fraudulent misrepresentation

- o Refer to Misrepresentation Act 1967

- o Refer to the Consumer Protection from Unfair Trading Regulations 2008

- o Identify and explain remedies:

- o Rescission

- o Damages

- o A right to a discount on the price paid (Consumer Protection (Amendment) Regulations 2014)

Credit can be given by markers for any other valid answer(s).