The Letting Centre

*Professional Series*

# Assured Shorthold Tenancy Agreement

## (Forms A02 & A03)

Drafting & Guidance Notes

# Contents

# Appendices



 

# 1. Introduction

## Historical background

The Assured Shorthold Tenancy Agreements (forms A02 & A03) are designed to operate under the modern legal framework for residential tenancies established by The Housing Act 1988 which came into force on 15th January 1989. The Act helped to end the long years of decline in the post-war private rented housing market brought about to a large degree by Rent Acts; Acts which had for many years kept a firm stranglehold on rent levels and the general freedom of landlords. The assured and assured shorthold tenancies introduced by the Act have restored a significant degree of control to the landlords and improved confidence to investors in the sector generally.

The assured shorthold (AST), unlike the ordinary assured tenancy, offers the tenant little in the form of security after the initial six month period. The AST was designed to encourage short-term letting at a time when many landlords were not willing to let empty property due to the risks and complications of recovering possession. In its introduction, it was one of the most politically contentious measures in the entire statute, described in Committee as 'a charter for housing sharks .....who will be able to get their properties back every six months and to increase rents twice a year'. In practice, the assured shorthold has provided renewed enthusiasm to invest in the private rented sector, and so increased availability and choice to the extent that landlords are generally reluctant to increase rents disproportionately.

It is fitting that such a fresh approach to housing legislation deserves an equally fresh look at the drafting of tenancy agreements to produce a clear, fair and unambiguous document. Since their introduction in 1991, many thousands of our tenancy agreements have been used by both professional agents and private landlords for the letting of residential property. We hope that users of the agreements will find that we have come close to meeting our objectives.

All documents are checked regularly and updated as necessary by a team of specialist housing lawyers. The agreements have been specifically updated to deal with the deposit requirements of the Housing Act 2004. In use, the documents are also regularly checked by the major lenders (i.e. banks and building societies) on behalf of landlords. A list of all lenders that have checked our agreements in the current or previous versions is included in Appendix E.

## Non assured shorthold tenancies

The assured shorthold tenancy agreement can be amended for situations where an assured shorthold is unsuitable. This may be because it is an excluded tenancy, for example where the rent is above £100,000 or the landlord is continuously resident – or because you wish to set up an assured (not shorthold) tenancy. Chapter 3 describes how the agreement may be amended to make it suitable for certain other categories of letting. It is important that you read this chapter carefully before making any alterations to your agreement.

 

## Scope

The Assured Shorthold Agreements A02 and A03 are supplied for use by either landlords or by property professionals acting in the capacity as agent for the landlord. The differences between the two forms of agreement are detailed on the following pages.

The agreements, as provided, are designed to be primarily used for assured shorthold tenancies under the Housing Act 1988 and therefore should not be used for any types of tenancy which are specifically excluded (as listed in table 2 in chapter 5) without making amendments (as described in chapter 3). The agreements are designed and verified for use in England.

## Scotland, Wales, and Northern Ireland

This agreement should not be used for lettings in Scotland at all or in Northern Ireland without suitable amendment. For lettings in Scotland, from December 2017 the Private Housing (Tenancies) (Scotland) Act 2016 will apply. As Welsh legislation is moving away from English law and there are proposals to introduce a new legal framework and standard tenancy contracts in Wales the Letting Centre agreements should not be used for Welsh tenancies unless they are checked by a Welsh housing lawyer. You should contact a forms supplier who specialise in Welsh housing law.

## Plain English

For too long, legal documents have been crammed with esoteric words, long sentences and legal jargon. Fortunately there is a long overdue trend in the legal and property professions towards the use of plain and simple English and this is the drafting style we have followed.

The law now requires that all consumer contracts (including tenancy agreements) should be drafted so as to be comprehensible not only to lawyers, but also to the individuals who will be affected by them, i.e. the 'lay' landlord and tenant. (see Unfair Terms below)

## Terminology

In these notes, a reference to the landlord should be taken to also include the agent. 'He' is often used in its general sense for the landlord or tenant (meaning he and she).

The '**Act**' refers to the Housing Act 1988 (unless otherwise stated).

The terms '**lease**', '**letting agreement**' and '**tenancy agreement**' are used interchangeably and are intended to have a similar meaning.

'**Tenant**' is used in its legal sense and may apply to one or more individual tenants. This is similar for 'landlord', especially where there are joint landlords.

The term '**AST**' means an assured shorthold tenancy as defined in the Housing Act 1988

 

# Licence Terms

Letting Centre's ***Professional Series*** tenancy agreements have been approved and legally checked. In the course of normal use, they have also been checked by the majority of the main UK lenders and building societies.

## Copyright and summary of terms



These forms are provided under an annual licence arrangement. This licence is required in order for you to use and reproduce copies of the forms for your business or personal use. In order to enjoy full use of the copyright licence, and our support services, an annual licence fee is payable. On payment of an annual licence fee you may use and reproduce the forms on a word processor or other means of reproduction at a designated business site.

The licence is designed to operate solely in relation to a single commercial office address or premises. If your business includes more than one branch office where these forms may be used and distributed, then you are required to hold one licence for each designated commercial address, or apply to the Letting Centre for a multi-site licence.

The forms are revised formally on an annual basis and further updates and changes will be made available to current licence holders as necessary. The law of landlord and tenant is continually affected by new legislation and court case precedents; the Letting Centre aims to keep you fully advised of these changes using the regular updates.

The licence requires that the Letting Centre's copyright notice is always included when the forms are used or reproduced. The notice must not be altered or removed from any forms.

## Compliance Support

The annual membership/licence fee includes the provision of compliance support in specified circumstances – this is where users have compliance issues – such as where the wording of the Forms has been questioned or disputed by a client's lender, or professional legal advisor. The Letting Centre will make reasonable efforts to provide the necessary legal support to ensure that such queries are satisfied. Compliance Support does not include the provision of general technical advice on using the tenancy agreement, drafting bespoke clauses or dealing with legal problems arising out of a tenancy that has been created. For general legal advice landlords and agents will need to obtain advice from a legal advisor.

### Support Guarantee

Because we believe that our letting agreements provide a comprehensive and well-drafted product for professional use, all users of Professional Series agreements are given the guarantee that if our standard agreement is not accepted by any bank or building society, then the Letting Centre will provide the necessary advice or support to ensure compliance.

# Style

There is perpetual debate regarding residential letting as to the optimal length and content of the tenancy agreement. The lessee (or tenant) and many landlords will generally adopt the philosophy that such agreements should be concise and easy to understand whilst offering comprehensive protection to the parties in case of default or other eventualities. Other practitioners adopt a more complex and verbose approach which can, in some cases, result in excessively long and incomprehensible agreements.

We do not attempt to determine which is the best approach. Our standard agreements are concise whilst being comprehensive in their coverage but we recognise that some landlords specialise in particular types of property (e.g. student lettings) that may benefit from the inclusion of additional clauses relevant to managing such properties. In Appendix A to these guidance notes, we have provided many additional clauses that may be added to a particular agreement to provide greater protection depending on the particular requirements and preferences of the landlord or local customs and practice. Also, different types of property will have different management issues and styles (e.g. blocks of flats) which will influence the style of agreement adopted.

Our only advice here is to warn against excessively long agreements. These have the disadvantage of being 'unfriendly' to use, more prone to mistakes, and more difficult to maintain and amend – all factors that make them a more attractive target to litigious tenants or ex-tenants. Also, the Courts will resolve any ambiguity or unfair term against the provider of the lease (i.e. the landlord).

# Form A02:

Form A02 offers a secure form of letting agreement between landlord and tenant. Because of the high degree of security offered to landlords by assured shorthold tenancies, this concise form of agreement is generally adequate for most letting situations and often preferred by landlords and tenants who find it easier to read and understand.

Form A02 makes no reference to the Landlord's Agent in the agreement which makes it particularly suitable for 'let-only' situations where an agent has no further involvement when the tenancy has been set up, and for other private letting arrangements between the landlord and tenant.

# Form A03:

Form A03 is the same form of agreement as the A02 except it has been developed in response to a professional market encompassing letting agents, solicitors and other professionals and is designed primarily where the practitioner is ***acting in the capacity of agent for the landlord***. The 'Agent' is cited as a party to the agreement and is given explicit authority to act on behalf of the landlord (collect rents, carry out inspections etc.).

 

# Tenancy Deposit Protection

The introduction of mandatory tenancy deposit protection (TDP) for landlords and their tenants in 2007 brought important changes to the way the tenancies are set-up and managed. Most importantly, it is now vital that certain prescribed information is given to any tenants of an assured shorthold tenancy where a rental deposit is accepted. These changes were brought into effect under provisions contained in the Housing Act 2004. The provisions and related regulations are described in more detail in the Appendix E to these notes.

Landlords should ensure the tenancy agreement covers all circumstances in which you may wish to withhold the deposit.

All three tenancy deposit schemes provide prescribed information templates that can be attached to the tenancy agreement or given to the tenants separately.

## The Dispute Service Ltd (TDS)

The Dispute Service Ltd scheme provides suggested clauses for customers to include within the tenancy agreement but these clauses are not mandatory. At the time of writing, the prescribed information is also populated by TDS after you register the deposit in the insured scheme which is available to download from TDS. With the custodial scheme the prescribed information is part produced and available to download after you register the deposit.

Landlords and agents will also need to provide the tenant with the scheme leaflet 'What is the Tenancy Deposit Scheme?'

## Deposit Protection Scheme (DPS)

A prescribed information template can be downloaded from the DPS website or alternatively the DPS produce the Prescribed Information document once the deposit has been protected and a copy can be saved and printed. The DPS terms and conditions must also be provided to the tenant with the Prescribed Information.

## Mydeposits

Once a deposit has been protected with Mydeposits the scheme will issue a Deposit Protection Certificate/Prescribed Information which needs to be signed and passed to the tenant together with the Mydeposits Information for Tenants leaflet.

 

 

# 2. Agreement Guidance Notes

This chapter provides explanatory notes on the structure and key clauses of the Letting Centre *Professional Series* Assured Shorthold Tenancy Agreements (A02 & A03).

The guidance is intended to:

- Assist practitioners to understand the general structure of the agreement
- Explain some key decisions and choices to be made when granting a tenancy
- Explain the purpose of each of the main sections and clauses, and any related issues or statutory requirements
- Assist practitioners to complete and use the standard agreement when drafting agreements for individual tenancies.
- Provide advice on signing and dating the agreement including guidance that may apply when using the documents with electronic signing systems.

## Key Issues

Whether drafting the agreement as the landlord, or as the landlord's agent, there are some key issues that need to be considered.

- Whether the landlord or tenant requires a **break clause**. As supplied, the standard agreement contains no break clause and so the parties will be contractually bound for the length of the agreed term.
- How the rent shall be payable by the tenant, both by **frequency** and **timing**. For example, many landlords express the rent as payable monthly, and require the tenant to pay the rent on the first day of each month.
- Whether the rent includes any extra services – such as water charges. Historically, landlords used to pay all general, water and sewerage rates on a given property although this practice has reversed in recent years. There are good reasons for each approach
- The **amount** of any **tenancy deposit** being held (currently limited to a maximum of five week's rent) and which of the Statutory Tenancy Deposit Schemes is being used by the Landlord or his agent.

Subject to the decisions reached on the above points, the agreement can be suitably amended by the end user. Additional clauses can also be added as required (see Appendix A).

The following sections give more information on the above issues and other considerations.

 

## Break Clauses

At times, tenants and landlords appreciate the flexibility provided by a break clause which allows a fixed term agreement to be terminated early. The break clause can be written so as to give this right to either party or both. Some example break clauses are provided in Appendix A (section 5). Generally, a landlord is obliged to give a minimum of two months' notice to terminate a tenancy. Therefore, it seems sensible when including such a break clause, that both parties are bound to give the same notice period, i.e. two months.

## Rent Payments

For ease of administration, some agents and commercial landlords run rent periods to a set day each month (e.g. 1st of month) and carry out a 'rent roll' every month as a batch. If this is the case, then such rent due date should be stipulated in the tenancy agreement.

A **rent payment method** can also be specified in the agreement. Where, for ease of administration again, the standard policy of the agent or landlord is that all rent payments are to be made by standing order, then this is an important contractual term and should be specified as a term within the tenancy agreement. Cash payments can incur extra bank charges – which could then be passed on if the tenant is in breach of this requirement. A 'Standing order only' payment system is generally more efficient since it avoids the 'cheque lost in the post' syndrome and saves the additional overhead of handling cheques and cash.

**Water charges** are now legally the responsibility of the tenant(s) unless an agreement is made otherwise. Historically, landlords paid all general and water rates and some agents and landlords wish to retain the older method.

## Deposits

Since 6th April 2007 all deposits taken for new assured shorthold tenancies have to comply with the requirements of one of the Schemes set up under the Housing Act 2004. See Appendix E for more information on tenancy deposit schemes.

# Other Considerations

## Implied and supplementary terms

Obligations on both the landlord and tenant which are clearly implied (generally by statute) are not included in the standard agreements. For reasons of brevity, our preferred format is that such information (including any related procedural or housekeeping issues of minor importance) is provided independently of the main tenancy agreement in a separate document such as the 'Standard Terms and Conditions' (see example in Appendix B).

## Charges and costs

Charges are often made to tenants for various additional items involved in setting up the tenancy. These might include charges for preparation of the tenancy agreement, the checking-in or out of the tenants and the cost of preparing and administering any resulting schedule of dilapidations. As a result of the Tenant Fees Act 2019 these charges are now known as prohibited payments in England and landlords and letting agents are only allowed to charge permitted payments to the tenant. Permitted payments include the following:

- a payment of rent and an annual interest charge for late payment of rent;
- a holding deposit of one week's rent;

 

- a tenancy deposit (equivalent to five weeks rent where the annual rent is less than £50,000 or six weeks rent where the annual rent is £50,000 or more);
- reasonable costs for lost keys or default of the terms of the tenancy agreement;
- a payment in connection with utilities, council tax or communication services
- reasonable costs incurred where the tenant requests early termination, a variation or assignment of the tenancy or where the tenant fails to give the legally required notice to terminate a periodic tenancy.

For further detail on the requirements under the TFA 2019 and the restrictions on permitted payments please see Letting Factsheet 51.

The Letting Centre have revised the tenancy agreements to take into account the requirements under the Tenant Fees Act 2019.

## Unfair Terms

A set of regulations descended upon all businesses with the introduction of the Unfair Terms in Consumer Contracts Regulations (introduced initially in 1995 and revised in 1999). It is fair to say that the Regulations radically changed the landscape for business and the legal profession in regard to the drafting of consumer contracts. These Regulations applied a test of fairness to most standard terms in a contract or agreement made between a business and a consumer (including the tenancy agreement provided by the landlord to his tenant) and requires agreements to be written in plain and intelligible language. The Consumer Rights Act 2015 (CRA 2015) replaced these regulations on 1st October 2015 which adopted the test of fairness provisions for consumer contracts and notices.

**- FAIRNESS AND GOOD FAITH.** With the exception of the provisions of the contract which relate to the basic service provided and the price charged for it, which must be in plain English, all terms in a contract or notice should be 'fair'. A consumer notice or a term in a consumer contract is unfair if contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations to the detriment of the consumer under the contract or notice. An unfair term in a contract concluded with a consumer by a trader shall be unenforceable although the contract as a whole shall continue to bind the parties if it is capable of continuing in existence without the term.

**- TRANSPARENT.** A trader shall ensure that any written term of a contract is expressed in plain and intelligible language and is legible. If there is doubt about the meaning of a written term, the interpretation most favourable to the consumer shall prevail.

**- PROMINENT.** A term is prominent if it is brought to the consumer's attention in such a way that an average consumer would be aware of the notice or term

**- CARE AND SKILL.** Every contract to supply a service is to be treated as including a term that the trader must perform the service with reasonable care and skill and within a reasonable time.

**SMALL PRINT:** There are limits as to how much information the average consumer (tenant) can take in at one time. It is therefore important to ensure that any additional clauses or key points are brought to their attention prior to signing the agreement.

The Letting Centre tenancy agreements have been reviewed in light of the unfair contract terms set out in the Consumer Rights Act 2015. For further information see Letting Factsheets Nos. 10 and 10a (published by the Letting Centre).

 

# Preliminary Clauses and Definitions

This section gives a clause by clause explanation of the clauses and sections of the standard A02 or A03 tenancy agreement.

## Title page & 'General Notes'

The title page and general notes identify the agreement and explains clearly the purpose of the agreement, its legal principles and the operation of key clauses and definitions used in the document. This information is important, and should not be deleted.

In General Note 8 the tenant's period of notice for a periodic tenancy occurring at the end of a fixed term AST tenancy should be at least 28 days (Section 5 Protection from Eviction Act 1977) but will be one month for a monthly periodic tenancy and 3 months for a quarterly periodic tenancy. It would be best to amend the notice period in brackets if rent is not paid weekly or monthly so it is clear to the tenant what notice they need to give if the tenancy becomes a periodic tenancy.

## Main Agreement (page 2 onwards)

The preliminary paragraph is a *declaration* and its purpose is to identify the agreement as an assured shorthold agreement between the parties specified.

This initial section identifies the key parameters of the tenancy agreement (e.g. the date and term of the agreement, the address and extent of the property, the amount and frequency of the rent etc.) and defines these terms so that they may be used later in the agreement with a standard meaning.

With the exception of the Date field, this section must always be completed fully, clearly, and unambiguously. If any part of the agreement is not completed, and a court is called upon to interpret the agreement, it might apply the '*contra proferentem'* rule. Under this rule, ambiguity is resolved against the party preparing the agreement. Otherwise, it could be concluded that the parties had still to reach agreement concerning those uncompleted portions.

**Date.** This field is normally called the execution date. Traditionally, practitioners are advised to avoid adding an execution date to tenancy agreements prior to the occupation date due to the legal rules that apply to shorthold tenancies. Under the Law of Property Act 1925 a lease that is not executed formally as a deed takes effect in possession and a lease dated prior to this date might be considered to be invalid. However, although this is best practice to date the agreement on the date of occupation, AST agreements which are dated prior to occupation are valid and enforceable as 'equitable tenancies' and s45 Housing Act 1988 provides that the beginning of the tenancy for the purposes of the Housing Act 1988 will be the day on which the tenant is entitled to possession. You should not artificially back or forward date the execution date.

Some situations may require that the date field is best removed, or left blank. For example, where electronic signing software is being used, where the signing software adds both a signature and a date below the signature, the presence of multiple dates on the agreement could cause confusion. The absence of an execution date will not generally invalidate the tenancy; and may therefore be safer practice in some situations. If the tenant has moved into the property and rent has been paid, then the law will infer that a tenancy has come into existence along the terms set out in the tenancy agreement accepted by the parties – so the completion of the execution date on the agreement is of minor importance in modern AST tenancies.

**Landlord.** Enter the full name(s) of the landlord(s).

**Landlord's Agent.** Enter full name and address of the agent. This will normally also be the main address where the landlord wants all correspondence and other contact from the tenant directed. For the sake of clarity (especially with regard to service of notice), it is

 

preferable that only one address is supplied on the tenancy agreement – either as the landlord's address, or the address of his agent.

**Section 48 Notice.** The line below the Agent details is a provision in compliance with Section 48 of the Landlord and Tenant Act 1987. Section 48 requires the landlord of the property to furnish the tenant with an address in England and Wales at which notices may be served. If the agent or landlord changes, the landlord must inform the tenant of the new address for service of notices.

**Tenant.** Enter the full names of all tenants who are to occupy the property. Where there is more than one tenant, a joint tenancy will be created, and references to the 'Tenant' will jointly include all the individual tenants listing in the tenancy agreement. The operation of joint tenancies is discussed in detail in Chapter 4 of these notes.

**Property.** The property being let should be accurately defined within the lease. Ensure that the address or description fully identifies the property and is free from ambiguity. Where it is difficult to verbally define the extent of the property a plan could be included. If the rental agreement includes for the use of a separate garage for example, then this could be mentioned within the property description for clarity (although the if this is done the garage will be treated as part of the property let to them and the landlord will not be able to assign a new parking space or prevent its use by the tenant).

**Maximum Number of Permitted Occupiers.** Enter the total number of occupiers who are permitted to occupy the property including tenants (including any children or other family members). HMO management and licensing regulations may restrict the number of occupiers permitted to live in the property. See 'Clause 4.8 Permitted Occupiers' on page 15 for more information. If the mandatory HMO licensing rules do not apply to the property, and there are no other national or local licensing schemes that may apply, then you may leave this field blank. However, it will be much safer to always include a maximum number of permitted occupiers.

**Term.** There is no minimum length for an assured shorthold tenancy. However, it should be borne in mind that possession will not be given under s21 unless 6 months of the **original** term has expired (s21(5)(a)). If the agreed term exceeds three years, the agreement should be drawn as a deed (Law of Property Act 1925 sections 52 and 54). Since 31st July 1990 a deed is validly executed by an individual if it is signed by the individual in the presence of a witness who attests the signature or at the individual's direction and in their presence and the presence of two witnesses who each attest the signature. See 'Completing and signing the agreement' discussed later in these notes for information on signing as a deed.

The tenancy will continue as a contractual periodic tenancy at the end of the fixed term tenancy. Where such wording is not included in a tenancy agreement the tenancy will continue as a statutory periodic tenancy at the end of the fixed term by virtue of section 5 of the Housing Act 1988. There are advantages in allowing the tenancy to continue as a contractual periodic tenancy as opposed to a statutory periodic tenancy and these are explained in more detail on page 55. The main reason for including such a clause is to assist the landlord in recovering possession costs incurred where the tenant does not vacate the property upon expiry of a validly served section 21 notice.

**Commencing On.** Insert here the **commencement date** of the tenancy. Unless otherwise defined (e.g. by insertion of a specific time) a tenancy agreement or lease expressed to commence 'on' a particular day commences at the first moment of that day.

**Rent:** The agreement clearly states the amount of rent payable. Normally this would be quoted as '**per calendar month**' or **'per week'**. The agreed rent is generally binding, although an assured shorthold tenant has the right to refer the rent to the Tribunal or Rent Assessment Committee within the first six months of the **original** term. (see Rent Control on page 61 for more information). Rent is stated to be payable 'by standing order' by default; you may amend this to suit your own commercial procedures or systems.

Where the annual rent is greater than £100,000, the tenancy cannot be an assured or assured shorthold tenancy under the Housing Act 1988 (further information in Chapter 5 /Table 2).

**Rent Review:** A provision for a rent increase can be inserted within the tenancy agreement in the 'Special Conditions' section (see section entitled 'Rent Review' on page 31 for information and an example wording). If this provision is not made within the lease, then the

 

landlord is not *entitled* to increase the rent during the fixed term (he must wait until the fixed term has expired) and can increase the rent using the section 13 procedure one year from the start of the tenancy for a contractual periodic tenancy. The rent and payment clauses also define the period of the tenancy and the common trend is to define the period to be monthly. A quarterly period or longer should be avoided as this considerably lengthens and complicates the procedure for possession under s21.

If the rent is calculated so that the rent is inclusive of water rates, then this should be stated at this point. E.g. **Rent: £650 per calendar month including water charges** (in this case, don't forget to remove the references to water charges in clause 3.2)

**Rent in Advance.** Landlords and agents need to be careful when accepting rent in advance to ensure that it is not conceived as a tenancy deposit. If it is necessary to accept rent in advance a tenancy deposit should still be taken and protected and the tenancy agreement should make it clear that the advance rent payment is actually rent and not a tenancy deposit (*Johnson v Old* [2013] EWCA Civ 415) and that rent is still payable monthly (to avoid issues with serving section 21 notices where the tenancy becomes periodic). Below is an example clause that can be inserted into the 'Special Conditions' section of the Letting Centre AST Agreement where rent is taken in advance:

*'It is agreed that the first [six months'] rent of £ will be paid on or before the commencement of the tenancy. This payment does not constitute any part of the tenancy deposit.'*

**Payment.** It is important to specify the timing and frequency of the rent payments.

Many landlords and agents prefer to collect all rents on a specified day each month (e.g. first day of every month). In this case, the appropriate wording should be added (e.g. 'on the first day of every month' ).

You can also use this clause if necessary to specify the method of payment that you require. Many letting agents prefer to receive their rents by standing order and the appropriate wording for this has been added to the standard agreement. Other payment methods can be mutually agreed in writing and inserted as a special condition at the end of the agreement.

If rent is payable weekly, then the landlord is obliged to furnish the tenant with a rent book containing prescribed information (Landlord and Tenant Act 1985, s.4).

**Deposit.** The amount of the deposit held must be entered. It is also recommended that you specify the Deposit Scheme provider. To provide adequate security for the landlord, it is unusual to take less than *four weeks rent* as deposit unless other arrangements are in place (e.g. a rent guarantee). The Tenant Fees Act 2019 restricts the maximum amount of deposit that can be taken to five week's rent.

With effect from 6th April 2007, all tenancy deposits accepted in connection with an assured shorthold tenancy become subject to statutory protection under the Housing Act 2004 including pre-April 2007 tenancies which become statutory periodic after 6th April 2007 (see page 54 for more information). The Tenancy Deposit Schemes were introduced in Chapter 4 of the Act, sections 212 – 215 and Schedule 10. The Act only applies to assured shorthold tenancy agreements (section 213) and it does not cover assured tenancies or other tenancies such as company lettings excluded from the Housing Act 1988 (see Schedule 1). Some landlords will decide that they no longer wish to accept tenancy deposits. In this case, enter the word 'NIL' in this field of the tenancy agreement, or simply delete this clause.

It should also be remembered that the Housing Act 2004 requires that prescribed information is given to the tenant within **thirty days** of accepting a tenancy deposit. This should be given in the form of a signed certificate either at the same time as signing the tenancy agreement, or as soon as the scheme information has been received from the scheme provider. See Appendix E to this guidance for more information on the statutory framework and requirements of Tenancy Deposit Protection. If the deposit scheme requires the landlord to give a leaflet or the scheme's terms and conditions to the tenant these must be provided also. Currently all three approved schemes have such a requirement.

For tenancy renewals the wording can be amended to replace the words 'A deposit of £ is payable on signing this Agreement' with 'A deposit of £ has been received.' It is important to check with the tenancy deposit scheme that the deposit will continue to be protected for the renewal tenancy and what requirements need to be met.

 

# The Main Clauses

## Core Provisions:

This section explains the purpose and operation of the various standard clauses in the agreement:

**Clause 1:** This clause confirms the intention of the agreement to set up an assured shorthold tenancy for the specified term, and for an agreed rent etc.

**Clause 2.1:** The Deposit Clause sets out the key terms arising from the acceptance of the tenancy deposit including the landlord's rights to make deductions and the obligation to release any balance to the tenant at the end of the tenancy.

Often omitted in many standard contracts, this clause is a valuable safeguard against the 'last month syndrome' (tenant fails to pay last month's rent, using deposit to offset liability). Without this clause, a court may allow the deposit money to be offset against any rent arrears with the result that no deposit is left to cover any cleaning or dilapidations. It is important that it is made clear to the parties whether interest is paid on the deposit and to whom it is paid. If the deposit is held by the landlord and protected with an insurance-based scheme, and there is no reference in the agreement, interest should be paid to the tenant.

**Clause 2.2:** It is important that the landlord and the tenant agree an inventory for the property and both parties should sign the inventory to acknowledge the condition of the property at the start of the tenancy.

## Obligations of the Tenant (clause groups 3 – 7)

Generally called 'User Covenants', these clauses have two main functions. Firstly, they allow the landlord to control the use which the tenant makes of the premises. Secondly, they protect the interests of the landlord by preventing the tenant acquiring specific legal rights which might be gained without these clauses (e.g. use of premises by a tenant for business purposes will give the tenant additional rights under the Landlord and Tenant Act 1954.)

## Rent & charges clauses:

**Clause 3.1. Payment Method.** Your rent collection system aims to collect rent in an efficient and cost effective way. Check that the standard agreement wording reflects your standard rent collection procedures (e.g. payment by monthly standing order). Should you wish to charge interest on late rent payments the Letting Centre have drafted an additional clause in Appendix A that can be added to the agreement.

**Clause 3.2. Charges**. The tenant would normally become liable for any costs incurred in connection with services used or consumed in connection with his occupation of the property. This clause confirms this fact although the tenant is generally liable for such charges anyway (e.g. section 6.6 of the Local Government Finance Act 1992 states that the tenant will be responsible for payment of the council tax where there is a material interest i.e. an interest granted for a term of six months or more unless the house is a "House in Multiple Occupation" or "HMO").

N.B. WATER CHARGES. If water charges (or any other charges included in this clause) are already included in the quoted rent (see section on 'Rent' above) and to be paid by the landlord, then references to the tenant's liability for the water costs and charges in this clause should be deleted accordingly.

**Clause 3.3. Charges.** The Landlord or Agent can reclaim reasonable costs for a breach of the tenancy agreement as permitted in Schedule 1 of the Tenant Fees Act 2019.

**Clause 3.4. Charges.** A landlord or agent can request a payment from the tenant to cover reasonable costs incurred where the tenant requests early termination or fails to give the legally required notice to end a periodic tenancy as long as there is a clause within the tenancy agreement stating this.

 

**Clause 3.5.Charges.** A payment can be requested from the tenant to cover the reasonable costs incurred where the tenant requests an assignment or variation to the tenancy if there is a clause within the tenancy agreement. As the Letting Centre standard agreement does not allow assignment we include a clause for costs in relation to a variation of the tenancy. Where your agreement allows assignment you can add assignment to this clause.

## Usage Clauses:

**Clause 4.1. Assignment.** In the absence of any restriction in the lease, a tenant may be entitled to assign his or her tenancy to another person. This may not be a desirable situation since there might be financial or other reasons why this third party would not prove to be a suitable tenant. The standard agreement does not allow the tenant to assign or sublet the property.

**Clause 4.2. Use as a Private Dwelling.** The main purpose of this clause is to confirm that the nature of the letting is for use as a single private dwelling as the Tenant's only or principal home, and to prohibit the tenant or any other person from carrying on a business from the property.

This is an important clause. The Housing Act 1988 states that assured and assured shorthold tenancies can only arise where:

> *"the tenant or, as the case may be, at least one of the joint tenants occupies the dwelling-house as his principal home"*

**Clause 4.3. Prohibition on Carrying on Business.** This subclause operates in conjunction with the previous clause (4.2) to acknowledge that the dwelling is not to be used for business purposes and thus gaining greater rights of tenure under the Landlord and Tenant Act 1954.

This clause does not seek to prevent a working person from bringing documents to the property in the evening for example in order to carry on extra work at home. Such use, when conducted in an informal way, and where the associated work activity does not represent a significant proportion of the occupation of the property, is not generally considered to constitute "business use".

Sections 35 and 36 of the Small Business, Enterprise and Employment Act 2015 establishes a new concept of a 'home business tenancy' and landlords may permit residential tenants to run a home business without the tenancy falling within the protection of Part 2 of the Landlord and Tenant Act 1954. In this situation landlords can use additional clause A.1.9.

**Clause 4.4. Nuisance Covenant.** Usually the wording used here is all that is necessary. As conditions dictate (i.e. sensitive residential neighbourhoods, blocks of flats etc.) you may want to extend the covenant (see example additional clauses in Appendix A) in order that tenants know what is and what is not permitted. A clause inserted in this way would restrict the times for the playing of music, radios, instruments and even make provision for carpeting of floors.

**Clause 4.5. Pets.** Landlords are often agreeable that tenants may keep their pets in the property, although many have had negative experiences in this respect. Without wanting to encroach on the tenant's freedom, it is important for the landlord to retain control since pets cannot always obey instructions and are immune from legal proceedings! Therefore, this clause prohibits the tenant from keeping pets at the property without written permission.

Where permission is granted, it is generally important for landlords to make appropriate checks beforehand as to the number and type of pets to be living at the property (tenants have been known to arrive with a pack of dogs!) and whether the property and pet are suitable (large active dogs can easily ruin a small suburban garden). There are also situations where it may not be permitted to keep a pet (e.g. in a block of flats) and such cases can cause considerable annoyance to other occupiers. If in doubt, check the terms of any headlease. [Example pet clause amendments to an AST are set out in Appendix A].

**Clause 4.6. Illegal or Immoral Purposes** - this clause is self-explanatory.

**Clause 4.7. Restrictions in Headlease**. Where the property is leasehold (e.g. a flat within a block of flats) there will be a further agreement (the Headlease) which may make

 

restrictions on the usage of the Property by the tenant and any subtenants. Where the headlease makes such restrictions, it is important that a copy of the Headlease, (or a schedule detailing the restrictions under the Headlease) is attached to the tenancy agreement otherwise these terms may not be enforceable against the tenant(s).

**Clause 4.8. Permitted Occupiers.** The purpose of this clause is to prevent Houses in Multiple Occupation (HMO) licensing regulations being exceeded and to prevent an HMO occurring without the Landlord's knowledge. If you are confident that the property is not and will not become an HMO you could leave this field blank. Under HMO management regulations, a property is likely to be an HMO if there are three or more people living in the property who form two or more households and who share common facilities such as a kitchen and bathroom. Landlords must comply with certain requirements where the property is an HMO but not all HMOs need to be licensed. At the time of writing, a licence is required under mandatory licensing if the property is rented to five or more people who form more than one household and the tenants share common facilities such as a kitchen and bathroom. Landlords may also require a licence for an HMO which is in an area where the local authority has introduced an additional licensing scheme. Where a selective licensing scheme is in force, all rented properties in that area will need a licence even if they are not licensable HMOs.

The number of permitted occupiers will need to include any children living at the property and not just adults as the regulations apply to 'people' living at the property.

**Example 1:**

Two single unrelated people who do not form a couple live in a two storey house. The house is not an HMO. During the tenancy one of the tenants becomes pregnant. Once the child is born the house will become an HMO as there will be more than two people who form two households. Prior to the birth of the child the property was not subject to HMO regulations but after the birth of the child the landlord will be required to comply with HMO management regulations. Here the number of permitted occupiers would be 2 but the tenant will be required to inform the landlord once the child is born so that he can ensure compliance with HMO management regulations.

**Example 2:**

A three storey house is rented to four unrelated sharers. This is an HMO under the Housing Act 2004 definition and HMO management regulations will apply. Mandatory licensing will not apply as there are only four sharers. In this example the number of permitted occupiers would be 4 and the landlord would need to be informed if this number was exceeded as, if the tenants allow another person to occupy the property or one of them has a child, then the property will be subject to mandatory licensing.

When carrying out regular inspections of the property it may become apparent to the landlord or agent that the number of occupiers permitted under the tenancy agreement has been exceeded. Where the tenant is in breach of this clause by allowing the number of permitted occupiers to be exceeded the landlord may be able to recover reasonable charges incurred as a result of the tenant not informing the landlord of the additional occupiers.

**Clause 4.9. No smoking.** Self explanatory clause prohibiting smoking tobacco and other substances in the property. The main purpose of this clause is so that the landlord can recover reasonable costs from the tenant at the end of the tenancy for any damage caused to the property where they are in breach of this non smoking clause. There is no evidence at the time of writing that e-cigarettes or vaping causes the same damage to a property as traditional cigarettes hence why these are not specifically mentioned in this clause. It may be possible to argue that these would come under 'any other substance' but could be difficult to enforce. If a landlord specifically requests prohibition on vaping/e-cigarettes for a particular property the clause can be amended as follows and moved to the special conditions section of the tenancy agreement:

*The Tenant agrees not to vape or smoke or permit any family member, guest or visitor to vape, or smoke, tobacco, e-cigarettes or any other substance in the Property without the Landlord's prior written consent*

 

## Clauses relating to repairs and damage to the property:

**Clause 5.1. Damage, Alterations and Improvements.** The tenant should be responsible for paying the reasonable costs for damage to the property and contents caused by the tenant, a member of the tenant's family, visitors or permitted occupiers. For obvious reasons, it is not in the landlord's interest to permit the tenants to alter the property without prior consent. For short tenancies (e.g. landlord letting home whilst abroad) it would not be appropriate to allow the tenant to carry out internal redecoration or other improvements and under the standard agreement, the landlord has reserved himself the right to oppose any such changes subject to a qualification of reasonableness.

**Clause 5.2. Damage.** It is important that the landlord is compensated for any damage caused by the tenant, and made aware of any damage at the earliest opportunity. A landlord has a right to seek contractual damages during the tenancy and may ask a tenant to make a payment to cover the cost of repairing a fitting or furnishing where this work cannot reasonably wait until the end of the tenancy.

**Clause 5.3. Care of Property.** The tenant is asked to take care of the interior of the property. This care is extended to a specific obligation to adequately heat and air the property as damp and mildew can cause considerable cosmetic damage and staining which will be costly to put right.

**Clause 5.4. Right to Entry.** This clause sets out the Landlord's statutory rights of access to the Property. It is also an implied term of every assured tenancy under the Housing Act 1988 that the tenant shall allow the landlord access to the property to carry out those repairs which he is entitled to execute (section 16, HA 1988). However, it should be remembered that a Landlord cannot use force to exercise this right and will need to resort to the Courts if the Tenant denies access.

**Clause 5.5. Care of Gardens.** This is a standard clause to ensure that the garden(s) is kept in good order. The clause provides a general cover which, within reasonable bounds, requires the tenant to upkeep the gardens on a regular basis (rather than by one massive tidy-up at the end of the tenancy which might otherwise satisfy clause 7.1).

N.B. Should the garden or objects in the gardens (plants or shrubs, garden furniture, appliances etc.) require any special types of care or upkeep, it would be prudent to draw attention to this by way of an extra clause agreed within 'Special Conditions'.

**Clauses 5.6 to 5.13.** - these clauses are self-explanatory.

**Clause 5.14. Smoke Alarms.** Landlords are required to ensure that smoke and carbon monoxide alarms are in good working order at the start of the tenancy. Government guidance advises that tenants should take responsibility for their own safety and test all alarms regularly to make sure they are in working order. This clause informs the tenant that they will be responsible for testing the alarms during the tenancy.

**Clauses 5.15 to 5.16.** - these clauses are self-explanatory.

## Other tenant responsibilities:

**Clause 6.1. Correspondence.** It is important that any statutory notices and other correspondence relating to the Property reaches the Landlord. This clause imposes that requirement on the tenant.

**Clause 6.2. Overpayments of Housing Benefit or Universal Credit.** Where the tenant has received overpayments or payments in error for housing support, local authorities (or the Department of Work and Pensions for Universal Credit) may claim this back from the landlord and the landlord may be able to claim a refund from the tenant for breach of the tenancy agreement where there is a provision in the agreement.

**Clause 6.3. Surrender.** Defining what is considered to be surrender within the tenancy agreement may strengthen the landlord's case for possession should a tenant vanish and become uncontactable. This clause assists landlords in situations where a tenant has abandoned the property.

 

NB. Situations concerning abandonment are inherently complex; each case needs to be assessed on the individual circumstances and professional advice taken where necessary. This clause does not give a landlord an incontrovertible right to take possession (only the court has this right for residential tenancies) although it may assist a landlord to demonstrate that he considers the abandonment of the property to constitute a legal surrender of the tenancy.

**Clauses 6.4 – 6.5. Security and alarms.** It is in the interests of the landlord (especially where the property contains several living units) to ensure that adequate security measures are taken so as not to attract break-ins.

**Clause 6.6. Access to the property.** This clause requires tenants to allow contractors access to the property to carry out maintenance appointments and to honour any appointments made.

**Clause 6.7. Immigration document checks.** This clause may assist with cost recovery where the tenant does not cooperate with information requests from the landlord to carry out right to rent checks particularly where the tenant has a time limited right to rent.

## End of tenancy:

**Clause 7.1. Condition and Reinstatement.** This is a useful and important clause. It confirms to the parties that the property, at the commencement of the tenancy, is in a clean condition, and requires the tenant to return the property in a similarly clean condition at the end of the tenancy. This clause does, however, impose the obligation on the landlord that the property is let in a good and clean condition as warranted and the clause may be rendered ineffective if this is not the case.

**Clause 7.2. Reinstatement of Contents.** This is a common standard clause which imposes an obligation on the tenant to restore the furniture and other effects supplied with the property to approximately their original locations.

**Clause 7.3. Keys.** The landlord or agent is often faced with the frustrating situation of tenants leaving without returning keys to the property. This clause encourages the tenants to return the keys, and also allows the landlord to recover reasonable costs (normally from the deposit) where the tenant fails to do so.

**Clauses 7.4 – 7.6.** These clauses are self explanatory.

**Clause 7.7. Access for Viewings.** It is important that the landlord or agent is able to gain access to the property in the final portion of the tenancy in order to conduct viewings for new tenants. Without this clause, the landlord has no automatic right to carry out such viewings.

According to the OFT guidance on unfair terms in tenancy agreements care must be exercised when reserving the landlord rights of entry to the property. A provision giving the landlord **excessive** rights to enter a rented property could be deemed unenforceable. In other words, tenants must be free from unwarranted and excessive intrusion. In exercising his right of access for inspections and viewings (see also clause 5.4), the landlord should carry out such access at reasonable hours and with reasonable prior notice (generally 24 hours).

Clause 7.7 allows for the landlord to conduct viewings in the last two months of the tenancy. For short lettings (ie six months or less), it might be appropriate to shorten this viewing period to say one or one and a half months in order to reduce intrusion on the tenant's right to quiet enjoyment.

**Clause 7.8. Possession Costs.** This clause may assist the Landlord to obtain full costs (not just fixed court fees) of obtaining a possession order where the tenant does not vacate the property after expiry of a valid notice seeking possession for contractual periodic tenancies. The Letting Centre standard agreement includes wording under the term to allow the tenancy to continue as a contractual periodic tenancy at the end of the fixed term. Where the tenancy agreement runs as a statutory periodic tenancy after the fixed term this clause should be removed. Under a statutory periodic tenancy landlords may not be able to claim legal costs following a possession action because s5 of the Housing Act 1988 gives a tenant the right to remain in possession of the property let under a statutory periodic tenancy until it is brought to an end by order of the court (unless the tenancy is surrendered or notice is given under section

 

33D of the Immigration Act 2014) and the tenant is entitled to remain in possession until any court order is executed. S5 does not apply to contractual periodic tenancies.

## Other clauses:

### Clause 8. Landlord's Covenants and Obligations.

**Clause 8.1. Quiet Enjoyment.** This term is implied into every tenancy agreement as is commonly referred to as the **'covenant of quiet enjoyment'**. The landlord undertakes to respect the right to quiet enjoyment of the tenancy and recognise the rights of the tenant (e.g. giving the tenant 24 hours notice before carrying out visits to the property).

**Clause 8.2. Frustration Clause.** This clause governs the situation where the property becomes uninhabitable and the tenancy is frustrated. The clause makes provision for the tenancy to terminate if the property becomes uninhabitable. Without this clause, the tenant could, in law, remain liable for payment of the rent until the end of the agreed tenancy in such situations, and the landlord be in breach of tenancy for the failure to provide the property.

**Clause 9. Forfeiture Provision.** The Housing Act 1988 requires that the tenancy agreement contains a repossession or forfeiture clause in order that the landlord may rely on the various grounds for possession listed in Schedule 2 of the Act. This clause is an express provision in the agreement that allows the landlord to repossess the property let (i.e. to forfeit the lease) on the breach of any of the obligations. Contrary to common interpretation by many lay landlords, this clause does not allow the landlord to get back his property (even on default) without first carrying out the correct possession procedures through the courts. Any person who attempts to evict or harass a tenant in this way may be liable to conviction and extensive fines and /or imprisonment under the Protection from Eviction Act 1977 and Sections 27 and 28 Housing Act 1988.

**Clause 10. Obligation to Repair.** The landlord is bound by various statutory obligations to keep the property in good repair and this clause clarifies some of these repairing obligations. In law, the landlord's main repairing obligations are defined in statute, under the Landlord and Tenant Act 1985. Residential Landlords are not normally permitted to exclude these implied terms, unless by order of a court.

**Landlord and Tenant Act 1985** (LTA 1985). (section 11 of LTA 1985 is a repairing obligation on landlords for short leases (i.e. less than 7 years)). In summary, the landlord is obliged to:

- Keep the structure and exterior, drains and gutters in good order and repair
- Keep installations for the provision of heating and supply of electricity, gas and water in good order
- Ensure ongoing supply for utilities (gas, electric, water etc.)
- Repair any defects in common parts, or the rest of the building in which the landlord has an interest.

**N.B.** The relevant extract from this Act is given in Appendix A: Statutory Extracts

**Clause 11. Inclusive Definitions.** This clause defines specific terms used in the agreement and, where necessary, expands the scope of such definitions, or explains the common law position. *For example:* **tenant** - where there are joint tenants, it is important to protect the landlord's interest by making the tenants' liabilities 'joint and several'.

## Notices.

**Clause 12.1. Ground 1 Notice.** This clause protects the landlord where an assured tenancy is granted and allows the landlord to recover possession at the end of the term under Ground 1,where the landlord has lived, or intends to live at the property as his principle home.

**Clause 12.2. Ground 2 Notice.** This clause protects the landlord where an assured tenancy is granted and allows the lender to recover possession at the end of the term under Ground 2.

**Clause 12.3. Service of Notices.** Case law relating to the service of notices (*Wandsworth London Borough Council v Atwell,* 1995) suggests that the tenancy agreement

 

should ideally contain express terms prescribing a method of service of legal notices under the tenancy.

Section 196 of the Law of Property Act 1925 provides that a notice shall be sufficiently served if sent by registered or recorded delivery post (if the letter is not returned undelivered) to the Tenant at the Property or the last known address of the Tenant or left addressed to the Tenant at the Property.

**Clause 12.4. Service of Notices and Documents.** Landlords and agents may wish to send the tenant notices and documents (such as the 'How to rent: the checklist for renting in England') in connection with the tenancy via email. In this case the tenant must have agreed to accept service of such documents by this method. It is important to keep an audit trail of any such emails or set up a read receipt request to show a secure method of receipt. Although there is mention in the tenancy agreement when the document will be regarded as received you will still need to show or prove that the tenant has received the document. Statutory notices such as a section 21 notice should not be served by email and it is advisable to serve a hard copy notice to ensure proof of service.

**Clause 12.5. Data Protection.** Landlords and agents should make it clear to tenants when they sign the tenancy as to what may happen to their personal information and how it may be given out. However, with the introduction of the General Data Protection Regulations proposed for May 2018 this may not be enough and landlords and agents will need to obtain explicit consent from tenants so that they can share information with third parties such as utility companies and contractors etc. Individuals must give a very clear and specific statement of consent and positively 'opt-in' meaning the use of pre-ticked boxes will be banned. We have added an extra section to our 'Required Document Checklist' to include a paragraph regarding use of data and an opt-in tick box for tenants to complete and sign to confirm their explicit consent.

## 13. Additional Clauses.

Additional clauses required by the user may be added to the agreement, either under a 'Special Conditions' section (if specific to that particular tenancy) or inserted into the main body of the agreement in the relevant section (if to be adopted for all tenancies). See Appendix A. Additional clauses should be brought to the tenant's attention prior to signing the agreement.

 

# Pre-tenancy Negotiations and 'subject to contract'

Until the tenancy agreement is signed, all letters, emails and related paperwork in relation to the tenancy application should be clearly marked as *'subject to contract'*. This is to demonstrate that the pre-tenancy documentation and negotiations do not constitute the formation of a contract through offer and acceptance (explained further below).

Although the tenancy agreement may be prepared in draft in advance, as part of the negotiation process, it should only be completed and signed once all the pre-tenancy checks are completed. The full process is described in more detail on page 41 - under 'Granting the Tenancy'. Landlords will, for example, often wish to check references and ensure that all monies have been received in full. Where the property being let is currently occupied, it would also be prudent to ensure that the outgoing tenants have vacated before granting the new tenancy. For this reason, the tenancy agreement will normally be signed on or shortly before the day of occupation - only when the tenants have been fully vetted, the outgoing tenants have vacated the property and both parties are ready to enter into a legally binding tenancy. See 'Agreement for a Tenancy' on page 41 for more information.

In certain situations (e.g. student lets), incoming tenants may wish to complete their tenancy agreement several weeks or even months in advance of their tenancy start date. In law, this arrangement will be considered as an 'agreement for a tenancy' which then becomes a true legal tenancy once the tenant starts paying rent and moves into occupation. Great care should be taken in entering into such arrangements as, once signed, the agreement is legally binding and the landlord can become liable if for some reason the tenants cannot take occupation on the agreed date (e.g. if existing tenants fail to vacate on the agreed departure date).

In these situations where a tenancy is to be granted at a future date, a conditional clause can be added to the agreement before signing to make it clear that certain terms must be met for the tenancy agreement to take effect. For example, a clause can be added to this type of tenancy so that the tenancy is 'granted subject to the Landlord having vacant possession of the Property' on the specified start date. **Example Clause:** *The Tenancy will take effect in Possession on the tenancy commencement date subject to the previous tenant(s) leaving the Property on or before the agreed departure date and the Landlord having vacant possession on the tenancy commencement date*

Sometimes, it will not be possible to arrange for all the tenants to sign the tenancy on the day of occupation, or when a landlord can be assured of vacant possession. We occasionally come across cases where the landlord is at the receiving end of a substantial compensation claim where the departing tenant has failed to vacate, and the unfortunate new tenant has arrived on the agreed occupation date (perhaps with family in tow) and amassed hundreds of pounds of expenses in storage fees and hotel costs whilst waiting for the property to become vacant.

## *'Subject to Contract'*

In English law, a contract may be made either in writing, or verbally by the *offer* of something (e.g. a tenancy in exchange for the promise of an agreed payment of rent) and *acceptance* of that offer. To avoid the unintended creation of a contract whilst negotiations and checks are ongoing, the words *'subject to contract'* are used when the parties do not intend any legal consequences to flow from the communications.

In the case of a tenancy, there are numerous checks that need to be carried out before the tenancy can be granted, and it will be important to agree details such as the exact occupation date and the terms of the tenancy. The landlord may also want to receive other applications for the tenancy and the tenant may also be considering other properties so it is important to have a process to ensure no legally binding contract is created inadvertently until both parties are ready to be bound under a legal contract.

In this context, it will be understood that the process of each party signing the formal written contract, exchange and dating of the agreement will constitute the point when the parties intend to enter a formal contract and be bound legally by its terms.

 

# Completing and Signing the agreement

At least two duplicate copies of the agreement will normally be prepared for each letting; these were traditionally called the **Original** and **Counterpart**. You may mark them accordingly although there is no requirement to do so. Ensure that all blank sections or fields are completed as required – this may be done either on a word processor, or by hand in permanent ink. Conventionally, the execution date field is left blank until signing is complete.

Where the tenancy agreement is reproduced on separate sheets of paper, the sheets should be securely stapled, together with the inventory, guarantor agreement and any other terms and conditions that may apply to the tenancy. It is also good practice to annotate the agreement to indicate both the page number and full extent of the document. E.g. 'Page 2 of 5'.

## Signing

The signatures on the end of the agreement are reliable evidence of the fact that the signatory approves and adopts the contents of the written agreement[1]. You should then ask the tenants to sign the agreement (ideally on the day of occupation rather than several days or even weeks in advance). There is no legal requirement to sign or even initial each individual page of the tenancy agreement, and we see no significant benefit to this style or practice.

You will need to ask **all** tenants listed on the tenancy agreement to sign the agreement(s). Where the landlord has instructed an agent to let the property and draw up the tenancy agreements, the agent may wish to sign the tenancy agreement on behalf of the landlord. In this situation, the agent is advised to check that such instructions or management agreement give the agent express authority to sign the agreement on behalf of the landlord. Typically, the date field (execution date) on a tenancy agreement is completed after signing, with the date that the agreement was concluded and agreements exchanged. Due to historic legal rules (under Law of Property Act 1925), a shorthold tenancy (for a term of three years or less) is only valid if it takes effect in possession. For this reason, tenancy agreements should ideally be signed on the day of occupation even though provisions in the Housing Act 1988 have allowed this rule to be relaxed for assured and assured shorthold tenancies.

Traditionally, once the landlord and tenant have signed their respective copies they 'exchange' their tenancy agreement copies. The main copy (or Original) agreement is signed by both parties and is given to the tenant(s). The counterpart is also signed and is held by the agent or landlord. Modern practice allows for one main agreement to be drafted and signed by all parties, and then copies given to the parties; and under electronic signing, only electronic copies are generated and distributed. All methods are equally valid if done correctly.

A situation where tenants have already moved in before signing the agreement is to be avoided and pre-tenancy information provided to tenants needs to spell out that all tenants must sign the agreement prior to occupation. The only exception (where for example one of the tenants is out of the country when the agreement is to be signed) is for the absent tenant to provide one of the other tenants a power of attorney or equivalent formal letter of authority to sign on his/her behalf. Otherwise, the original agreement should be made with the tenants available at the time and a new agreement entered into when the rest of the group is present.

Any last minute additions, deletions or amendments to the agreement (other than the standard completed fields) should also be avoided. Where changes are required, both the tenants and the landlord (or his representative) should initial them.

## Landlord signing as a company

A contract can be signed 'by' or 'on behalf of' a company. There are different formalities for execution which are set out under the Companies Act 2006. In most cases simple contracts are made 'on behalf of' a company due to the simple formalities involved. It is good practice to check that the signatories are duly authorised to sign the agreement (the company's articles of association will normally contain a clause which allows the directors and company

[1] Mason, *Electronic Signatures in Law*, p9

 

secretary to contract and sign on behalf of the company). Identity checks should also be made to ensure that the signatories are who they claim they are.

### *Contracts made on behalf of a company*

Contracts can be signed on behalf of a company by a person acting under the company's express or implied authority (s43(1)(b) Companies Act 2006). This may be a director or can also be an employee of the company who has authority to contract on the company's behalf. The person authorised should sign the document and state that they are signing on behalf of the company.

### *Contracts made by a company under its common seal*

Where a contract is made by a company under its common seal it will be correctly executed either by affixing the company's common seal or where it is signed by two authorised signatories (e.g. a director and a company secretary) or one director in the presence of a witness (s44 Companies Act 2006).

## Witness

A witness is a person who observes the signing of a legal document in case it is subsequently necessary to verify the authenticity of the signature. Under English conveyancing law, it is not compulsory and generally not necessary to use a witness when signing a tenancy agreement, unless the agreement is executed as a deed (i.e. term is over three years).

Letting agreements often make provision for a witness signature for this reason. It is also a reasonable safeguard against the situation where a person denies ever signing or being shown the agreement in the first place. A witness could be a colleague or some other third party who is present during the signing of the tenancy agreement.

## Signing as a Deed

The law requires that any tenancy agreement for a fixed term of more than three years must be granted by deed (Law of Property Act 1925) although the rule can be easily avoided by making the agreement for three years or less initially, and allowing the tenancy to continue after the fixed term as a periodic tenancy.

To be a deed, the document must be clear on its face that it is intended to be a deed by the person making it, or the parties to it, and must be validly executed as a deed. A document is validly executed as a deed by an individual if it is signed by that person, in the presence of a witness who attests the signature, and it is delivered as a deed (e.g. the parties must show an intention to be bound by it) (s1(3) Law of Property (Miscellaneous Provisions) Act 1989). A deed can also be signed at the direction of the individual, and in their presence, and the presence of two witnesses who each attest the signature, where the individual is unable to sign (s1(3) Law of Property (Miscellaneous Provisions) Act 1989).

Where a company is signing a deed it must be validly executed by the company (in accordance with s44 of the Companies Act 2006 – see above) and delivered as a deed (s46 Companies Act 2006). A company may instruct a person to execute a deed on its behalf using a Power of Attorney (s47 Companies Act 2006). Where the tenancy agreement is set up as a deed and the signatories are individuals the signature section should be amended to say:

IN WITNESS whereof the parties sign this document as a Deed:

| | |
|---|---|
| **SIGNED by the LANDLORD(S) :-** | **In the presence of :-** |
| ..... | Name .....<br>Address .....<br>Occupation .....<br>Witness Signature ..... |
| **SIGNED by the TENANT(S) :-** | **In the presence of :-** |
| .....<br>..... | Name .....<br>Address.....<br>Occupation .....<br>Witness Signature ..... |

 

## Electronic Communications

For many years, the law has allowed legal agreements to be signed in person, and then exchanged electronically by fax or by email. In these cases, the document is still signed with a proper (physical) signature even if an electronic communication method is adopted to send a copy of the signed document. However, in recent years, the capabilities of the internet and information technology have been moving fast and the law has struggled to catch up.

As companies increasingly rely on email and websites to conclude contractual agreements, the law has gradually evolved to make this possible. The Electronic Communications Act 2000 came into force in 2002 to give legal certainty to electronic signatures, and web-based services such as Adobe Sign, DocuSign and RightSignature now provide the technology to support this process.

If you decide to use electronic signatures for your agreements, then you should still ensure that you store a copy of the signed agreement in a safe place either on your computer server or in your paper files. Any system will need to be able to satisfy the court that there is a valid signature, in order to bind the tenant to the agreed terms or to prove that the tenant has received the document. Your referencing procedures should be capable of proving a person's identity, and linking this to any signature supplied.

One feature of many electronic signing systems is that they record a signing date either on the tenancy agreement itself, below the signature, or within the signing certification record held elsewhere. If you are using the tenancy agreements in this way, it is no longer necessary to complete the execution date field at the start of the agreement. In these situations, we recommend that you remove the execution date field (see page 10 previously) from the agreement or just leave it blank to avoid confusion.

# Sureties and Guarantors

The landlord may require a surety to guarantee the payment of the rent or the tenant's other obligations under the lease. A surety or rent guarantee is generally used whenever the tenant's ability to pay the rent is in question. Typical cases will be where the tenant is:

- **A student or unemployed person.** Such persons normally have no or low current earnings and often little in the way of previous earnings history to rely upon. They generally have a low credit rating and this is a classic situation where a surety would be appropriate.
- **A divorced or separated spouse.** Where the separated person is solely dependent on maintenance payments for income, the 'paying' spouse or ex-spouse should be required as surety.

## Guarantor

It will first be necessary to find an appropriate guarantor. Similar credit checks and references should be taken on the guarantor as would normally be taken for a tenant in order to establish the guarantor's ability to meet any defaulted rent payments or other costs.

## Guarantor Agreement

It is recommended that the surety is set up using a separate guarantor agreement such as Letting Centre's Guarantor Agreement. This will be a written legal agreement between the guarantor and the landlord. Standard agreements can also be obtained from suppliers of legal forms, or individually drafted by a solicitor. It is important that the agreement is correctly drafted; there are several important recent legal precedents in this area and the agreement should include these changes.

 

A surety will *prima facie* be construed as applying only to the (contractual) fixed term and not to any contractual or statutory extensions, or to any period where the tenant simply holds over paying rent or otherwise remains at the property. There is uncertainty as to whether, and for how long, a Guarantor can be bound to a continuous guarantee. The Letting Centre Deed of Guarantee has been drafted to provide for the continuance of liability with an option for the Guarantor to give notice to cancel to try to assist with this situation but only the court can decide on the Guarantor's liability. As explained in the 'Guarantor Drafting and Guidance Notes' upon expiry of the fixed term tenancy it would be advisable to grant a new fixed term and sign a new Deed of Guarantee. See Guarantor Drafting and Guidance Notes for more information.

## Setting up the Guarantor agreement

It is good practice to send the guarantor copies of the relevant tenancy and guarantor agreement prior to signing along with a letter confirming that he/she has been asked to stand as guarantor for a specified tenant and an explanation of the financial implications of providing such a guarantee. The reasons for this are firstly that the guarantor should be given time to peruse the document, understand the commitment and take advice. Secondly, it provides a means of verifying both the validity of the guarantor and the guarantor's address.

If possible, landlords should try and ensure that the guarantor is present when the agreement is signed (preferably at the same time as signing the tenancy agreement) rather than by exchange of signed forms. It has been known for such guarantees to be signed fraudulently (i.e. not by a bona fide guarantor) and thus declared worthless.

# Minors

In law, a child or person under the age of 18 is termed a 'minor.' The general rule is that minors cannot enter into and be legally bound by a contract, or hold an estate in land, so their ability to enter into a tenancy agreement is restricted. When letting to a family, any children under the age of 18 are not usually named on the tenancy agreement; in law, they would occupy the property as licensees but any children will need to be included in the Maximum Number of Permitted Occupiers section e.g. if there are three adults and one child living at the property then the maximum number of permitted occupiers will be four.

However, the law recognises that minors can become emancipated from their parents or guardians where they live away from their parents and carry on a trade apart from them. The Trusts of Land and Appointment of Trustees Act 1996 allows land to be held in trust for a minor. Landlords can therefore grant a tenancy to a parent or guardian as trustee on behalf of the minor. Once the tenant reaches 18, notice can be served on the trustee to end the tenancy and a new tenancy can be granted in the tenant's name. It would be sensible to grant such tenancies so that the tenancy becomes due for renewal on or soon after the tenant's 18th birthday.

# Inventory

Finally, it is important to include an inventory, especially when letting furnished property. Ideally, the inventory should include not just how many of a particular item are present, but also what condition (sometimes referred to as a Schedule of Condition). Of course, it will be necessary to apply some simple logic and discretion to the process; it is of far greater importance to accurately note the condition of a set of antique dining chairs than a set of cheap old cutlery.

 

The Schedule of Condition may also include a complete description of the condition, colour, and texture of the walls, wallcoverings, fixtures and fittings, doors and even door handles. It is difficult to recommend what level of detail should be included; this decision will ultimately be dictated by the agent's standard procedures, the value of the items in the property, the requirements of the landlord and the need to provide evidence in any Alternative Dispute Resolution (ADR) case (see Appendix E).

# Extending the tenancy

Where the initial term of the assured shorthold tenancy has come to an end, and the landlord and tenant wish the tenancy to continue, there will generally be two main options at the end of the initial fixed term:

- Agreeing a replacement tenancy for a new or further fixed term
- Allowing the agreement to 'roll-over' on a periodic basis

The two options are discussed in further detail in Chapter 5.

 

 

# 3. Adapting the Agreement

When drafting individual tenancy agreements or leases, most practitioners will normally begin with a standard agreement as the starting point. But it is often necessary to adapt the agreement for a particular tenancy, as dictated by the circumstances of the tenancy itself, the requirements of the lessor's building society, or as a result of stipulations made by the landlord or tenant.

For the purposes of this chapter, such changes will be considered under two main headings:

- Adding extra clauses and similar amendments.
- Using the agreement for non-AST tenancies

**Important Note:** A tenancy agreement is a legally binding document and great care should be taken when making amendments to the standard format and wording. Agreements should only be drafted or amended by persons with sufficient legal knowledge of residential lettings and it is recommended that a lawyer checks the agreement after it has been amended substantially.

## Amendment Example

*An agent wishes to draft a tenancy agreement for the letting of a luxury flat in London. The owner is currently working in Brussels and requires the ability to terminate the tenancy agreement in case his employment abroad comes to an end, or if his employer relocates him back to London. The rent for the flat is £10,000 per calendar month.*

In the example situation, it will be necessary to amend the standard agreement. Firstly, the tenancy agreement will need to be drafted as a general tenancy agreement; the fact that the rental is over £100,000 per annum[2] means that legally, the tenancy may not be assured shorthold. Secondly, an extra clause(s) will need to be added to the tenancy agreement so that the landlord may give notice to the tenant prior to the end of the fixed term – this is called a break clause. Guidance relating to both the adding of extra clauses and the amendment of the agreement for non-AST situations is given in this chapter.

Information on drafting the agreement as a general tenancy agreement is given on page 33.

Information on inserting a break clause is given on page 30.

[2] Assured Tenancies (Amendment)(England) Order 2010 (Correct at time of writing)

 

# General Drafting Rules

In drafting any legal agreement, there are two main principles that apply. Clearly, the first objective is to include absolutely everything in the agreement that should legally be there, and by doing so make provision for all possible situations and disputes that may arise between the parties. This is particularly important should any matter need to be resolved by way of legal proceedings as the courts will look to the substance of the agreement to determine the intention of the parties. It is worth remembering that some terms will be implied either by law or by statute, and that some duties on landlords are absolute and so cannot be passed onto the tenant.

The second principle follows logically from the first, which is to use straightforward and clear language so that no possible doubt can arise as to its meaning.

## Rules of construction and interpretation

The rules of construction guide the draftsman when drafting and amending the legal agreement. They also illustrate the assumptions that courts will make when interpreting the words and clauses that the draftsman has chosen to use.

The rules provide for particular words or phrases to be interpreted in a particular pre-determined way. It is for this reason that established phrases are so common to many residential leases. Often the interpretation of a standard phrase has already been decided by the court and so it is adopted generally. It is therefore prudent to have a general understanding of the main rules of interpretation and of some of the lesser ones. The main rules are:

### The Golden Rule

The grammatical and ordinary sense of the words is to be adopted, unless that would lead to some absurdity, or some inconsistency with the rest of the document in which case the court will, in essence, read between the lines, to give the effect they decide was intended, or should have been intended, by the parties. The court will also always take into account any common law or statutory provisions which place obligations on either party when interpreting any document.

**Surrounding circumstances:** It is an overriding principle that in applying 'The Golden Rule' above, the court interprets the words taking into account all of the surrounding circumstances unless the words are so unambiguous that no surrounding circumstances could affect their construction. Where there is an issue which the drafter feels to be of importance in relation to the construction of the agreement, it is prudent to include it as a recital or a declaration, in the body of the agreement.

### Consistency of use

When interpreting any document if the court determines that a word used in one part has some clear and definite meaning, then the presumption is that it is intended to mean the same thing in the remainder of the document. Similarly, there is a presumption that the draftsman uses his terms consistently, and that therefore a change in use is intended to have significance. This is known as the ***expression unius, exclusivio alterius*** rule.

### The *ut magis* rule

The court will, as far as possible, give effect to every word and every clause and will always lean towards treating words as adding something or having some effect rather than being 'mere surplusage'. This is known as the ut magis rule. The draftsman should consider carefully what every word he uses adds, and words which are redundant should be omitted.

 

### The *contra proferentem* rule

In the case of *ambiguity* in a document, ambiguity is to be resolved against the party preparing it. However, this rule is applied low in the order of seniority and only when construction by the surrounding circumstances has failed to produce an answer. This is known as the ***contra proferentem*** rule.

# Other Common Drafting Techniques in Leases

## Recitals and factual matters

Recitals are those parts of the lease that merely declare facts and do not generally affect any of the substance of the agreement. They are usually inserted to explain the reason for the transaction or other related background circumstances which are recorded for evidential purposes.

Recitals may also be used to record facts that the landlord may later wish to rely on at a later date, or to show that the tenancy agreement takes place as a renewal to an earlier tenancy – which may affect the landlord's ability to raise the rent or get his property back. Thus, for example, if the new tenancy agreement takes effect as a renewal of an existing tenancy, the landlord may wish to record this fact as a recital. E.g. *This agreement acts to extend a prior tenancy let under similar terms which started on 20th January 2016 and ended with the grant of this new tenancy.*

## Definitions and labels

It is now accepted practice in letting agreements to define certain words as 'labels' at the beginning of an agreement. Once defined, the labels can be used throughout the agreement in place of the longer expressions which would otherwise be necessary; the definition of 'Landlord' and 'Tenant' being the most common example. Once these expressions have been defined, it is unnecessary to refer to the parties by name again.

The labels to be adopted should be clear and accurately reflect the concept to which they relate. They should not be capable of accidental transposition. Thus 'Lessor' and 'Lessee' should be avoided since it is possible that they could become reversed with disastrous consequences.

It is usual to use an initial capital letter throughout the agreement for any word that has been specifically defined. The use of the initial capital indicates that the word is being used in its defined sense, and this also allows the same word to be used elsewhere in the agreement in its general sense, e.g. *'.. the Tenant and the other tenants in the Building.'*

## Decisions on the meanings of previous words and phrases

There are many common words and phrases that are used in modern leases whose meanings have a well established and settled meaning in law. In case of a dispute, the courts will uphold these established meanings provided that they have been correctly used. Care must therefore be taken when using a word which has acquired a technical meaning or become a term of art, to use it accurately.

 

# Inserting Additional Clauses

Additional clauses may be added to the agreement in two main ways:

- Adding extra clauses in the main section of the agreement.
- Adding extra clauses or conditions to a section within the agreement entitled: 'Special Conditions' (or listed on a schedule attached to the main agreement).

How the agreement is structured is generally a matter of personal style and choice. We recommend that you place clauses containing standard terms, or frequently-used terms within the main body of the agreement, whereas additional terms or stipulations that are specific to the individual tenancy can then be listed under 'Special Conditions', or if extensive, attached as a separate schedule. Individually negotiated clauses and clauses inserted into the 'Special Conditions' section will not be exempt from considerations of fairness and will be subject to the unfair terms requirements under the Consumer Rights Act 2015.

When adding extra clauses to the main body of the agreement, take care to check that the new clauses are appropriately drafted so that they follow the same style and existing numbering sequence correctly.

When adding several extra clauses as 'Special Conditions', you may want to label them A, B, & C etc. in order not to confuse them with the numbering system for the main clauses in the agreement.

## Example Additional Clauses

The following are some common additional clauses that are often included in letting agreements:

**1) Break Clause.** A landlord wishing to allow either party to give notice may insert a break clause into the tenancy agreement. The break clause can be inserted in the 'Special Conditions' section of the tenancy agreement. An example wording is given below:

*'It is agreed that [after an initial period of four months,] either party may give two months' written notice to terminate this Agreement'*

*N.B. The wording in the square brackets can be amended but s21(4A) of the Housing Act 1988 states that a section 21 notice may not be given within the first four months of the original tenancy.*

**2) Property for Sale.** It is quite legitimate to let a property that is also for sale. Where a property is to be advertised for sale during the term of the let, or it is probable that this situation will occur, it is important to make this clear to the tenant(s) at the outset prior to signing the agreement, and gain his agreement by including an appropriate additional clause. Living in a property that is 'for sale' puts extra inconvenience onto the occupiers; the tenants will often receive many visits and be expected to open their home to complete strangers at regular intervals. It is best to get the co-operation from them from the outset rather than impose the burden on them part way through the tenancy. It would be entirely appropriate for the tenants to receive a small rent reduction in compensation. The agent should insert a clause into the agreement providing for these extra viewings.

*'The Tenant acknowledges that the Landlord has informed them that they intend to offer the Property for sale during the term of the let and that the Landlord or his appointed agent(s) shall be permitted to carry out viewings at the Property with reasonable notice'*

 

**3) Property Let under a Superior Lease.** Flats are often purchased leasehold rather than freehold and are subject to various restrictions and agreements listed in the superior lease. In this case, it will be important that any tenant renting the property from the leaseholder will also undertake to abide by any conditions in the superior lease which are relevant. Failure to do so could put the owner's own tenancy at risk. The following clause could be used:

*'It is agreed that the Tenants occupy the Property as subtenants of the Landlord and that the Tenants agree to abide by the conditions and covenants defined in the master lease, a copy of which is attached.'*

**4) Rent Review.** With a typical six or twelve month assured shorthold tenancy, it is not vital to include provision for rent increase as the rent may be reviewed at the end of each term. However, when the term is for longer than a year, then consideration should be given to including a rent review clause. The rent increase can be quoted as a set amount:

*'It is agreed that the Rent shall be reviewed on 1st January 2019 and that the Rent shall be increased to £650 per month'*

Alternatively, you may simply want to link the rent increase to a most commonly available published inflation index such as the Consumer Protection Index (CPI) or Homelet Rental Index.

*'It is agreed that the Rent shall be reviewed on [1stJanuary 2019] [and annually thereafter] and that the Rent shall increase by a proportion equal to the most recently published UK CPI (Consumer Price Index) annual percentage change which applies at that time.'*

A provision for rent increase could be cancelled by a determination of the Tribunal if the Tribunal concluded that the effect of the increase would be to raise the rent to a level significantly higher than comparable properties. However, the landlord can protect against this by including a provision entitling him to terminate the tenancy (i.e. a break clause). See Chapter 5 for more information on rent control and rent increase procedures.

**5) Pets.** Since the standard agreement prohibits the keeping of pets at the property, it will be necessary to insert a special clause should you wish to relax the restriction. Given the extra risk of damage and dilapidation to the property, it is recommended that this permission is only given after due consideration and consultation with owners, and that such permission is revocable in the event of damage arising. E.g.:

*'It is agreed that the Landlord gives consent for the Tenant to keep a cat in the Property and that the Landlord may withdraw this consent at any time in the future on reasonable notice to the Tenant.'*

*N.B. More comprehensive versions of this pet clause is available in Appendix A – Additional Clauses.*

**6) Special Conditions.** Where a dwelling is situated in close proximity to other residents (e.g. blocks of flats) then the headlease, or the landlord or local resident's association may stipulate particular rules which can be incorporated within the tenancy agreement. E.g.:

*' The Tenant agrees not to allow or permit in the flat any singing of music or playing of any musical instrument, record player, radio, hi-fi, television or loudspeaker or any disturbing noise whatsoever before 7am or after 11pm.'*

N.B. The Letting Centre has prepared a comprehensive range of additional clauses that may be added to the standard tenancy agreement for various requirements. These may be found in Appendix A at the end of these guidance notes.

 

# Non Assured Shorthold Tenancies

The Assured Shorthold Tenancy Agreements (A02 and A03) can be altered for use in circumstances where it is either not desirable or not possible to use an assured shorthold agreement.

In this section, we list some of the more common types of lettings that are excluded from being assured or assured shorthold tenancies (as defined by the Housing Act 1988). We can refer to these as 'non-assured tenancies'. We will also explain how the agreement may be altered for general use for these excluded categories - to a General Tenancy Agreement. The changes are minimal. However, they are important and the agreement should not be amended and used without first carefully reading and following the guidance contained in this chapter.

## Excluded categories of letting

A General Tenancy Agreement will be required where the conditions of the let do not allow an assured shorthold (or ordinary assured) tenancy to be used. The more common categories of tenancy which are excluded from the Housing Act 1988 are, in the main, specified in Schedule 1 of the Housing Act 1988, and listed below:

- **A tenancy granted by a resident landlord.** A resident landlord is broadly defined as one who lives in the same building as his tenant where the property has been divided into one or more dwellings, unless the two dwellings are contained in a purpose built block of flats. A resident landlord must be living continuously in the property as his only or main home both when he grants the tenancy and also during the tenancy A landlord living in a separate flat or house converted into flats in which his tenant(s) live(s) may be a resident landlord. However, a landlord living in a separate flat in the same purpose-built block of flats as his tenant is not a resident landlord.

- **A tenancy of a property at a high rent.** With the introduction of council tax Schedule 1 of the Housing Act 1988 was amended in 1990 to exclude with an annual rent exceeding £100,000. It is to be noted that the £100,000 figure is annualised and therefore if the proportional monthly rent is more than £8333.33 per month for a shorter term (e.g. only six months), the letting is still outside the Housing Act 1988 as amended. ***(NB The £100,000 threshold came into effect on 1st October 2010. Previously, a threshold of £25,000 applied).***
- **A tenancy where the property includes agricultural land.** Tenancies in which 'agricultural land exceeding two acres, is let together with the dwelling-house' cannot be assured under the Housing Act 1988.
- **A tenancy allowing the tenant to occupy the property for a holiday.** Similarly, a tenancy allowing the tenant to occupy a property for a holiday cannot be an assured tenancy. The General Letting Agreement could be used for this type of letting.
- **A tenancy granted to a company.** A residential letting to a company (as opposed to an individual or individuals) cannot be an assured tenancy. Although the General Letting Agreement may also be used for lettings to companies, an improved agreement is available (Company Letting Agreement - A05) for this purpose which provides added safety clauses to prevent the company or its employees gaining tenancy rights under the Landlord and Tenant Act 1954.
- **A business tenancy –** where the purpose of the tenant's occupation of the property is for business purposes and as a result they obtain the protection of the Landlord and Tenant Act 1954.

For further information, please refer to Chapter 5 - Assured and Assured Shorthold Tenancies.

 

# General Tenancy Agreements

Tenancies which are excluded from the protection of the Housing Act 1988 (see previous page) will operate as contractual or common law tenancies. Although the statutory requirements of the Housing Act 1988 will not apply, these tenancies will be governed essentially by the common law, the law of contract, and other general housing legislation.

Where the tenancy is granted by a resident landlord, or for a property with high rent, it is normally sufficient to use a general tenancy agreement as the basis. This agreement appears, with minor amendments, very similar in format and content to the standard Assured Shorthold Tenancy Agreement (although, it should be remembered, that some aspects of common law tenancies, such as the provisions for termination, are different). The Letting Centre General Tenancy Agreement (A01) is a suitable agreement for this purpose.

Other types of non-assured tenancy (such as a letting to a company or holiday lettings) generally require more significant changes and are best created using an agreement drawn up specifically for the purpose (e.g. Company letting agreement). The Letting Centre provide separate specific agreements for holiday lettings (A04) and residential company lettings (A05).

## Lettings unsuitable for use with the General Tenancy Agreement

### Licence

In some cases, a landlord may not wish to create a tenancy at all but grants a 'licence'. The Letting Centre provides a separate licence agreement for this situation. In land law, a licence (unlike a tenancy) does not usually confer a right to exclusive possession of the property or domain with a property, nor any estate or interest in it. Thus a licence gives the person receiving the licence fewer rights than a tenant and will often include extra services such as provision of linen and cleaning.

An occupier of a residential hostel is an example of an arrangement commonly considered to be a licence. Licences may be needed where elements of the property outside the tenanted area are occupied in common with others or where a person other than the tenant, for example his or her partner needs to occupy property but not be party to the tenancy. (See Additional Clauses labelled ‘Licences’ for example clauses).

A licence cannot be granted to a person/persons whose occupation has the hallmarks of a tenancy (exclusive occupation, for a term for a rent, with an intention to create a legal interest) and effectively occupy as tenants (*Street v Mountford*). The courts can look behind a sham licence agreement and conclude that the occupier really has a tenancy in those circumstances.

### Commercial Lettings

Lettings of non-residential property (e.g. shops, offices etc.), or property with mixed use (e.g. a shop and flat) operate under the law of business tenancies and these confer a wholly different set of rules and rights. For this reason, the General Tenancy Agreement, being essentially designed for residential use, will not be suitable for use with commercial lettings.

 

# Assured Tenancies (non Shortholds)

The main issue to be understood when deciding whether to use an ordinary assured tenancy is that the tenant gains considerable security of tenure. Unlike the assured shorthold tenancy, there is no automatic right of possession by the landlord brought about by the expiry of the term. The landlord needs to rely on invoking one of the specific grounds listed in Schedule 2 (see Appendix A to these notes) in order to effect involuntary possession.

For this reason, assured tenancies are seldom used within the private rented sector except in special cases. A landlord or agent entering into an assured tenancy is advised to ensure that an exit route exists should the landlord wish to return to his property. Many of these grounds are such that notice of the ground **must** be given to the tenant before entering into the agreement - this is called a *prior notice ground*.

Often, the landlord can invoke Ground 1 as the ground for possession (where the landlord has lived in the property as his own house prior to the let or intends to move into the house as his principle residence directly afterwards). If neither this ground nor any other ground is applicable, then there will be no certain way of recovering possession at the end of the term.

Notice of Ground 1 is already included within the tenancy agreement at clause 12.1 in the standard tenancy agreement. Many building societies insist that this prior notice is used even when letting under an assured shorthold tenancy. Some even require that a separate Ground 1 (and occasionally Ground 2) notice is served independently of the tenancy agreement.

## Amendments

You may create an ordinary assured tenancy agreement by amending either of the standard AST agreements supplied by the Letting Centre – agreements A02 & A03. All references to an assured shorthold agreement will have to be altered in order to reflect the intentions of the parties to the tenancy to set up an ordinary assured tenancy.

1. You should change the title of the agreement form (on page 1, or the cover page) to:

   'Assured Tenancy Agreement'

2. Within the small notes on the front or cover page of the agreement, the first note under ‘General Notes’ should be amended to read:

   *'This Tenancy Agreement is for letting furnished or unfurnished residential accommodation on an assured tenancy within the provisions of the Housing Act 1988 as amended by the Housing Act 1996.'*

3. The preliminary paragraph at the top of page 2 ('THIS AGREEMENT is made ...') should be amended, replacing the reference to an 'assured shorthold tenancy' to an 'assured tenancy'.

4. All references to the statutory Tenancy Deposit Scheme should be removed as this scheme does not apply to Assured tenancies.

5. The other clauses included in the agreement should be carefully checked but can remain.

For assured tenancies it is a requirement under the Housing Act 1988 that the tenant is notified in writing that it is an assured tenancy agreement before the tenancy is entered into. A separate notice should be served on the tenant before the assured tenancy is entered into (and the notice should state that the assured tenancy to which it relates is not to be an assured shorthold tenancy – see Housing Act 1988 Sch 2A, para 1).

Also be aware that the landlord cannot use the section 21 procedure to terminate an ordinary assured tenancy. The landlord will need to rely on one of the 17 statutory grounds in the Housing Act 1988 in order to bring the tenancy to an end. See Letting Handbook (published by the Letting Centre) for more information about setting-up and terminating an ordinary assured tenancy.

 

# 4. Residential Tenancies

This purpose of this chapter is to give the reader an understanding of the basic law relating to residential tenancies. It also explains the main obligations that will apply to the parties; both on the landlord and the tenant.

## Definition of a tenancy

A tenancy exists where the landlord agrees to grant the tenant an estate in land which comprises of **exclusive possession** of the specified property, for a **term**, at an agreed **rent**.

The main written terms of the tenancy will be set down in the tenancy agreement as in any other legal contract - these are commonly known as the **express terms**. Further terms may be added by statute or the common law - theses are known as **implied terms**.

## Purpose

A tenancy agreement or lease is one of the most important documents in the letting process. It is required for a number of reasons. Firstly, it will lay down the terms of the letting in advance for both parties to agree. Secondly, the tenancy agreement is a contractually binding agreement between the parties, and acts as a safety net (to either party) in case of problems or a dispute. A verbal understanding is subject to ambiguity and a significant proportion of verbal tenancy agreements end up in the courts for this reason. The agreement also serves other important functions:

- often required by mortgagee for inspection before granting permission to let

- statute now provides that the tenant may request a written tenancy agreement

- required when using certain procedures (e.g. Accelerated Possession Procedure)

- informs parties of any statutory obligations

## Nature of the agreement

When the landlord and tenant enter into a tenancy, they are creating a legally binding relationship which will consist of a series of obligations. For example, the tenant agrees to pay £100 per week to the landlord and the landlord promises to allow the tenant to occupy the property for six months. In practice, the landlord and tenant normally enter into a written tenancy agreement or contract which provides an extensive list of written clauses or obligations on both parties and this forms the basis on which the property is let.

 

**Table 1:**

# Glossary of Tenancy Terms

| | |
|---|---|
| ***Tenancy*** | An interest in land (as opposed to a "licence" which is a personal permission to occupy) whereby a person(s) enjoys exclusive possession of a property over a period of time usually in return for rent. (see 'Exclusive possession') |
| | ---- ---- ---- ---- ---- ---- ---- ---- ---- |
| ***Break clause*** | A break clause is a term in a fixed term tenancy agreement which allows either or both parties the right to terminate the agreement prior to the end of the term. |
| ***Covenant*** | A covenant is a type of obligation in the tenancy agreement. Terms contained within the agreement are often called covenants as they 'run with the land'. That is, they don't just bind the parties to the agreement, but they also bind any future successors in title. |
| ***Deed*** | A formal written legal document which must make it clear that it is intended to be a deed. It was a requirement that all deeds bore a seal before 31 July 1990. Now, the requirements are that it must be signed by its maker in the presence of a witness, or at the maker's direction in the presence of two witnesses. A deed normally takes effect on delivery, which consists of presenting it to the other party. |
| ***Deposit*** | Sum of money requested by a landlord at the beginning of a tenancy as security against non-payment of rent, damage to or removal of property. For more information on the Tenancy Deposit Scheme see page 5 & Appendix E. |
| ***Exclusive possession*** | The right of exclusive possession of land means the right to control of the land and to exclude all other persons from it. Where a person is granted the right to use the premises without the right to exclusive possession, then the occupier will not be a tenant and the grant is a licence. Thus for example, if a landlord rents out beds in a hostel, then the occupier does not have exclusive possession of either his room or the entire property and he occupies under licence. |
| ***Forfeiture Clause*** | This clause, usually included in the tenancy agreement, allows the landlord to forfeit the agreement and end the tenancy in the event of the tenant failing to pay the rent, or otherwise breaching one of his obligations. |
| ***Licence*** | A permission to occupy without having a tenancy, for example where the occupier does not have exclusive possession of the premises. |
| ***Premium*** | A sum of money (non-refundable) paid to a landlord for initial occupation of accommodation or for the grant or renewal of the tenancy. Strictly, a sum will only be considered as a premium if it exceeds one sixth of the annual rent. |
| ***Recital*** | The recitals are those (general introductory) parts of a tenancy agreement or deed which declare facts but do not affect otherwise the substance of the transaction. |
| ***Surety*** | A surety is established where a person offers security for another (e.g. Guarantor). |

 

## Main requirements of the tenancy agreement

The various obligations and issues that would normally be resolved within the tenancy agreement are:

- The name and address of the landlord
- The name of the tenant
- The address of the property being let
- The amount of rent payable
- The timing and manner of payment
- What happens if the rent is not paid or other obligations broken
- The commencement date of the tenancy
- The term or duration of the tenancy
- Whether the parties can terminate the contract before the end of the term
- Who is responsible for the bills
- Who is responsible for repair (externally or internally)
- Whether the tenant can sublet or have a lodger
- Restrictions on how the tenant can use the property
- Whether the tenant can assign the lease
- Whether pets can be kept at the property
- What alterations the tenant can make to the property
- How any statutory notices shall be served.

If the landlord is letting the property furnished, then an inventory and a schedule of condition should be attached. Otherwise, only a schedule of condition needs be provided.

## Legal requirements

In general, there is no standard or statutory form that the agreement must take and, for this reason, tenancy agreements come in all shapes and sizes; many lawyers, letting agents and landlords having their own preferred drafting styles and standard clauses.

The following issues are relevant:

- In England, a tenancy agreement may be agreed verbally. Whilst there is currently no legal requirement for a written tenancy agreement, the tenant is entitled to ask for a written statement of the terms of his tenancy - which must be provided within 28 days. (Housing Act 1988, s.20A)
- Whilst there is little formality required for ordinary shorthold residential tenancies, an agreement for a term of more than three years must be in writing and by deed. (Law of Property Act 1925)
- Neither party to a lease is permitted to charge the other party for any solicitor's costs for preparing the tenancy agreement unless the parties agree otherwise in writing (Cost of Leases Act 1958).

In some cases, it is helpful or necessary to serve various notices and other documents and prescribed information on the tenant prior to signing the tenancy agreement. Since October 1st 2015, a tenant must be supplied with a copy of the Government's How to Rent guide at the outset of the tenancy. An Energy Performance Certificate and Gas Safety Certificate must also be provided (where required) to the tenant before the tenant occupies the property.

The Tenant Fees Act 2019 which came into force on 1st June 2019 in England bans certain fees being charged to tenants. See Letting Factsheet 51 for more detailed information on charges that can be made to the tenant.

 

# Implied & Express Obligations

At the beginning of this section, we discussed how the tenancy agreement essentially consists of a series of obligations that are binding on both the landlord and the tenant. The obligations may be divided essentially into two types:

- Express obligations (i.e. promises made by the landlord and tenant)
- Implied obligations (i.e. obligations implied by statute or common law)

If there is an express provision or agreement regarding a particular obligation in the tenancy agreement, the general rule is that the express agreement takes priority, overriding the common law obligations. However, many of the implied statutory obligations have ultimate force since they provide that the parties cannot contract out of the legal obligation.

## Express obligations

Many of the obligations in the tenancy agreement will arise as a result of promises or an express agreement between the parties (generally enshrined within the words of the tenancy agreement). These are generally known as the express or contractual obligations, or the express covenants.

For example, the landlord may include a covenant in the agreement to return any rent payable during any period where the property has been rendered uninhabitable by fire.

## Implied obligations

In addition to these express terms in the tenancy agreement, there are many obligations implied into every residential lease, both by the common law and by statute.

These implied obligations arise by two routes:

- Obligations implied by statute (e.g. landlord's repairing obligations)
- Obligations implied by the common law. (e.g. the landlord's covenant for 'quiet enjoyment' one of the oldest common law tenant's rights)

In the case of assured tenancies, the Housing Act 1988 adds two important obligations:

1) Tenant cannot assign a statutory periodic tenancy. (Housing Act 1988, section 15)

2) Tenant must allow the landlord access for repairs. (Housing Act 1988, section 16)

## Usual covenants

These are a particular class of obligations or covenants that are implied by the common law into a contract for a lease. Where the parties fail to specify what terms the actual lease should contain, then the common law provides that the lease or tenancy agreement will contain the 'usual covenants' when the tenancy is granted.

Where the 'usual covenants' are implied, certain basic covenants will apply in every case (e.g. the tenant's covenant to pay rent and any taxes (expenses or services consumed) on the property).

The nature of the 'usual covenants' may also depend on any local conveyancing customs, the nature of the premises and the purposes of the letting.

 

# Landlord's Implied Obligations and Terms

The landlord's main implied obligations, both in common law and implied by statute are given below:

## Quiet enjoyment.

This means that the landlord undertakes that the tenant shall be free from disturbance by adverse claims or physical interference by the landlord, or any person claiming rights under the landlord (e.g. the landlord's agent). This covenant is implied unless specifically excluded.

## Repairing obligations

Firstly, statute implies a repairing obligation on all dwelling houses let for less than seven years (ss 11-16 Landlord and Tenant Act 1985). This covenant is binding and may not be specifically excluded from the lease. Essentially, they state that the landlord is normally responsible for:

- the structure and exterior of the dwelling
- basins, sinks, baths, and other sanitary installations
- installations for the heating of water and space heating
- installations for the supply of gas, water and electricity

Secondly, there is an implied condition in the letting of a **furnished dwelling house** *(Smith v Marrable 1843 11 M & WS)* that it should be reasonably fit for human habitation at the beginning of the tenancy.

**Blocks of Flats.** There is an implied condition in every lease of a flat in a block of flats that the landlord will take reasonable steps to keep the common parts (lifts, staircases etc.) and the structure of the building retained by him, in repair and proper working order.

**Defective Premises Act 1972.** The landlord may also be under an obligation under s4 of the Act to all persons who might be affected by defects in the premises to take reasonable care to see that they and their property are reasonably safe from injury or damage.

## Not to derogate from the grant

This prevents the landlord doing anything or permitting anything to be done which would render the premises unsuitable for the purpose for which they were let. In the majority of cases, the covenant not to derogate from the grant is exactly the same as the covenant for quiet enjoyment.

The most common situation where they might apply is with regard to easements. If, for example the tenant is granted a right of way over the landlord's land to reach his property, then the landlord must not do anything which prevents the tenant from exercising these rights (e.g. erecting a fence).

These provisions were originally implied at common law but are now mostly provided by statutory harassment provisions in the **Protection from Eviction Act 1977.**

## Immigration Act 2014

It is an implied term of a tenancy agreement which is not a residential tenancy agreement within the meaning of the Housing Act 1988 that the landlord may terminate the tenancy if the property is occupied by an adult who is disqualified as a result of their immigration status from occupying the premises (s33E Immigration Act 2014).

 

## Homes (Fitness for Human Habitation) Act 2018

Since 20th March 2019 it is an implied term of a tenancy agreement that a landlord (or an agent acting on their behalf) in England provides the property as fit for human habitation at the beginning of the tenancy and that it will remain fit for human habitation during the tenancy. The implied term does not require the landlord to:

- carry out works or repairs for which the tenant is responsible e.g. the tenant's duty to use the property in a tenant like manner or where the property is deemed unfit for human habitation as a result of the tenant's own breach of covenant;
- rebuild or reinstate the property in the case of destruction or damage by fire, storm, flood or other inevitable accident;
- keep in repair or maintain anything which the tenant is entitled to remove from the property;
- carry out works or repairs which would put the landlord in breach of any obligation imposed by legislation;
- carry out works or repairs requiring the consent of a superior landlord or other third party in circumstances where consent has not been obtained following reasonable endeavours to obtain it;

The provisions apply to a new tenancy (including renewals) granted on or after 20th March 2019 and a tenancy which was a fixed term tenancy and becomes periodic after 20th March 2019. The provisions also apply to existing periodic tenancies from 20th March 2020. The Government have provided a guidance document for landlords: Guide for landlords: Homes (Fitness for Human Habitation) Act 2018.

# Tenant's Implied Obligations

The tenant's main implied obligations, both in common law and by statute are given below:

**1. To Pay the Rent.** Under common law, a landowner has a right to recover from any person occupying his land as a tenant, a reasonable sum for use and occupation.

**2. To Pay Rates and Taxes.** The tenant is obliged to pay any rates or related charges assessed in respect of the premises except those for which the landlord is liable. These obligations are generally supplemented by specific statutory obligations on the 'occupier' to pay council tax, water rates etc. unless the tenancy agreement provides otherwise.

**3. Repairing Obligations.** A tenant is under an implied obligation to use the property in a responsible way and a tenant-like manner. *Warren v Keen* (1954) is one of the key case law decisions in this respect, and the judge (Denning LJ) stated this obligation: *'The tenant must take proper care of the place. He must, if he is going away for the winter, turn off the water and empty the boiler. He must clean the chimneys, when necessary, and also the windows. He must mend the electric light when it fuses. He must unstop the sink when it is blocked by his waste. In short, he must do all the little jobs about the place which a reasonable tenant would do. But apart from such things, if the house falls into disrepair through fair wear and tear or lapse of time, or for any reason not caused by him, then the tenant is not liable to repair it.'*

**4. Waste.** The tenant also has an obligation not to commit waste. The tenant commits 'waste' if he causes any alteration or damage to the property. The tenant should not damage the property and should make sure that his family or visitors do not do so.

**5. Enter and View.** The tenant is obliged to permit the landlord to enter and view the premises in order to carry out repair works associated with the landlord's obligations.

**6. Improvements.** A tenant may not generally make any improvement or addition to the property without the consent of the landlord.

**7. Title**. The tenant may not deny the landlord's title to the land. This might occur for example in possession proceedings where the tenant requests the landlord to prove that he holds proper title to the land. This request is denied on the basis that if the tenant was able to deny the landlord's good title to the property, then it would also deny the existence of the tenancy in the first place.

 

# Granting the Tenancy

## Negotiating & Tenant Vetting

Prospective tenants Mr & Mrs T see a property that they would like to rent. They complete the application form, supply their personal details and apply for the tenancy. They may also wish to negotiate the amount of the rent and the terms of the tenancy. At this stage, there is no contract - this is the pre-tenancy stage where the landlord is evaluating the application, taking credit checks, immigration status checks (if applicable) and references before deciding to offer the tenancy. Care should therefore be taken to add '*subject to contract*' to all correspondence with respect to the prospective tenancy at this stage to demonstrate that the documentation does not constitute the formation of a contract through offer and acceptance. A holding deposit may be taken from the tenants when they apply for the property (which may be retained or returned according to the conditions under which it is accepted) but again it does not generally bind the landlord to grant the tenancy. The Tenant Fees Act 2019 allows one week's rent to be taken for the holding deposit and sets out the requirements for retaining or returning it. See Letting Factsheet 51 for more information.

## Agreement for a Tenancy

Creating the tenancy can be considered as a two-stage process. Once the various pre-tenancy checks are complete, the tenants will be offered the tenancy of the property at an agreed rent, and often with an agreed occupation date. If accepted, this effectively constitutes an informal *agreement for a tenancy* - in other words, an agreement to create a tenancy at some future date. The tenancy agreement itself would not generally be signed until near or on the day of occupation in order to give the tenants a chance to study or amend the tenancy agreement before signing, and so that the landlord can be sure that he has vacant possession of the property on the day of occupation. Any offer letter confirming the tenancy details to the incoming tenant would normally be qualified with the words 'subject to contract' to confirm that the parties do not intend to be bound legally and formally at this stage.

In some situations, such as student lettings, where it can be useful and necessary to arrange the new tenancy well in advance of occupation, it is possible to formalise this intermediate stage and create a legally binding agreement for a tenancy which effectively reserves the property for a future tenancy.

## Tenancy Agreement

All tenants should be given ample opportunity to study the tenancy agreement before signing. Generally speaking, ordinary tenancy agreements for three years or less 'take effect in possession' (s.54, LPA 1925) which means that they should be signed and executed on the start date of the tenancy and not before. It would be unwise for a landlord to ask for the tenancy agreement to be signed by the parties well in advance unless he has vacant possession of the property. Occasionally, it might be appropriate to insert a term which makes the agreement conditional on having vacant possession, or some other condition or authority. Once the tenancy agreement itself has been signed by both parties, this constitutes a binding legal agreement to let the property. If one party then reneges on his or her obligations, the other party will have a contractual remedy and the possibility to claim for damages.

Traditionally, this tenancy process is completed with each party signing their respective physical copies of the tenancy agreement. The agent will, with appropriate authority, often sign on behalf of the landlord. The agent would then exchange the documents between the parties and complete them by dating the agreements. The tenants would then receive the copy of the agreement signed by the landlord (the 'Original') which is then in turn signed by all the tenants. The other copy (the 'Counterpart') could then be retained by the landlord or the agent. With the advent of email and the internet, it is now equally possible for the agreement to be signed electronically and validly completed without the inconvenience of physically exchanging and producing multiple paper copies of the agreement.

 

# Joint Tenancies

Some tenants occupy rented property as individuals but many more occupy as joint tenants, tenants in common or licensees. Married or cohabiting couples are frequently joint tenants, but so, also, are groups of friends. Whether they occupy as tenants or licencees, it is important to understand the differences between them, since each has its own set of characteristics and rules which will apply when it comes to granting renewal or termination.

## Types of co-tenancy

There are two common types of co-tenancy, or tenancies where there are tenants who share the occupation of a property. These are:

- joint tenancy
- co-tenancy where tenants hold individual tenancies in the same property

## Joint tenancy

A joint tenancy is the more common form of co-tenancy where the tenancy is granted to a group of sharers as a single transaction. The principle behind the joint tenancy is that, although the rights granted by the landlord are, in fact, granted to a group of people, this group is treated by the law in many respects as if it was a single person.

Most important and usefully from the landlord's perspective, this joint interest also extends to the liabilities or obligations under the tenancy agreement. Thus, under a joint tenancy, if one occupier breaches the terms of the agreement, or each denies individual responsibility for damage to the property, the landlord can either claim against all of them jointly, or against one of them individually - this is the concept of "joint and several liability". Equally, if one of them absconds leaving rent arrears, the landlord can make the remaining tenants responsible for making up the shortfall in rent.

## Individual tenancies within same property

In this second type of co-tenancy, tenants simply hold separate tenancies for their particular parts of the property that they occupy, but often share other parts - the common areas. The tenancies may frequently be granted at different times, for different rents and for different terms of occupation. A typical example might be a student house in which the individual rooms have been let to different students on separate tenancy agreements, and perhaps at different times.

## Advantages & disadvantages

The joint tenancy is an obvious and straightforward way for the landlord to rent out his property to a group of sharers and provides advantages to both the landlord and the tenant.

The arrangement has the benefit of simplicity; the landlord lets his property to the tenants as a single transaction, using a single tenancy agreement, specifying a single rent for the whole property. The tenants all hold the property equally and can organise their living arrangements between themselves; and decide who is to occupy which room.

Equally, the concept of unity can also bring disadvantages. If the landlord falls out with just one of the occupiers and wishes to remove that individual, there is no way of terminating that individual's tenancy in isolation (from the joint tenancy). The landlord would first need to terminate the tenancy for all occupiers before re-granting a new tenancy.

 

## Granting the Joint Tenancy

When granting a joint tenancy, the tenancy agreement must contain the names of all tenants living in the property. This may include emancipated minors (ie persons under 18 who effectively occupy as adults) who jointly share the tenancy but where the occupiers are a family, this would not include children under the age of 18 who would normally be treated as licensees.

All joint tenants should sign the tenancy agreement although, in exceptional cases, it is possible for one of the co-habitees to obtain authority (e.g by an appropriate letter of authority) to sign on behalf of a tenant who is absent when the tenancy agreement is entered into.

### Limitation under Law of Property Act 1925

Care should be taken when letting to groups of five or more sharers under a single joint tenancy. The reason is that the Law of Property Act 1925 sets a limit of four persons who may hold a tenancy jointly. Although it is possible to create a legally valid joint tenancy for five or more sharers, the principles of joint and several liability will only apply to the first four persons listed on the tenancy agreement.

In practice, this issue is largely ignored, and we are not aware of any cases where this has caused problems with groups of five or more joint tenants.

## Variations to the Joint Tenancy

A common problem with joint tenants is that members of the group comprising the joint tenancy may change over time.

Often, one of the joint tenants wishes to leave, whether or not his place is taken by a replacement joint tenant. When there is an agreement (verbal or otherwise) to substitute or amend the tenancy in this way, this act will, in law, operate to surrender the original tenancy and, by the same process, grant a new tenancy to the reconstituted group (often referred to as "surrender and re-grant"). The parties will enter into a new written agreement.

Where there is an agreement adding a new person as a joint tenant - this may simply be treated as an agreement to vary the existing contract. Clearly, the safest course is, as in the other cases cited above, to enter into a new written agreement that includes all the parties in the new tenancy.

Previously, this implied change of tenancy used to involve further complication since the landlord was required to grant a new term of at least six months under the replacement tenancy (whether or not the joint tenants all wished to remain on at the property for this long). Since the amendments introduced by the Housing Act 1996, this requirement of a minimum term of six months has, of course, been deleted. However, the resulting replacement joint tenancy will still be affected by the substituted provision that prevents the landlord regaining possession of the property in the first six months of the (replacement) tenancy - something to warn landlords and tenants prior to agreeing to such variations.

 

# Termination of Joint Tenancies

## Termination by landlord

Practitioners will be familiar with the standard routes for recovering possession of tenancies under the Housing Act 1988 (principally sections 8 and 21). The position with sharers or joint tenants is no different except that any such notice under these sections should be addressed to all the tenants jointly and also sent to, or served on, each tenant individually.

## Termination by tenants

Where the joint tenancy held by two or more joint tenants has become a periodic tenancy, the tenancy may be determined by a notice to quit from any one of the joint tenants without the concurrence of the others, unless the terms of the tenancy provide otherwise.

In all other cases, (e.g. tenants exercising a break clause within a fixed term tenancy) notice is required from ALL tenants unless the tenancy agreement expressly provides for it to be determined by one of them. If all the tenants must give notice but the notice is signed by only one of them, this will only be valid if that tenant has the other tenants' authority to give notice as their agent (and the landlord, in such a case, would be well-advised to verify with the other joint tenants that such authority had been given).

# Joint Tenancies and Guarantors

Joint tenancies can pose problems to guarantors. Since, by default, each individual tenant will be jointly and severally liable for the obligations under the tenancy, the guarantor can, in turn, become liable, not just for the individual whose obligations he presumes to be underwriting, but for any default of any of the other joint tenants living in the property.

The prudent guarantor will not normally wish to extend his liability beyond the specified individual tenant. Commonly adopted solutions are for the guarantor to limit the guarantee to a pre-agreed limit, or to a set proportion of the total rent arrears (or damage claim). One practical solution, is to insert a provision in the guarantee which limits the guarantor's liability to a particular individual's share of any rent arrears plus an equitable share of any other claim arising from the tenancy; i.e. those damages, losses or expenses attributable to the specified individual (see the Letting Centre *Professional Series* Guarantor Agreement (G01) and accompanying guidance notes for a more detailed discussion on this subject).

 

# Requirement for Tenant to Give Notice at End of Tenancy

By default, the tenant who signs a fixed term tenancy is permitted to leave at the end of the tenancy without giving any notice to the landlord.

This potentially puts the landlord in a slightly inequitable situation since the landlord is ALWAYS required to give notice to his tenant under section 21 of the Housing Act 1988 if he want to get possession of the property at the end of the fixed term tenancy.

Many landlords avert this problem by including an additional clause in the tenancy agreement which requires the tenant to give a defined period of notice to the landlord if they do not wish to stay on at the property after the end of the fixed term. We provide a suitable additional clause (see clause A.8.1) that landlords or agents may include at their option.

The Office of Fair Trading (now CMA) objects to such clauses on the basis that they are potentially unfair and prejudice the tenant's rights. Their proposed alternative approach is to consult the tenant in advance (by at least two months) of the end of the tenancy in order to determine whether s/he wishes to stay beyond the fixed term and renew the tenancy. If there is no positive response, then the landlord could then serve notice under section 21.

We do not agree with this view but in the absence of any binding case law rulings, or legislative changes, the law is likely to remain unclear. Whilst we believe that such clauses can be helpful in certain letting situations, practitioners should therefore include such clauses at their own risk.

Current practice is largely dictated by the approach taken by tenancy deposit adjudicators – which is of course not binding on other adjudications. In practice, many adjudicators will accept such notice clauses on the tenant where one month's notice is required (since this duplicates the tenant's common law requirement for a statutory periodic monthly tenancy) but reject such clauses where an extended period of say two months or more is required. Where users decide to include this in their standard tenancy agreements, we therefore recommend that you do not substantially alter or extend this requirement for one month's notice as it is likely to be struck out and declared void in any deposit adjudication process.

 

 

# 5. Assured and Assured Shorthold Tenancies

An **assured** or **assured shorthold** tenancy is the standard form of letting for all tenancies which began on or after 15 January 1989. This arrangement for the letting of houses and flats was introduced by the Housing Act 1988 but important changes were made by the Housing Act 1996.

These tenancies were introduced to encourage lettings by allowing landlords to charge a full market rent, unlike previous forms of tenancy. Shorthold tenancies also allow landlords to let their property for a short period only and landlords can regain possession of the property at the end of the fixed term where they have complied with appropriate legislation.

In the legislation, the term "assured tenancy" covers both assured tenancies (sometimes called "full" or "ordinary" assured tenancies) and assured shorthold tenancies (AST). For clarity, we shall refer to assured tenancies in these notes when we wish to refer to both types.

The Housing Act 1988 defines that a tenancy may be assured if:

- the tenant is an individual
- the tenancy began on or after 15 January 1989;
- the house or flat is let as separate accommodation and is the tenant's main home

A tenancy will NOT be assured if:

- the tenancy began before 15 January 1989
- it is a business or holiday let
- no rent or a very low rent is charged
- a high rent is charged (threshold now set at £100,000* pa)
- the landlord is a "resident" landlord

(* This figure was raised from £25,000 from 1 October 2010)

The table overleaf gives a more detailed list of tenancies which cannot be assured tenancies.

 

## Table 2: Tenancies that may not be Assured Tenancies:

(Housing Act 1988, Schedule 1, as amended)

The Housing Act 1988 defines various types of tenancy that cannot be assured (or assured shorthold). These are briefly summarised below:

**- A tenancy granted by a resident landlord.** A resident landlord is defined as one who continuously lives in the same property as his tenant. A landlord living in a separate flat or house converted into flats in which his tenant(s) live(s) may be a resident landlord. A landlord living in a separate flat in the same purpose-built block of flats as his tenant is not a resident landlord. For further details on resident landlords, see Department of Communities and Local Government Booklet – 'Letting Rooms in Your Home: A guide for residential landlords' at www.gov.uk

**- A Business tenancy subject to Part II of the Landlord and Tenant Act 1954**

**- A tenancy allowing the tenant to occupy the property for a holiday**

**- A tenancy of a property let together with more than two acres of agricultural land.** Agricultural land is land used as arable, meadow, pasture, woodland, poultry farming, orchard or as a market garden. Such agricultural land does not include land occupied with a house as a park, or as grounds used mainly for sport or recreation. It may be safely assumed that the land is agricultural for the purposes of the Housing Act 1988 if it has been rated for council tax purposes as agricultural (Local Government Finance Act 1988).

**- A tenancy of an agricultural holding**

**- A tenancy granted by an educational body** specified within a list issued by the Secretary of State to a student studying at that same institution.

**- A tenancy in which the landlord is the Crown or a Government Department.**

**- Protected tenancies under the Rent Act 1977** or the Rent (Agriculture) Act 1976.

**- A tenancy entered into before 15 January 1989**, or arising as a result of a contract entered into before then.

**- A tenancy of a licensed premises**

**- A tenancy where the landlord is a local authority, a housing action trust, certain specified statutory bodies or a fully mutual housing association** (unless they are old style assured tenancies that have been converted).

**- A tenancy which is rent-free or where the annual rent is less than two thirds the rateable value of the property.**

**- A tenancy of a property at a high rent.** With the introduction of council tax, the Act was amended in 1990, Schedule 1, Section 1, Para 2(1)(b), such that tenancies with an annual rent exceeding £100,000* are now excluded. It is to be noted that the £100,000 figure is annualised and therefore if the proportional monthly rent is more than £8333.33 per month for a shorter term (e.g. only six months), the letting is still outside the Housing Act. ***(*A threshold of £25,000 applied prior to 1 October 2010).***

**- A tenancy will not be an assured tenancy if it falls within any of these exceptions or if it fails to meet the definition of an Assured tenancy in the Housing Act 1988.** For example, if it is not let as a separate dwelling, or if the tenant does not occupy it as his only or main residence.

 

# Differences: Assured Tenancy and the Assured Shorthold

The majority of lettings by private landlords are assured shorthold tenancies.

## Assured shorthold tenancy - AST

If the landlord lets a property on an assured shorthold, he is entitled and guaranteed the right to regain possession at the end of the term subject to the statutory notice requirements:

- the landlord must give at least 2 months' notice that possession is required
- possession will only be awarded after a minimum term of six months

The AST tenant may apply to the appropriate tribunal (rent assessment committee in Wales and First Tier Tribunal in England) to have the rent reduced if he considers the rent to be significantly higher than the rent for comparable tenancies in the area.

With effect from 28 February 1997, the AST is the default or automatic tenancy, and it is no longer necessary to serve a notice (s20) on the tenant. All assured shorthold tenancies are subject to the requirements of the Tenancy Deposit Scheme.

## Ordinary Assured

With the ordinary assured form of tenancy, the tenant enjoys greater security of tenure. The tenant has the right to remain in the property unless the landlord can prove particular grounds for possession. There are seventeen such grounds provided by the Housing Act 1988. The most common grounds that may be utilised are:

- that the landlord wishes to move back into his own home
- that the tenant is in arrears with his rent
- that the tenant has broken one or more of his obligations under the tenancy
- that the tenant or his visitors is guilty of causing a nuisance

Unlike the AST, the landlord has no automatic right to repossess the property when the tenancy comes to an end. Assured tenancies are not subject to the requirements of the Tenancy Deposit Scheme.

The ordinary assured tenant has no equivalent right (compared with ASTs) to refer the rent to a rent assessment committee or First-tier Tribunal during the initial agreed tenancy.

Prior to 28 February 1997, lettings were automatically assured unless the landlord served a specific notice on the tenant.

# Furnishings

Prior to 1974, there was a clear differentiation between the security of tenure of tenants of unfurnished and furnished tenancies. Furnished tenants were only given limited security.

This is no longer the case with assured tenancies; it does not make any difference to the status of the tenancy whether the property is furnished or unfurnished.

 

# Setting up an Assured Tenancy

Tenancies starting on or after 28 February 1997 are automatically assured shortholds (ASTs) unless special steps are taken to set up an assured tenancy.

## Assured shorthold

***For tenancies starting on or after 28 February 1997:*** there is no longer any special procedure for creating an AST. A tenancy will automatically be an AST.

***For tenancies which started or were agreed before 28 February 1997:*** a tenancy will be an AST only if the landlord served a special notice - a 'Notice of Assured Shorthold Tenancy' otherwise known as a 'Section 20 notice' that the tenancy was to be an assured shorthold tenancy. If the tenant has an ordinary assured tenancy, then the landlord cannot simply replace his tenancy with a shorthold tenancy.

## Ordinary assured

***For tenancies starting on or after 28 February 1997:*** the landlord must give the tenant a notice which says that the tenancy is not an assured shorthold tenancy. The notice must be given before the beginning of the tenancy, or alternatively can be given by including a simple declaration in the tenancy agreement to this effect. If the parties wish to agree to an assured tenancy after the commencement, then such notice can also be served after the tenancy has started. There is no special form for giving this notice.

***For tenancies which started or were agreed before 28 February 1997:*** the ordinary assured tenancy was the standard and default form of tenancy prior to this date. The tenancy also automatically became an ordinary assured tenancy if the landlord served a defective Section 20 notice, or forgot to serve it, even if the parties had an oral agreement that it was a shorthold tenancy.

## Written agreement

There is no legal requirement that the tenancy agreement must be in writing for short leases although a tenant may now request this after the commencement of the tenancy. Agreements are however essential safeguards to the landlord's interests and there are specific clauses that it should contain in order to comply with various statutory requirements.

For tenancies starting on or after 28 February 1997, the tenant who does not have a written agreement has the right to ask for a statement of any of the following main terms of the tenancy:

- the date the tenancy began
- the amount of rent payable and any rent review arrangements
- the dates on which it should be paid
- the length of any fixed term which has been agreed

The tenant must apply in writing for this statement which is to be provided within 28 days.

## How to Rent Guide

For assured shorthold tenancies granted in England on or after 1st October 2015 all tenants must be provided with the Department of Communities and Local Government (DCLG) 'How to Rent Guide: Checklist for Renting in England' either in hard copy or by email as an attachment (paragraph 3 of The Assured Shorthold Tenancy Notices and Prescribed Requirements (England) Regulations 2015) at the start of the tenancy. Where landlords have not given the tenant a copy of the How to Rent Guide at the start of the tenancy they will not be able to serve a section 21 notice until the tenant has received a copy.

 

Landlords and agents will only be able to email the How to Rent Guide where the tenant has agreed to accept service of documents by email. The Letting Centre tenancy agreement includes a clause to allow for this and there is also an example document checklist in the Management Forms Pack which can be used alongside our agreement, or separately, as proof of evidence that the tenant has received documentation and agreed to accept service by email.

### *Renewal and replacement tenancies:*

If a newer version of the How to Rent Guide becomes available landlords do not have to re-issue the guide during the tenancy. However, the new version must be given to the tenant when the tenancy is renewed or where a new tenancy is granted. Our understanding is that this includes statutory periodic tenancies and replacement tenancies. If the How to Rent Guide has not changed at the time of issuing a new, renewal or replacement tenancy to existing tenants there is no need to re-issue the document.

## Right to Rent Checks

Landlords who rent property in England under a residential tenancy agreement must carry out checks on adult occupiers from 1st February 2016 to ensure the occupier has a right to rent in the UK even if they are not named on the tenancy agreement. A residential tenancy agreement is a tenancy which grants a right of occupation of premises for residential use, provides for payment of rent and is not an excluded agreement under the Immigration Act. Tenancy also includes any lease, licence, sub-lease or sub-tenancy and an agreement for any of those. Landlords must establish the occupiers who will be living at the property; whether the property is their only or main home and conduct right to rent document checks. Occupiers should provide original documents and landlords will need to check the documents are genuine with the tenant present and keep copies on file.

If the occupier is only allowed to stay in the UK for a limited time, landlords will need to do the check in the 28 days before the start of the tenancy and must diarise a follow up check one year after the initial check or upon expiry of the time limit whichever is later. Where an occupier does not have a right to rent in the UK landlords will need to make a report to the home office. The checks do not apply to existing occupiers or under 18s but, according to government guidance, when an occupier turns 18 during the course of a tenancy agreement *'landlords do not need to conduct additional follow up checks but, where other adult occupiers require follow up checks, the now adult should be checked at the point these further checks fall due.'*

Responsibility for completing the checking process will primarily lie with the landlord unless this responsibility has been transferred to a superior landlord or a letting agent, which must be agreed in writing. Further guidance is available on the government website.

## Pre-tenancy Document Checks

It is important to ensure that the tenant has been provided with certain information at the start of the tenancy in order that a section 21 notice can be issued at a later date.

Tenancy deposits must be protected within a statutory scheme within 30 days of receipt and the tenant must be issued with a copy of the prescribed information and tenancy deposit scheme leaflet/terms and conditions. See 'Tenancy Deposits' below and Appendix E for more information.

Tenants must be provided with a current version of the DCLG How to Rent Guide, a copy of the Energy Performance Certificate (EPC) (where required) and a copy of the Gas Safety Certificate (where required).

Energy Performance Certificates must be provided free of charge to any prospective tenant (*s6 The Energy Performance of Buildings (England and Wales*) *Regulations 2012*) and gas safety certificates must be provided within 28 days of completion of the annual check or to new tenants before they move in (*s36(6) The Gas Safety (Installation and Use) Regulations 1998*).

A section 21 notice can only be given to the tenant if the tenant has received these documents from the landlord (*s21A Housing Act 1988, introduced by s38 Deregulation Act 201*5). Landlords should also ensure that they comply with any other requirements prior to giving the tenant a section 21 notice. See 'Ending the Tenancy' below.

 

# Fixed Term and Periodic Tenancies

An assured tenancy (including an AST) may be set up as one of two types:

- fixed term tenancy
- periodic tenancy

## Fixed term tenancy

A fixed term tenancy is a tenancy agreed for a definite term. The tenancy will therefore have a pre-established commencement date and termination date. Unless there is a significant breach of the tenancy agreement, or the agreement contains a provision to terminate early (using a break clause), it should be noted that this agreed term is a contractually binding legal contract on both parties, and may be enforced by either party. Equally, it should be noted that the common law allows the tenant to give up possession and leave the property on the last day of the term without giving notice whereas the landlord does not have the equivalent power. (Under the Housing Act 1988, the landlord is required to give at least two months' notice – see section later in this chapter entitled 'Ending the Tenancy').

A fixed term tenancy may include a break clause allowing either or both of the parties (depending on the wording) to terminate the agreement early. If the landlord grants a fixed term tenancy with no break clause, he will only be able to seek possession if one of the grounds for possession 2, 8, 10 to 15 or 17 in the Housing Act 1988 (see Appendix A) apply and if the terms of the tenancy make provision for it to be ended on any of these grounds. Such provision is often called a 'forfeiture clause' and may provide the landlord with powers of repossession, forfeiture or determination by notice.

The landlord may agree a fixed term for less than six months if the tenant agrees (or alternatively set up a periodic tenancy from the outset) but the tenant has a right to refuse to leave and may stay in the property for a minimum of six months (or six months from the beginning of the original tenancy in the case of a replacement tenancy). However, the landlord can seek possession during this period on one of the grounds listed in the paragraph above.

It is not possible to seek possession from an ordinary assured tenant at the end of the fixed term without grounds (as specified in the Housing Act 1988). The Letting Centre tenancy agreement contains the necessary provisions that permit the landlord to apply to the court for possession of the property early (e.g. due to breach of the tenancy agreement).

The procedures for seeking possession at the end of an assured or AST tenancy are dealt with in more detail below.

## Periodic tenancy

A periodic tenancy is a tenancy that runs on indefinitely on a periodic basis. The length of the period is determined by the rent payment interval. Thus if the rent is payable weekly, the tenancy period will be weekly; if the rent is payable monthly, the tenancy period will be monthly. Either party should give notice to end a periodic tenancy.

Prior to 28 February 1997, it was not possible to agree an initial periodic AST. The initial fixed term was required to be a minimum length of six months. Thus, tenancies set up for less than this time, or set up on a periodic basis from the commencement automatically became ordinary assured.

Since 28 February 1997, it is possible to agree an AST on a periodic basis initially. If the landlord agrees a tenancy on this basis, he will have an automatic right to possession at any time after the first six months, provided that the statutory requirements for giving notice of possession have been complied with.

 

# Renewing or Extending the Tenancy

## Assured shorthold tenancies

Where the initial term of the assured shorthold tenancy has come to an end, and the landlord wishes the tenancy to continue, there will generally be two main options at the end of the initial fixed term:

- Agreeing a replacement tenancy for a new or further fixed term
- Allowing the agreement to 'roll-over' on a periodic basis

Any replacement tenancy that the parties agree will automatically be on shorthold terms unless they choose to set up a replacement tenancy on an ordinary assured basis (to do this, the landlord needs to follow the procedure for setting up an ordinary assured tenancy - see preceding section).

## Renewal by further fixed term

The initial fixed term tenancy may be renewed or extended by the preparation of a new agreement, signed by both landlord (or his agent) and tenant(s) and dated to take effect from the day immediately following the expiry of the previous tenancy.

When drafting the replacement tenancy agreement, it is useful to include a clause in the new agreement identifying the renewal agreement acts as an extension to a previous AST agreement (supplying the commencement and expiry dates of the previous tenancy).

During the fixed term, the landlord will have no power to put up the rent unless there is provision for rent increase within the agreement. At the end of the agreed term, the landlord and tenant are free to agree another fixed term and a new rent.

Inclusion of an agreed notice period within the renewal agreement allows the landlord to set an optimum period of notice (e.g. 2 months notice by either party). However, a simple periodic tenancy (in the absence of any references to the notice period) makes no similar restriction on the tenant and the landlord is left in the rather inequitable position of having to give 2 months notice whilst the tenant need only give as little as four weeks (or a month for a monthly tenancy).

Where the tenancy is renewed for a further fixed term, and the deposit being held is more than five weeks' rent, landlords and agents should note that the part of the deposit which exceeds five weeks' rent must be returned to the tenant in order to comply with the Tenant Fees Act 2019 (s30).

## Advantages to renewal under new fixed term

The majority of professional landlords and agents prefer to renew the agreement with a new fixed term, and this is the approach generally recommended. There are a number of advantages in this method:

- **Certainty.** Both parties have the security of knowing that the tenancy is going to continue for a specified period into the future.
- **Terms.** By drawing up a new agreement, the terms of the replacement tenancy are clearer to both parties, being specified in the agreement.
- **Rent Increase.** Provisions for rent increase can be included in the agreement or re negotiated at each renewal. With the periodic method, the landlord must follow the statutory procedure (Housing Act 1988, s13) and serve the appropriate notice etc.

 

- **Drafting Fee.** Some agents charge a fee to the landlord to draw up the new agreement.
- **Tenancies requiring a guarantor.** As previously indicated it may be appropriate to use a new fixed term in this situation. Where the initial fixed term has been granted with a guarantor it is important to contact the current guarantor in advance of the tenancy renewal to ensure the guarantor is happy to sign for a further fixed term. If the guarantor states that he is not willing to continue with the guarantee the landlord will need time to source another guarantor if needed.

## Tenancy Deposits and Renewals

The original intention of the deposit protection legislation was that when a fixed term tenancy expired and continued as a statutory periodic tenancy no new tenancy arises and the existing deposit arrangements could remain.

However, the Court of Appeal cases *Superstrike Ltd v Marino Rodrigues [2013]* (pre-April 2007 deposit and the tenancy became statutory periodic after April 2007) and *Charalambous & Anor v Maureen Rosairie Ng & Anor* [2014] (pre-April 2007 deposit and the tenancy became statutory periodic prior to April 2007) interpreted previous legislation as requiring landlords to re-protect deposits when a tenancy became statutory periodic. Landlords were unable to rely on Section 21 where the deposit was not being held in accordance with an authorised statutory scheme.

The effect of *Superstrike* has been modified by the Deregulation Act 2015 which became law on 26th March 2015. The Act confirms that any deposits received prior to 6th April 2007 where the tenancy has been renewed or becomes statutory periodic after 6th April 2007 must be protected in one of the three statutory schemes and the prescribed information issued to the tenant within ninety days of commencement of the Act.

The Deregulation Act also confirms the decision in *Charalambous & Anor v Maureen Rosairie Ng & Anor* [2014] where the deposit was received prior to 6th April 2007 and the statutory periodic tenancy commenced prior to 6th April 2007. In this case the judge held that the deposit should have been protected within an authorised scheme prior to issuing the section 21 notice in accordance with Section 215 (1) (a) which states that 'if a tenancy deposit has been paid in connection with an assured shorthold tenancy, no section 21 notice may be given in relation to a tenancy at a time when the deposit is not being held in accordance with an authorised scheme.' No financial penalties will be payable for non-protection in this situation but the deposit must be protected prior to issuing the section 21 notice.

For post April-2007 tenancies, where the landlord protected the deposit and issued the tenant with the prescribed information in relation to the initial fixed term tenancy the tenancy deposit requirements are that there is no need to re-protect or re-issue when the tenancy is renewed or becomes statutory periodic where the tenancy deposit continues to be protected.

Landlords should protect all deposits held on assured shorthold tenancies in connection with a fixed term or statutory periodic tenancy, whether received before or after 6th April 2007, to ensure valid service of a Section 21 Notice. An alternative would be to return the deposit to the tenant prior to serving the Section 21 Notice.

 

# Renewing the tenancy using a periodic tenancy

A fixed term tenancy can continue as a **contractual periodic tenancy** or a **statutory periodic tenancy** when the fixed term expires. Where there is a clause within the fixed term agreement stating that the tenancy will continue as a periodic tenancy at the end of the fixed term a contractual periodic tenancy will arise. The Letting Centre AST agreement includes such wording under the Term to allow the tenancy to continue as a contractual periodic tenancy.

Where the tenancy agreement does not include such wording and the landlord does nothing when the original fixed term ends, a statutory periodic tenancy will normally arise under the same terms as the previous tenancy. In the case of an assured or AST, the law defines that a new tenancy is automatically created in this situation, the so-called statutory periodic tenancy.

A periodic tenancy will continue to run until brought to an end by either party or replaced by any new agreement between the parties.

## Terms of periodic tenancy

Unless anything is stated and agreed to the contrary, any extension of an existing tenancy will be deemed to be subject to the general terms contained within the original agreement. Once the terms of the periodic tenancy have been agreed, the landlord must propose any future rent increase under the formal procedure in section 13 of Housing Act 1988 (unless the tenant agrees to the new rent) or risk it being declared invalid by a court.

Where there is a guarantor, periodic tenancies are best avoided, due to grey areas with continuing guarantees, and a new fixed term tenancy and deed of guarantee should be granted.

## Advantages of renewal under periodic tenancy

There are however situations which favour the use of periodic tenancies. Possession of the property can sometimes be obtained more quickly from a statutory periodic tenancy than from an additional fixed term tenancy. The accelerated possession procedure (APP) can be freely used with periodic tenancies provided the statutory period of notice has been given to the tenant (whereas it can only be used with fixed term tenancies under limited grounds).

A periodic tenancy is useful at the end of a fixed term tenancy where the tenant has asked to stay on for a short but undefined period. The comments from the paragraph above apply equally in this case if the tenant does not leave when agreed.

### *Statutory periodic vs Contractual periodic*

**Tenant's right to remain in the property.** Under a statutory periodic tenancy landlords may not be able to claim legal costs following possession action because s5 of the Housing Act 1988 gives a tenant the right to remain in possession of the property let under a statutory periodic tenancy it is brought to an end by order of the court (unless the tenancy is surrendered or notice is given under section 33D of the Immigration Act 2014) and the tenant is entitled to remain in possession until any court order is executed. S5 does not apply to contractual periodic tenancies.

**Council Tax.** If the tenancy is for a whole property for a fixed term of at least 6 months then the tenant is liable for council tax until the end of that term even if they move out without giving notice and this rule applies if the tenancy continues as a contractual periodic tenancy as it is classed as a continuation of the tenancy. However, if a tenant leaves during a statutory periodic tenancy without notice then the landlord will be liable for the council tax as a statutory periodic tenancy is a new tenancy and the 6 month fixed term rule is not met (*Leeds City Council v Broadley* [2016] EWHC 1839).

**Government Guide 'How to Rent: Checklist for renting in England.'** This guide needs to be served on the tenant at the start of the tenancy and any subsequent tenancy where it has been updated. This includes statutory periodic tenancies but not contractual periodic tenancies following on from a fixed term as they are not classed as new or subsequent tenancies.

 

**Deposits.** Where a tenancy deposit has been protected late during the original fixed term tenancy a landlord will need to return it before serving a section 21 notice if it has continued as a contractual periodic tenancy. However, with a statutory periodic tenancy as this is a 'new' tenancy the deposit will need to be protected correctly when the fixed term comes to an end so that the landlord will be able to serve a section 21 notice during the statutory periodic tenancy. It is also understood that contractual periodic tenancies will only be subject to 1-3 times the deposit penalty as the fixed term and contractual periodic act as one tenancy but the penalty will be higher for statutory periodic tenancies where there has been non compliance in both the fixed term and statutory periodic tenancies as these are classed as two tenancies.

**Rent Increases.** A rent increase for a statutory periodic tenancy can take effect as soon as the fixed term has ended using the procedure under s13 Housing Act 1988 (HA 1988) but for contractual periodic tenancies the landlord will have to wait until 12 months from the start of the fixed term before the rent increase can take effect. This wouldn't matter if the landlord has issued a 12 month fixed term tenancy but if he has issued a six month fixed term tenancy he won't be able to implement a rent increase for a further six months. However, for these situations a rent review clause can be inserted into the tenancy agreement setting out how and when the rent will be reviewed (e.g. at the end of the fixed term), which will take precedence over section 13, allowing a rent increase to take effect as soon as the tenancy becomes contractual periodic.

**New Legislation.** Legislation brought in by the Government usually refers to 'new' tenancies which often includes statutory periodic tenancies so there is some argument towards using a contractual periodic tenancy.

# Ordinary assured tenancies

Any replacement tenancy will automatically be on assured terms whatever the tenancy agreement says. However, to avoid any possibility for misunderstanding, it is helpful to state in the replacement tenancy agreement that the tenancy is not an assured shorthold tenancy.

If the parties do nothing and no further agreement is made, the tenancy will automatically run from one rent period to the next on the same terms as the preceding fixed term assured tenancy. In a similar way to the case above, this replacement tenancy is called a statutory periodic tenancy. It will continue to run on this basis until it is replaced by any new agreement between the parties, the tenant leaves, or the landlord seeks possession from the tenant. Alternatively, the landlord and tenant may agree to a replacement assured tenancy.

They may agree to either:

- a replacement fixed term assured tenancy
- a replacement assured tenancy on a periodic basis - this is called a **contractual periodic tenancy**

## Replacing assured with assured shortholds

Under the original Housing Act 1988, it was not possible to grant an assured shorthold to a tenant who immediately before held an ordinary assured tenancy.

For tenancies created on or after 28 February 1997, it is only possible for the tenancy to change from ordinary assured to an assured shorthold if both parties agree. The tenant is required to serve on the landlord a notice in the prescribed form, stating that the new tenancy is to be an assured shorthold.

Conversely, if the parties wish to grant an ordinary assured tenancy to an existing assured shorthold tenant, the new agreement must simply include a clause to the effect that the new tenancy is not to be an assured shorthold.

 

## Renewal Provisions

Some tenants request that a right to renew be included in the AST tenancy agreement, and this might be a reasonable request in some circumstances given the lack of security conferred to the AST tenant.

Care should be taken; including such a provision will in effect commit the landlord to let for at least two terms and the term should be correctly worded (by reference to the original tenancy dates) in order to avoid creating a perpetually renewable tenancy.

Where a provision to renew is used, it will usually set out a procedure that needs to be followed by the tenant in order to renew the term. The tenant will need to comply with these terms and serve notice on the landlord stating that he or she wants to renew the tenancy. A renewal clause would usually include a provision for rent review together with the notice period and when the notice can be served. It is probably more common these days to include a contractual periodic tenancy clause (discussed earlier) or issue a new fixed term tenancy at the end of the term.

 

# Ending the Tenancy

There are various statutory requirements for the termination of assured tenancies.

## Assured shorthold tenancies

If the fixed term has ended, or the landlord wishes to get the property back at the end of the fixed term, the landlord must give the tenant at least two months notice requiring possession. Due to the limited security of tenure provided by the assured shorthold tenancy, the landlord is given the guaranteed right to possession - this is often referred to as seeking possession under the 'shorthold rule' or under 'section 21'.

Landlords renting property in England may be required to provide the tenant with certain prescribed information and ensure they have complied with legal requirements prior to giving the tenant a section 21 notice. These requirements include complying with tenancy deposit protection legislation, ensuring the property has a licence where a licence is required (e.g. HMO) and providing the tenant with a copy of the EPC, Gas Safety Certificate and DCLG How to Rent Guide.

The Deregulation Act also provides that no section 21 notice can be served within 6 months of an Improvement Notice or Emergency Remedial Notice being served in respect of the property by the Local Authority. This can also invalidate a section 21 notice already served if a possession order has not been made before service of the Notice. See Lfacts 21 and Possession and Rent Arrears Guidance Notes for more information.

### Fixed term tenancy

The landlord can give notice during the fixed term. In this case, the statutory requirements are:

- the landlord shall give at least two months' notice stating that he requires possession;
- the notice cannot be given to the tenant within the first four months of the original tenancy where the tenancy is in England.

### Periodic tenancy

If the fixed term of the tenancy has expired, or the tenancy is on a periodic basis (either contractual or statutory periodic) then the requirements are:

- the landlord shall give at least two months' notice stating that he requires possession;
- the length of the notice period may be longer than two months if the period of the tenancy is longer than monthly (e.g. quarterly);
- for contractual periodic tenancies in Wales the notice must be dated to expire on the last day of a tenancy period unless it is a statutory periodic tenancy – see *Spencer v Taylor* below.

Since the Court of Appeal case of *Spencer v Taylor* [2013] landlords can now serve a section 21(1)(b) notice for statutory periodic tenancies in Wales meaning the notice does not need to expire on the last day of a tenancy period. For contractual and statutory periodic tenancies in England the notice is not required to expire on the last day of a tenancy period as a result of the Deregulation Act 2015.

More information is available at: www.letlink.co.uk and the Letting Centre's Possession Pack.

### Requirement for written notice

Where the landlord is seeking possession under the shorthold rule for either a fixed term or periodic tenancy the notice must be in writing and a prescribed form has been drafted. You

 

are advised to obtain a standard form available from The Letting Centre or a legal stationers that includes the required information.

## Assured tenancies

At the end of the fixed term, a statutory periodic tenancy will automatically arise if no other tenancy has been agreed. The landlord may only seek possession during the tenancy if one of the following grounds for possession apply - grounds 2, 8, 10 to 15 or 17 and the terms of the tenancy make provision for it to be ended on any of these grounds.

## Right to Rent

The landlord may terminate a residential tenancy agreement if the Secretary of State has given one or more notices in writing which identify ***all the occupier(s)*** of the property and states that the occupier(s) are disqualified as a result of their immigration status from occupying premises under a residential tenancy agreement s33D(2).

The landlord may terminate the residential tenancy agreement by giving at least 28 days notice in writing and in the prescribed form to the tenant or joint tenants. The landlord is not required to obtain a court order where the notice states that all occupiers are disqualified as the Protection from Eviction Act has been amended to exclude tenancies within the meaning of Chapter 1 Part 3 of the Immigration Act 2014 and where section 33D(2) applies.

If the landlord (or in the case of joint landlords, one or more of them) has received notice in writing from the Secretary of State which identifies that ***one or more*** of the tenants or adult occupier(s) are disqualified as a result of their immigration status from occupying the property under the tenancy the landlord can serve a section 8 notice relying on mandatory ground 7B. The court has discretion to order that the tenant's interest is transferred to the remaining tenants for the remainder of the fixed term instead of making an order for possession.

The Immigration Act 2016 also states that it is an implied term of a residential tenancy agreement which is not an assured tenancy within the meaning of the Housing Act 1988 that the landlord may terminate the tenancy if the property is occupied by ***an adult*** who is disqualified as a result of their immigration status from occupying the premises (s40 which inserts a new section 33E into the Immigration Act 2014).

 

## Table 3: Grounds for Seeking Possession under Assured Tenancies:

Schedule 2 of the Housing Act 1988, defines various grounds that may be used for seeking possession of properties let on assured tenancies (including assured shorthold). These are briefly summarised below:
(This is a summary - the full wording of each Ground is given in the Housing Act 1988).

***Part I Grounds on which court must order possession*** (otherwise known as 'mandatory grounds') *N.B. Grounds 1 to 5 inclusive are* ***prior notice grounds****. i.e. not later than the beginning of the tenancy, the landlord must give notice in writing to the tenant that possession might be recovered on this ground.*

**Ground 1:** that the landlord used to live, or intends to live in the property as his only or principal home.

**Ground 2:** that the mortgagee is claiming possession. NB this can only be of use where the mortgage predates the tenancy.

**Ground 3:** that the tenancy is let for a period not exceeding eight months and was previously let for the purposes of a holiday within the last 12 months. E.g.. an off-season letting of a holiday cottage.

**Ground 4:** that the tenancy is a letting for 12 months or less which was previously let by a specified educational establishment to students during the previous 12 months. (i.e. an out of term-time letting).

**Ground 5:** that the property is held for use by a minister of religion and is required for this purpose.

**Ground 6:** where the landlord intends to redevelop the property.

**Ground 7:** that the former tenant has died (unless there is a person with a right to succeed).

**Ground 7A:** that the tenant, or a person residing in or visiting the dwelling-house, has been convicted of a serious offence, certain offences under the Anti-Social Behaviour, Crime and Policing Act 2014, an offence under section 80(4) or 82(8) of the Environmental Protection Act 1990 – a mandatory ground.

**Ground 7B:** that the landlord has received notice from the Secretary of State that one or more of the occupiers are disqualified from occupying the property as a result of their immigration status.

**Ground 8:** that the tenant owed at least two months' rent both when the landlord served notice that he wanted possession and still owes two months' rent at the date of the court hearing.

***Part II Grounds on which court may order possession*** (otherwise known as 'discretionary grounds')

**Ground 9:** that suitable alternative accommodation is available.

**Ground 10:** that the tenant was behind with his rent when the landlord served notice that he wanted possession, and when he began court proceedings.

**Ground 11:** that, even if the tenant was not behind with his rent when the landlord started possession proceedings, he has been persistently behind with his rent.

**Ground 12:** that the tenant has broken one or more of his obligations under the tenancy agreement.

**Ground 13:** that the condition of the premises or any of the common parts has deteriorated because of the behaviour of the tenant, his subtenant, or any other person living there.

**Ground 14:** that the tenant or someone living in or visiting the property has been guilty of conduct which is, or is likely to cause a nuisance or annoyance to neighbours, the landlord or a person employed in connection with the exercising of the landlord's management functions or has been convicted of using the property, or allowing it to be used, for immoral or illegal purposes or has committed an arrestable offence in or in the locality of the property.

**Ground 14ZA:** that the tenant or an adult residing in the dwelling-house has been convicted of an indictable offence which took place during, and at the scene of, a riot in the United Kingdom.

**Ground 15:** that the condition of the furniture has deteriorated because it has been ill-treated by the tenant, his subtenant, or someone living there.

**Ground 16:** that the tenant was granted the property in order to properly fulfil her employment duties and is no longer employed by the landlord.

**Ground 17:** that the landlord was induced to grant the tenancy by a false statement made knowingly or recklessly by either the tenant or a person acting at the tenant's instigation.

 

# Rent Control

The Housing Act 1988 provides various procedures for rent control for assured tenancies. The procedure depends on the type of tenancy, whether ordinary assured or AST, and is operated by the Property Chamber in England who will assess the tenancy and determine a market rent for the property and the locality.

## Rent assessment

Since 1st July 2013 rent assessment committees have been abolished in England with its functions now being exercised by the First-tier Tribunal (Property Chamber) and disputes regarding rent should be referred to the tribunal.

The tribunal is usually made up of 2 or 3 people - usually a lawyer, a property valuer and a lay person. There is a fee to lodge an application and a further fee payable if there is a hearing. The tribunal can make a decision by considering the relevant papers although you or the tenant can ask for an informal hearing, which you may both attend.

The tribunal will decide what rent the landlord could reasonably expect for the property if it were let on the open market under a new tenancy on the same terms. It does not take into account any increase in the value of the property due to voluntary improvements by the tenant or any reduction in the value caused by the tenant not looking after the property. The tribunal may agree the proposed rent or set a higher or lower rent.

The rent fixed by the tribunal is the legal maximum that the landlord can charge. The new rent will be payable from the date specified in the notice of rent increase unless the tribunal considers this would cause the tenant undue hardship in which case it may specify a later date.

## Rent Reduction

Under s22 of the Housing Act 1988 an AST tenant can apply to the tribunal at the start of the tenancy to have the rent reduced if he considers the rent to be significantly higher than the rent for comparable properties. If successful in having the rent determined, he may not apply again (s22 (2)(a) of the Housing Act 1988).

For tenancies starting **on or after 28 February 1997**, the tenant may only apply to the tribunal once within 6 months of the beginning of the original tenancy. An application cannot be made if the original tenancy has ended, been subsequently replaced, and more than 6 months have elapsed since the date the original tenancy started.

For tenancies which started or were agreed **before 28 February 1997**, the tenant may apply to the committee at any point during the initial fixed term of the original tenancy.

For ordinary assured tenancies, there is no equivalent rent control mechanism available initially. A tenant cannot refer the agreed rent to the tribunal.

 

# Rent Increase Procedure

## Rent increase by agreement

Ideally the landlord should agree with the tenant the arrangements for rent increase prior to granting the tenancy, and these details should be laid down within the tenancy agreement (otherwise the landlord will have no power to increase the rent during the fixed term). If there is no rent increase provision, then the landlord will be held to the agreed rent (by the contract entered into) until the end of the fixed term and can then use the s13 procedure during any periodic tenancy to increase the rent as explained below.

Where there is a rent review clause within the tenancy agreement and the tenancy becomes periodic at the end of the fixed term the rent increase procedure will depend on whether the tenancy continues as a contractual periodic tenancy or a statutory periodic tenancy. If the tenancy agreement is contractual periodic then the rent review clause will apply. Where the tenancy becomes statutory periodic landlords should use the s13 procedure to increase the rent (*London District Properties Management Ltd & others v Goolamy* [2009] EWCA 1367) as any rent review clause in the fixed term tenancy agreement will cease to apply once the tenancy becomes statutory periodic.

## Rent increase by Housing Act 1988 procedure (section 13)

If the parties cannot agree, then it is only possible to vary the rent for periodic assured and assured shorthold tenancies using the procedure discussed below (specified in Housing Act 1988, s13). The landlord should notify the tenant of the proposed rent increase using the prescribed form.

The landlord must give the tenant at least one month's notice of the proposed rent increase if the rent is paid on a weekly or monthly basis (more if the rent period is longer) and to take effect at the beginning of a period of the tenancy. If the tenant does not agree with the proposed increase, he must apply to the tribunal who will decide what the rent should be. He must do so before the date on which the new rent would be due.

If the tenancy is a **contractual periodic tenancy**, the landlord may propose a rent increase under section 13 which will take effect one year after the tenancy began, and then at yearly intervals after the first increase. Therefore, if the original fixed term was for six months then the landlord cannot use the s13 procedure at the end of the six month fixed term, the landlord will have to wait until 12 months had passed before the rent increase takes effect.

If the tenancy is a **statutory periodic tenancy**, the landlord may propose a rent increase under section 13 which will begin as soon as the statutory tenancy comes into being, and at yearly intervals after the first increase. However, if the tribunal has already made a determination of the rent of an assured shorthold under s22, the landlord will have to wait 12 months before he can make a proposal.

## Further increases

Once the landlord has served the notice of rent increase, and the rent has been increased as a result, the landlord is not permitted to propose a further rent increase to take effect earlier than one year after the date on which the increased rent took effect.

 

# Varying the Terms of Assured Tenancies

The landlord or tenant may wish to change other terms of the tenancy apart from the rent. (e.g. The landlord may wish to offer the property unfurnished in the replacement tenancy). If the tenancy is a fixed term or contractual periodic tenancy, the landlord can only change the terms of the tenancy if the tenant agrees. If the landlord can agree with the tenant the arrangements for changing the terms, then they should do so in writing.

## Housing Act 1988 procedure (section 6(2))

This procedure only applies if the fixed term of an assured or AST has ended and automatically become a **statutory periodic tenancy**. In this case, it would normally continue on the same terms unless the parties propose new terms. Either party may propose new terms, and any consequent change to the rent, within a year of the statutory periodic tenancy starting, using the procedure specified in the Housing Act 1988.

The landlord or tenant must propose new terms, and any consequent change to the rent, using the prescribed form (using the same form for ordinary assured or AST tenancies). Copies of the form are available from the Letting Centre and legal stationers. If the terms are agreed, they can be included in, and become part of the tenancy agreement. If the terms are not agreed, the person receiving the form must apply to the tribunal to settle the terms and any consequent change in rent. He should do so within 3 months of receiving the notice using another prescribed form (available from legal stationers or the tribunal offices).

## Assessment

The tribunal will consider whether the proposed terms might reasonably be found in an assured periodic tenancy of the property in question; or it may substitute its own terms. In making its decision, it will make the following assumptions:

- that the tenancy began as soon as the former fixed term tenancy ended;
- that the tenancy is granted by a willing landlord and all the terms of the tenancy are the same as those of the statutory periodic tenancy, except the particular term the committee is looking at.

If the tribunal thinks that, due to a new term, the rent should be adjusted, then it will adjust the rent. This will happen whether or not the landlord or the tenant had originally proposed a change in the rent to match a change in the term.

The new terms fixed by the tribunal will become the new terms in the tenancy, and the associated change in the rent, if any, will become the new rent. The new rent and terms cannot apply before the date specified in the notice.

## Further changes

Once the new terms have been fixed by the tribunal, the landlord and tenant can only make further changes by mutual agreement.

 

# Succession and Matrimonial Rights

A spouse, or someone living with the tenant may have the right to succeed to an assured periodic tenancy if the tenant dies. The right (called "succession") depends on the type of tenancy held by the persons and whether the tenant had a fixed term or periodic tenancy.

If the tenancy is a joint tenancy, then if a tenant dies, the remaining joint tenant continues as the sole tenant.

## Assured tenancies

If the tenant had a fixed term tenancy and the fixed term tenancy has not expired, the tenancy rights can be passed on to whoever is chosen to inherit the tenancy.

If the tenant had a contractual or statutory periodic tenancy, the tenant's spouse, civil partner or someone living with the tenant as husband or wife, will have the automatic right to succeed to a periodic tenancy unless the tenant who died had already succeeded to the tenancy. The Housing Act 1988 only allows one succession. No one else in the family has an automatic right of succession.

If the tenancy was periodic, or becomes periodic and there is someone living in the property who does not have a right to succeed to the tenancy, the landlord will have a right to possession under Ground 7, provided that possession proceedings are started within a year of the death of the original tenant.

## Assured shorthold

If the tenancy is an assured shorthold tenancy, the landlord has an automatic right to possession of the property at the end of any fixed term, even if the tenant had a right to succession, provided that the statutory requirements for notice are fulfilled.

# Matrimonial Homes Rights & Separation

When the tenanted property is occupied by husband and wife, only one of whom is tenant, special considerations apply. The tenant who goes away for a time leaving his spouse in occupation will, whether or not there is an intention to return to the house, remains an assured tenant (although technically no longer occupying as 'only or principal home'). Thus the tenant who abandons his or her spouse nevertheless remains an assured tenant.

The law also provides protection for the remaining partner or cohabitee (Family Law Act 1996) in certain circumstances. The problem arises if the partner was not a tenant initially. The courts now have the power to either grant an occupation order, or order the transfer of the tenancy so that the remaining partner may remain in the property.

## Divorce

Similar rules apply on divorce or separation; the court has powers to grant an occupation order or order the transfer of the tenancy to the spouse if he or she was not the tenant originally. This order would normally be made in the course of matrimonial proceedings.

 

# Terms Implied by Law

## Assignment and subletting

In the case of a statutory periodic tenancy, the tenant is not permitted to assign the tenancy (in whole or in part) or sublet or part with possession of the whole or part of the dwelling house without the landlord's consent. A similar term will be implied into assured tenancies which are non-statutory (i.e. contractual) periodic tenancies unless the parties have made express provision about assignment and subletting in the lease.

If a covenant against assignment or subletting is implied as above, the tenant will not be able to question the refusal of the landlord to give his consent to a proposed assignment.

## Access for repairs

It is an implied term of every assured tenancy that the landlord or his agent shall have the legal right to enter the property to carry out the repairs that the landlord is entitled to execute, and to inspect the condition and state of repair of the property.

In law, the landlord is obliged to give his tenant 24 hours notice in writing and enter at reasonable times of the day when exercising such a right. It is a good idea to set out the arrangements for access and procedures for getting repairs done in the tenancy agreement.

The repairing obligations will include those items defined by s11(6) of the Landlord and Tenant Act 1985 (structure of property, and services for supply of water, electricity and other utilities etc.) and any further obligations included in or implied by the agreement.

## Rent books

If the rent is payable weekly, then the landlord is legally obliged to provide a rent book which must contain certain information prescribed by statute. Rent books containing the required information are available from legal stationers.

No rent book is required if the tenancy is monthly but it is always advisable to keep a record of rent paid for all tenancies in case of future disagreement.

 

 

# Appendix A

## Letting Centre

## *Professional Series*

## Additional Clauses

## IMPORTANT NOTES FOR USERS

A. This appendix contains examples of extra clauses which may be used in a tenancy agreement. They are intended to be incorporated into the tenancy agreement, as required, for individually negotiated agreements between a landlord and a tenant

B. The *Professional Series* standard Assured Shorthold Tenancy agreement has been drafted after due consideration of the current legal requirements and the guidance issued by the Competition and Markets Authority (CMA) on unfair contract terms. The Letting Centre believes that concise agreements are likely to cause fewest problems. The incorporation of additional clauses into a standard form of agreement should be very carefully considered before being pursued.

C. **Tenant Fees Act 2019.** The incorporation of additional clauses and the general amendment of our standard agreements may have uncertain effects with regard to compliance with Tenant Fees Act 2019 (TFA2019). We have revised and checked these clauses in consideration of the TFA2019 but we strongly recommend that any agreement where additional clauses have been drafted or incorporated is checked for compliance with TFA2019 before issue. The Letting Centre makes no warranty as to the legality of any agreement where such checks have not been carried out.

D. Standard tenancy agreements with additional clauses should be reviewed in each case in the light of the CMA's guidance on unfair terms in tenancy agreements available on the government website www.gov.uk.

E. It is likely that many of the clauses contained in this appendix (and similarly-worded clauses with an equivalent intention) would not satisfy the CMA when incorporated into a landlord's or agent's standard contract terms.

F. We have categorised the additional clauses with respect to unfair terms under the Consumer Rights Act:

1: Likely to be compliant – can be incorporated into standard agreements
2: Compliance position uncertain – we advise only use this clause under separate negotiation and individual amendment
3: Unlikely to be compliant

 

## *1. GENERAL CLAUSES*

| ***The Tenant agrees with the Landlord:*** (these extra clauses can be appended where appropriate) | ***Comment*** | ****Unfair terms category*** |
|---|---|---|
| **A.1.1** - *that the Tenant has been supplied with a copy of the 'Standard Terms and Conditions' of ABC Lettings which apply to all tenancy agreements* | add this term if you provide tenants with supplementary terms and conditions (see example in Appendix B) | 1 |
| **A.1.2** - *any amendment to this tenancy agreement must be recorded in writing and agreed by both parties* | Self explanatory | 1 |
| **A.1.3** - *not to change or cause to be changed the telephone number relating to the Property without the written permission of the Landlord* | or cite this information in the supplementary terms. | 1 |
| **A.1.4** - *that where the Rent is accepted from a party other than the Tenant, it shall be deemed to be accepted for and on behalf of the Tenant* | helps avoid setting up a tenancy inadvertently with, for example an unauthorised lodger in the property. No longer so critical since default tenancy is now an AST. | 1 |
| **A.1.5** – *the Tenant is responsible for insuring their own personal effects and the Tenant is advised to take out appropriate contents insurance cover* | This is an advisory clause. Landlords cannot require tenants to take out contents insurance. | 1 |
| **A.1.6** - *to return any additional keys to the Landlord at the expiration or earlier determination of the tenancy* | extends clause 7.3. Difficult to enforce. | 1 |
| **A.1.7** - *not to introduce any water-bed into the Property without the Landlord's prior written consent* | self-explanatory. Important for US tenants | 1 |
| **A.1.8** - *in the event of a dispute between the parties to this Agreement such dispute may be referred to [enter name of professional association to which landlord or agent is a member*] | or cite this information in the supplementary terms. | 1 |
| **A.1.9** - *Not to receive paying guests or carry on or permit to be carried on any business, trade or profession on or from the Property except as for those permitted under this Agreement. The Landlord permits the Tenant to run a home business to operate from the Property as defined by the Small Business, Enterprise and Employment Act 2015* | Sections 35 and 36 of the Small Business, Enterprise and Employment Act 2015 establishes a new concept of a 'home business tenancy'. Allows landlords to permit residential tenants to run a home business without the tenancy falling within the protection of Part 2 of the Landlord and Tenant Act 1954. This clause can replace standard clause 4.3 | 1 |
| **A.1.10 -** *to pay for a valid television licence where required and for any cable, satellite or broadband services connected to the Property* | self-explanatory. | 1 |
| **A.1.11-** *not to keep at the Property any apparatus or other equipment that might endanger the Property or invalidate the Landlord's insurance of the Property, a copy of which is attached* | or cite this information in the supplementary terms. This clause is dependent for its effectiveness on the attachment of the landlord's insurance. | 2 |

 

| | | |
|---|---|---|
| **A.1.12**- *not to do or permit or suffer to be done in or on the Property any act or thing which may be a nuisance damage or annoyance to the Landlord or to the occupiers of the neighbouring premises, or which may void any insurance of the Property or cause the premiums to increase* | the OFT/CMA guidance objects to this clause included as part of a standard letting agreement on the basis that the tenant may not have the chance to examine the terms of the insurance policy unless they have been given these prior to signing the agreement | 3 |
| **A.1.13**-*where items have been left at the Property at the end of the tenancy, the Tenant will be responsible for meeting all reasonable removal and/or storage charges. The Landlord will remove and store them for a maximum of one month. The Landlord will notify the Tenant at the last known address. If the items are not collected within one month, the Landlord may dispose of the items and the Tenant will be liable for the reasonable costs of disposal. The costs may be deducted from any sale proceeds or the Deposit and if there are any costs remaining they will remain the Tenant's liability* | this clause is dependent for its effectiveness on notice being given to the tenant in the prescribed form as set out in Schedule I of the Torts (Interference with Goods) Act 1977 | 1 |
| **A.1.14**- *not to repair cars, motorcycles, vans, or commercial vehicles at the Property other than for general maintenance to vehicles which are owned by the Tenant* | self explanatory. | 1 |
| **A.1.15**- *not to keep (or permit to be kept) at the Property any commercial vehicle, heavy goods vehicle (HGV), boat, caravan, mobile home or similar large vehicles without the Landlord's written consent* | useful clause to prevent large vehicles being parked at the Property. Difficult to enforce 'commercial vehicle.' | 3 |
| **A.1.16**- *not to alter, add or interfere with the internal or external decoration at the Property without the written permission of the Landlord, such consent not to be unreasonably refused* | already implied by Clause 5.1 | 1 |
| **A.1.17**- *the Landlord is entitled to seek possession of the Property by obtaining a court order where Grounds 2, 7, 7A, 7B, 8, 10, 11, 12, 13, 14, 14A, 14ZA, 15 or 17 apply as set out in Schedule 2 of the Housing Act 1988. See www.legislation.gov.uk for the text of the Housing Act 1988* | Provides additional compliance with Housing Act s.7(6) - see also clauses 9, 12.2 & 12.3 | 1 |
| **A.1.18**- *at the end of the tenancy, the Tenant is advised to attend the check-out process which will be arranged by the Landlord or his Agent. The check-out process will comprise a full inspection of the Property and Contents and any items missing, damaged or otherwise in a different state to their condition at check-in will be recorded in a schedule of dilapidations.* | useful clause giving the Tenant notice that any damage to the Property and Contents will be recorded at the check-out process at the end of the Tenancy. | 1 |
| **A.1.19 –** *Where the Tenant is unsatisfied with any service provided by the Agent he should contact the Agent in the first instance to resolve matters. The Agent has an in-house complaints policy which must be followed, a copy of which has been provided with or prior to entering into this Agreement.* | As a result the requirement for Agents to belong to a Redress Scheme Agents are required to provide tenants with details of their complaints handling policies and details of which Redress Scheme they belong to. | 1 |

 

| | | |
|---|---|---|
| *The Agent is a member of and where the Tenant is unsatisfied with the way the complaint has been handled he may refer the matter to the scheme for a further decision, details of which are available upon request from the Agent.* | (insert details of the agent's redress scheme) | |

*Unfair Terms category – see key ('Important Notes for Users') on page 67 for detailed explanation

 

## *2. MAINTENANCE AND RELATED PROVISIONS*

| | *Comment* | *Unfair terms category* |
|---|---|---|
| **A.2.1** - i*n the event of an emergency, the out-of-hours service number is: < contact no.... >* | or cite this information in the supplementary terms. | 1 |
| **A.2.2** - *to maintain the garden of the Property in as neat and tidy condition as it was at the start of the tenancy. Keeping lawns cut, flower beds and borders free of weeds and generally cultivate the garden in a reasonable manner and condition according to the season of the year* | in law, the 'Property' is deemed to include the grounds of the dwelling and any outbuildings. Tenants (except in flats etc.) would be expected to care for gardens in 'tenant-like' manner. | 2 |
| **A.2.3** - *not to lop, top, cut down, remove or otherwise injure any trees shrubs or plants growing upon the Property (with the exception of normal pruning) or to alter the layout or general character of the garden during the tenancy without the permission of the landlord not to be unreasonably refused* | these clauses spell out the provisions relating to garden maintenance in added detail. | 1 |
| **A.2.4** - *to allow any person authorised by the Landlord or his Agent access to the Property grounds and any outbuildings in order to carry out gardening work* | self explanatory | 1 |
| **A.2.5** - *not to deposit any store of coal in any part of the Property other than the receptacle provided for the purpose, nor to keep any combustible or other dangerous goods, provisions, or materials at the Property* | or cite this information in the supplementary terms. | 1 |
| **A.2.6** - *to visually inspect electrical appliances and contact the Landlord or Agent should any of the Landlord's electrical appliances require repair* | or cite this in the supplementary terms. | 1 |
| **A.2.7** - *to keep all electrical and other working appliances (except gas appliances) up to the standard pertaining when the Tenant took possession* | already implied by 5.2 | 1 |
| **A.2.8** - *at all times (if the Property has oil-fired central heating) to keep the oil-tank adequately filled with the appropriate heating oil and, at the end of the tenancy, to refill the tank to the same level as it was at the start of the tenancy* | a useful clause in rural areas or cite this in the supplementary terms. | 2 |
| **A.2.9** - *not to alter or interfere with the gas, water or electrical installations, and not to overload or damage any of the drains, wires, pipes or cables. The Tenant shall not connect or install any additional gas appliances at the Property without the Landlord's prior written permission. Any installation must be carried out by a suitably qualified engineer, and the appliance must be checked annually for safety. Unsafe appliances will be immediately disconnected* | or cite this information in the supplementary terms. | 1 |

 

| | | |
|---|---|---|
| **A.2.10** - *to clean all windows on a regular basis and at the expiration of the tenancy* | not generally necessary. Tenant has implied duty to care for the property in a tenant-like manner. | 1 |
| **A.2.11** - *to take reasonable steps to adequately heat and ventilate the Property throughout the tenancy to avoid condensation, mould and mildew. Where any of these occur, to take care to promptly and regularly wipe down and clean the affected surfaces* | Additional condensation obligations | 1 |
| **A.2.12** - *to look after any houseplants supplied with the Property* | difficult to enforce | 2 |
| **A.2.13 –** *that where the tenant is in breach of clause 5.16 to pay the Landlord for all reasonable costs and expenses that may be incurred resulting from notices being served under the Environmental Protection Act 1990 due to the presence of vermin in the Property which is attributable to the Tenant* | Environmental Protection Act 1990 clause | 1 |
| **A.2.14** - *to maintain in good repair the television aerials, satellite dish and similar reception devices (if any) in the Property. The Landlord shall not accept any responsibility for unsatisfactory radio or television reception* | or cite this information in the supplementary terms | 1 |
| **A.2.15 -** *to keep any chimney(s) swept as often as reasonably necessary, where the Property has a chimney that serves an open fire or solid fuel appliance. Where used regularly, the chimney(s) should be swept annually.* | a useful clause where the property has an open fire or solid fuel appliance | 1 |
| **A.2.16 -** *where the Property has a swimming pool to maintain that pool to a reasonable and clean standard* | or cite this information in the supplementary terms | 1 |
| **A.2.17 -** *to arrange and pay for the emptying of cesspools and septic tanks (if any) as necessary during and on termination of the tenancy* | useful in rural areas | 1 |
| **A.2.18 -** *not to use or store any items in the loft space without the Landlords prior written consent* | useful where the landlord stores his own items in the loft space. | 1 |
| **A.2.19 -** *not to install, cause or authorise the installation of any pre-payment meter at the Property without the written permission of the Landlord* | self explanatory | 1 |
| **A.2.20 -** *that the Tenant will allow the Landlord or other authorised persons access to the Property to carry out risk assessments during the tenancy in order to comply with health and safety requirements. The Landlord or his Agent will give the Tenant a minimum of 24 hours notice* | Landlords and Agents may be required to carry out risk assessments to identify hazards at the Property. This clause provides access to the Property to carry out inspections. We have included more detail regarding checks in relation to Legionella in our TINFO document. | 1 |

 

| | | |
|---|---|---|
| **A.2.21 -** *To use appliances in accordance with the manufacturer's instructions and carry out any minor maintenance that would be expected such as cleaning or changing filters. The Landlord will be responsible for the repair costs during the initial three months of the tenancy for the genuine breakdown (i.e. not caused by misuse) of appliances supplied by the Landlord.* | Where appliances are supplied with the property a clause should be inserted into the tenancy agreement to confirm who is responsible for repair costs. | 1 |
| **A.2.22 –** *to be permitted to keep the following pet(s) at the Property:*<br><br>*Type of pet –*<br><br>*Breed -*<br><br>*Name –*<br><br>*Colour -*<br><br>*As a consequence of this permission by the Landlord, the Tenant agrees as follows:*<br><br>*To keep the pet(s) from causing any annoyance or discomfort to others and to immediately remedy any complaints concerning the pet;*<br><br>*To keep the pet(s) from damaging any property belonging to the Landlord/Agent or others;*<br><br>*To keep the pet(s) under control at all times;*<br><br>*Should the Tenant fail to comply with any part of this clause, the Landlord reserves the right to revoke permission to keep the pet(s). In such event, the Tenant agrees to permanently remove the pet(s) from the Property within 48 hours of receiving written notice from the Landlord; failure to comply with the same shall be grounds for termination of the Assured Shorthold Tenancy Agreement* | pets permission clause (to replace clause 4.5)<br><br>See also Addendum to Agreement on page 74 where pet is introduced after tenancy has commenced. | 2 |

 

### *3. PETS - An addendum, to be attached to the standard tenancy agreement*

***Pet Addendum to Assured Shorthold Tenancy Agreement***
*THIS AGREEMENT is hereby attached to and made a part of the Assured Shorthold Tenancy Agreement dated _____, 20_____, between*

*_____, the Landlord, and*

*_____, the Tenant,*

*for the premises located at*

*_____*

*_____*

*The Tenant desires to keep a certain pet(s) described below on the said premises and the Assured Shorthold Tenancy Agreement specifically prohibits allowing pets on the premises; the Assured Shorthold Tenancy Agreement is hereby amended to grant such permission to the Tenant. In exchange for this permission, the Tenant agrees as follows:*
*1. To keep the pet(s) from causing any annoyance or discomfort to others and to immediately remedy any complaints concerning the pet;*
*2. To keep the pet(s) from damaging any property belonging to the Landlord/Agent or others;*
*3. To keep the pet(s) under control at all times;*
*4. To keep the pet(s) restrained, but not tethered, when it is outside of the Property;*
*5. Not to leave the pet(s) unattended for any unreasonable periods;*
*6. To dispose of the pet's droppings properly and quickly;*
*7. Not to leave food or water for the pet(s) outside of the Property;*
*8. Not to keep the pet's offspring on the premises for longer than 8 weeks after birth;*

*The permission granted herein shall be limited to a certain pet(s)*

*Named _____and described as follows:*

*Type of Pet _____*

*Breed _____*

*Colour _____*

*Should the Tenant fail to comply with any part of this Pet Agreement, the Landlord/Agent reserves the right to revoke permission to keep the pet. In such event, the Tenant agrees to permanently remove the pet(s) from the premises within 48 hours of receiving written notice thereof from the Landlord/Agent; failure to comply with same shall be grounds for termination of the Assured Shorthold Tenancy Agreement.*

*THIS AGREEMENT is made in duplicate on this _____day of _____, 20_____.*

*Tenant _____*

***Landlord_____***

 

## *4. COST RECOVERY AND OTHER FINANCIAL PROVISIONS*

Generally, any extra charges or penalties must be brought to the attention of a Tenant prior to entering into the tenancy if they are to be enforceable.

| | ***Comment*** | ***Unfair terms category*** |
|---|---|---|
| **A.4.1** - *interest will be paid on this Deposit (clause 2 to be amended if appropriate) (this will be subject to the requirements of the Tenancy Deposit Scheme – see Appendix E)* | in law, interest may be retained by agent or landlord. However the RICS Code specifies that an agreement should be made with the tenant in this respect. | 1 |
| **A.4.2** - *interest will be payable on any late rent payments where payments are more than 14 days overdue. Interest will be payable at an annual percentage rate of 3% above Bank of England Base Rate calculated on daily basis starting on the 15th day after the rent due date* | Since the Tenant Fees Act 2019 any interest charge for late payment of rent can only be 3% above the bank rate prevailing at the time. | 1 |
| **A.4.3** - *in the event of any infectious or contagious disease brought into the Property by the Tenant during the tenancy, the Tenant agrees to comply with any requirements directed by the Medical Officer of Health or such other competent officer* | there is an (rarely invoked) obligation on landlords to carry out disinfecting of dwellings where certain specified infectious or contagious diseases have been present*.<br><br>* Public Health (Control of Diseases) Act 1984 | 1 |
| **A.4.4** - *any Rent accepted after the Tenant has breached the terms of the tenancy shall be accepted as mesne profits and shall not prejudice the Landlord's right to enforce compliance with this Agreement* | When a former tenant remains in occupation after a tenancy has been terminated, a landlord can claim money from her/him for continued use of the premises. These payments are known as mesne profits. | 1 |
| **A.4.5** - *Where rent has been paid in advance, the Landlord shall be entitled to deduct any reasonable costs incurred through any breach of this tenancy agreement, or as decided by the Court* | useful clause where landlord has incurred court costs following issue of possession proceedings. Court will generally award court costs against the tenant. | 1 |

 

## *5. LICENCES*

A Licence may be needed where elements of the property outside the tenanted area is occupied in common with others or where a person other than the tenant, for example his or her partner needs to occupy the property but not be a party to the tenancy.

| | | |
|---|---|---|
| **A.5.1** – *that [name of permitted occupier] be permitted to reside at [address of Property] subject to the tenancy of [name of Tenant(s)] for the duration of that tenancy subject to the right of the Landlord to terminate on one month's notice to the occupier.* | short licence | 1 |
| **A.5.2 –** *The Tenant has a licence to use the communal parts of the Property in common with other tenants of the Property* | common parts licence. | 1 |
| **A.5.3 –** *It is agreed that the Tenant has authority to licence the rooms within the Property to an Approved Occupier during the term of the tenancy subject to the following conditions:*<br><br>*(1) The Tenant must not part with possession of the whole Property*<br><br>*(2)(a) The Tenant must ensure that throughout the Term the Property is occupied by an Approved Occupier. This clause does not require that the same Approved Occupier should occupy the Property throughout the Term*<br><br>*(2)(b) An Approved Occupier means a respectable and responsible person(s) appointed by the Tenant and previously approved in writing by the Landlord*<br><br>*(3) That the Approved Occupier occupies the Property as licencee(s). It is not the intention that a tenancy should be created in the name of the Approved Occupier or any other persons that may reside at that address*<br><br>*(4) The Tenant shall inform the Landlord in advance of any change of Approved Occupier*<br><br>*(5) The Tenant agrees to abide by his duties under the Immigration Act 2014 (or any subsequent legislation). The Tenant is required to carry out appropriate checks in order to ensure that all Occupiers of the Property have the right to reside in the UK before they are allowed to live at the Property and to carry out follow up checks during the tenancy, where required. The Tenant agrees to keep appropriate evidence of such 'Right to Rent' checks as required by legislation and provide copies of such evidence to the Landlord on request* | Licence clauses which can be added to the Special Conditions section of the tenancy agreement allowing the tenant to rent out rooms in the property as licences to avoid creating sub-tenants. It is important to check that there are no restrictions within any lease, headlease, mortgage terms or insurance terms before allowing the tenant to grant licences.<br><br>As the Letting Centre standard tenancy agreement does not allow occupiers other than the tenant to live at the property the words 'subject to Special Condition Clauses [*13.1-13.7*]' will need to be added to the end of Clause 4.1 when using these clauses. | 1 |

 

| | |
|---|---|
| *(6) The Tenant is responsible for ensuring that the Approved Occupier does not breach any of the tenancy conditions and the Tenant will be responsible for liaising with the Approved Occupier regarding any requirements*<br><br>*(7) The Tenant will ensure that the rent is paid in full and on time, regardless of whether the rooms are occupied or not* | |

## *6. BLOCKS OF FLATS*

Where the Property consists of a flat, it is sometimes useful to define the 'Building' as an extra entity which allows the Landlord to make provisions which apply to the common areas in the Building where the flat is situated. The definition of Building can be added to the initial definitions in the following way:

**Property** *those rooms known as* [ E.g. **Flat 21** ] *located in the*
*building known as* [ **Rose Court, Park Street, Cambridge** ]
*hereinafter referred to as "the Building"*

or where there is no fixed flat or room identification

**Property** *those rooms located on the* [ E.g. 2nd ] *floor of the*
*building known as* [ Rose Court ]
*hereinafter referred to as "the Building"*

| ***Clauses relating to blocks of flats*** | ***Comment*** | ***Unfair terms category*** |
|---|---|---|
| The following clauses are often useful for lettings of flats and apartments. You may incorporate some of the example clauses in your standard tenancy agreement, or it may be more convenient to draft a specific agreement only for use with the letting of flats. | | |
| **A.6.1** - *not to make any noise audible outside the Property or to the adjoining occupiers between the hours of 11 p.m. and 7 a.m* | noise restriction clauses are useful in areas of high housing density. They are also useful when the walls between adjoining properties are thin or when there is little sound insulation. May be unenforceable if unavoidable. | 1 |
| **A.6.2** - *no washing machine in the Property, whether the property of the Landlord or the Tenant, shall be used or operated before eight a.m. in the morning or after nine p.m. at night* | could be included if head lease includes a similar restriction. | 3 |
| **A.6.3** - *to maintain in place carpet or other sound absorbent material on all floors of the Property* | self-explanatory | 1 |

 

| | | |
|---|---|---|
| **A.6.4** - *not to use or permit the use of the common entrance hall in the Building (if any) otherwise than for quiet and peaceful entry to the Property* | self-explanatory | 1 |
| **A.6.5** - *at all times, when not in use, to keep shut the entrance door to the Building (if any). And, between the hours of 11 p.m. and 7 a.m., to make reasonable efforts not to disturb adjoining occupiers* | self-explanatory | 1 |
| **A.6.6** - *not to cause damage, or allow to be caused damage by the Tenant's servants, agents or visitors, to any part of the Building or the passages, landings, stairs or entrance halls thereof, or to the person or property of the occupier of any other part of the Building, by carrying in, or removal of, furniture or other goods to or from the Property. The Tenant will be responsible for the reasonable costs of making good any damage caused* | self-explanatory | 1 |
| **A.6.7** - *not to obstruct the common areas which may constitute a safety risk or nuisance to other occupiers of the Building and to remove, upon being so required by the Landlord or Agent, any object of or obstruction by the Tenant* | self-explanatory | 1 |
| **A.6.8** - *not to leave any refuse outdoors except on the normal day(s) designated for refuse collection in the locality and then in a properly closed receptacle* | or cite these provisions in the supplementary terms. | 1 |
| **A.6.9** - *no clothes or similar articles are to be hung outside(except in designated areas) or at the windows of the Property* | self-explanatory | 1 |
| **A.6.10** - *where the Tenant occupies a flat on the ground floor of the Building, the Tenant agrees to accept responsibility for the maintenance of the gardens in accordance with clause .....* | refer to garden maintenance clause in the tenancy agreement or insert similar provisions. | 1 |
| **A.6.11** - *the Property includes [one] allocated parking space and the Tenant is permitted to use only the allocated space(s) at the Property* | Allocated parking space should be named in the Property section e.g. ***Property:*** *The flat known as [ ] and [Parking bay 1]* | 1 |

 

## *7. BREAK CLAUSES*

| | *Comment* | *Unfair terms category* |
|---|---|---|
| **A.7.1** - *it is agreed that [after an initial period of four months,] two months' notice in writing may be served by either party to terminate this Agreement*<br><br>N.B. [ ] - term in square brackets may be altered but it must not be less than four months. | self-explanatory. For ASTs, the landlord must give a minimum of 2 months' notice.<br><br>N.B. Since the revisions introduced by the Housing Act 1996, it is no longer necessary to specify a minimum period of six months. Since the introduction of Deregulation Act 2015 a s21 notice cannot be given to the tenant within the first four months of the original tenancy (s36) | 1 |
| **A.7.2** - *it is agreed that [after an initial period of six months] the Tenant may terminate this tenancy by giving the Landlord not less than two months' written notice PROVIDED that the Tenant's main place of employment is no longer within a 30 mile radius of the Property and that such notice is supported by written confirmation from the Tenant's main employer* | a useful safety clause for tenants who change or lose their jobs. Could be problematic where tenant's job is not location-specific (e.g. a field sales representative). | 1 |

## *8. TERMINATION AND RENEWAL*

| | | |
|---|---|---|
| **A.8.1** - *if the Tenant does not wish to remain in the Property after the end of the fixed term then at least one month's prior notice to quit should be given in writing to the Landlord or Agent* | A requirement on the tenant to give notice may be unenforceable. The CMA's view is that the tenant is not required to give the landlord notice to end a fixed term tenancy. | 2 |
| **A.8.2** - *it is agreed that this Agreement replaces any existing tenancy agreement between the Landlord and Tenant* | To be used where Landlord/Agent has amended the tenancy agreement or wants to invoke a surrender or regrant for any other purpose. | 1 |

## *9. RENT REVIEW*

| | *Comment* | *Unfair terms category* |
|---|---|---|
| **A.9.1** - *that the Rent shall be reviewed on [January 1st 2014] [and annually thereafter] and that the Rent shall increase by a proportion equal to the most recently published UK CPI (Consumer Price Index) annual percentage change which applies at that time* | landlord can increase the rent without risk of reference to Rent Officer if clause is included in contract. | 1 |
| **A.9.2** - *that the Rent shall be reviewed on [January 1st 2011] and that the Rent shall be increased to [£.....] per month* | only use for a specific property at a specific rent. (i.e. do not use as a standard clause). | 1 |

 

 

# Appendix B

*Example*

## Information for New Tenants and Standard Terms and Conditions of Letting

 

# *Example*

# STANDARD TERMS AND

# INFORMATION FOR TENANTS

**Name of Landlord / Agent:**

**Name of Applicant (s):**

**Property:**

These terms and conditions apply to your application to rent a property through *ABC Lettings* and constitute a binding legal contract. By signing the Agreement you agree to comply with the terms and conditions below. If you are unsure of your obligations under this Agreement, then you are advised to take independent legal advice before signing.

***HOW TO RENT GUIDE***

The applicant is advised to read the Government 'How to rent: checklist for renting in England' which is available from the government website www.gov.uk. The guidance aims to help tenants renting property in England understand their rights and responsibilities when renting property and provides a checklist and more detailed information on each stage of the process. The applicant will be given a copy of the 'How to rent: checklist for renting in England' by the landlord or his agent where the tenancy proceeds in England.

***SIGNING CONTRACTS***

The letting contract or agreement must be signed by all parties and, until this has taken place, no tenancy exists. If any tenant is unable to sign the tenancy agreement on or before the start of the tenancy, then a letter must be obtained from that person giving another tenant authority to sign the documentation on their behalf. For the avoidance of doubt, these tenancy terms are subject to contract and nothing in this document should be seen as granting or promising to grant a tenancy to the Applicant or anyone else.

***REFERENCES***

All applicants will be expected to provide references which are satisfactory to the landlord before any tenancy can be entered into.

***GUARANTORS***

A guarantor will be required for any applicant who is unable to provide satisfactory credit references or has been employed for less than one year. The guarantor is usually a close associate or member of the applicant's family who is of sufficient means to provide suitable financial guarantees. This person will be required to sign a legally binding document, which could make him/her liable for the applicant's obligations under the tenancy agreement. This could make the guarantor liable for the rent for the full term of occupancy as well as the cost of any damage if the tenant breaches the terms of the tenancy.

***MOVING IN***

It is the applicant's responsibility to arrange services (normally telephone, gas, electricity, television licence, satellite TV, internet and water). You are advised to apply for connection to the respective suppliers at least THREE working days before moving in. Applications for electricity and gas supply need to be made directly to the supplier. You are required to inform the landlord or agent of the respective suppliers as soon as possible. You should also contact the telephone service provider for connection of your telephone service. *ABC Lettings* cannot accept responsibility for any costs incurred with connection of supplies.

You should check carefully the condition of the property and its contents when you move in with respect to the inventory. The inventory is an important record which is used to assess any damage, dilapidation or losses during the tenancy – which may lead to deductions from the deposit being made at the end of the tenancy. If you find anything that is not in good order, then we ask you to report it to us within the first week of moving-in so that the problem can be put right or marked on the inventory. The property is let as seen at the time of viewing; and requests for extra furniture, appliances or redecoration will not normally be considered after the tenancy has been entered into. The property should be in clean condition, free from dust and damage, windows clean etc.

 

***RIGHT TO RENT CHECKS***

The Agent or Landlord may be required by law to carry out immigration checks on any occupiers at the Property. In these circumstances all occupiers who are authorised to live at the Property, whether or not they are named on the tenancy agreement, will be required to provide the Landlord with documentation to support their right to rent property in the UK prior to the tenancy being granted. Where an occupier has a time-limited right to rent, the Landlord or Agent is required by law to carry out follow-up checks on the occupier. Where the occupier cannot produce evidence that they have a right to rent property in the UK, the Landlord or Agent must make a report to the Home Office. Where the Landlord or Agent has received notice from the Home Office stating that one or more of the occupier(s) do not have a right to rent the Property the Landlord or Agent may end the tenancy in accordance with the provisions of the Immigration Act 2014 (as amended).

***METHOD OF PAYMENT***

The balance (one month's rent and deposit) is to be paid either by bank transfer or debit card payment [funds to be cleared before the start date of the tenancy], or by Bankers Draft or Building Society cheque. The holding deposit can be credited towards this first payment. WE WILL NOT ACCEPT PERSONAL CHEQUES OR CASH except by prior arrangement.

When the landlord has instructed *ABC Lettings* as agent to collect the rent each month, we will appoint a lead tenant and a standing order facility will be set up for the total amount of rental on that property. It is important that you furnish us with your bank details on or before the occupation date.

***TENANCY DEPOSIT***

A tenancy deposit will be held either by [*ABC Lettings]* (if the property is to be managed by ourselves) or the Landlord as a security against any breach of the tenancy terms by the tenant (such as damage to the property or its contents, loss of rent or other unexpected costs). This deposit is protected by: …… (Tenancy deposit scheme).

Details of the scheme and the dispute resolution provisions will be issued within 30 days of receipt of the deposit. The tenancy deposit is returnable at the expiration of the tenancy, subject to a final inspection and full inventory check. If any necessary cleaning, repairs or replacements are required following the tenancy, then the deposit will be refunded, less any remedial costs, within 10 days of reaching an agreement about the deductions to be made.

***FROST DAMAGE***

Frost damage is a risk to all houses left empty during the winter period due to possible pipe bursts and flooding. You are required to take reasonable precautions to prevent frost damage if you are away from the property for anything other than a very short period. Such precautions might include leaving the heating on (and turned down to a low setting), and opening the loft access hatch to allow warm air to circulate into the attic space. If you are away for a more extended period, then you should contact *ABC Lettings* or the landlord regarding more permanent arrangements such as turning off the mains water supply or draining down the heating system. Failure to carry out these precautions could make you liable for any damage caused as you will be in breach of your obligation as a tenant to take good care of the property.

***INSURANCE***

As a tenant, you will be responsible for the safe-keeping of the property and its contents. You may wish to consider obtaining insurance for your own personal effects and for the contents belonging to the Landlord which you have agreed to look after.

***REPAIRS***

Tenants are requested to bring any disrepair, damage or defect in the premises to the attention of the agent as soon as possible. In the event of emergency repairs, please call our maintenance contractor on .....

The landlord has a legal responsibility to maintain the fabric and services of the building (water supply, drains, heating and hot water etc.). Tenants should use the drains responsibly and not dispose of any inappropriate items down the toilet or sink which could cause the drains to block such as cooking fat, oil or grease, waste food, nappies, sanitary products, baby/hand wipes and cotton wool etc. The Tenant will be responsible for the reasonable cost of unblocking any drains which become blocked due to the tenant's misuse.

***MAINTENANCE OF APPLIANCES***

Any damage, breakdowns or other maintenance problems should be reported as soon as possible to *ABC Lettings*. As tenant you are responsible for all appliances left in the property and should take good care of them. This will

involve using any appliance in accordance with the manufacturer's instructions or user manual and carrying out any minor maintenance that would be expected (e.g. cleaning or changing filters etc.)

The landlord will undertake to cover genuine breakdowns (ie not caused by misuse) and pay the related repair costs on appliances supplied by the Landlord during the initial THREE months of the tenancy.

***LEGIONNAIRE'S DISEASE***

The potential risk of exposure to Legionella from most residential hot or cold water systems in the UK is very low, but the law requires that we alert tenants to these risks in any case. For most healthy people, the risk of developing Legionnaire's disease in a typical well-maintained domestic setting is negligible. There is a higher risk of infection with older people and people with lowered immune systems, which can lead to severe pneumonia or other complications.

In the domestic environment, risks of Legionella may increase where the property is unoccupied for a short period, or where water is being stored between 20°C and 50°C. In particular, tenants are advised to:

- inform the Landlord or Agent if they believe the hot water temperature is below 50°C or the hot water tank/boiler is defective in any way
- advise the Landlord or Agent if they believe that the cold water temperature is above 20°C
- flush through little used outlets for 2 minutes once every week or two, or on return from a holiday
- clean, disinfect and descale shower heads at least once every six months
- notify the Landlord or Agent if they notice any debris or discolouration in the hot or cold water

***SMOKE DETECTORS***

You may find that smoke detectors and similar safety devices have been fitted in your property. Where this is the case, please ensure that you check all such devices on moving into the property and familiarise yourself with their operation (most smoke detectors have a test button to check batteries and the unit are operating correctly) and report any problems to your agent. Government Guidance recommends that the tenant should test alarms regularly to make sure they are in working order and arrange replacement of any batteries that may be required.

[*Note for Agent/Landlord: You should include a corresponding clause in your tenancy agreement stating that the tenant will be responsible for testing alarms regularly – Letting Centre standard tenancy agreement includes such a clause (Clause 5.14)*]

***ALARMS***

Where the property is alarmed using a security code, the tenant must not change the alarm code without obtaining prior written consent from the landlord or *ABC Lettings*. *ABC Lettings* need to hold alarm and similar security information for emergency, maintenance and inspection purposes; if any alteration is made to the code, you are requested to inform *ABC Lettings* as soon as possible.

[*Note for Agent/Landlord: You should include a corresponding clause in your tenancy agreement stating that the tenant must not change the alarm code without obtaining prior written consent from the landlord – Letting Centre standard tenancy agreement includes such a clause (Clause 6.5)*]

***TELEVISION AERIALS***

The tenant is responsible for maintaining in good repair the television aerials, satellite dishes or similar installations for use with any television at the property. You are also reminded that a television licence is required in order to use a television at the property and the tenant would be responsible for this cost.

***DAMP AND CONDENSATION***

Damp can be a problem in houses where there are many occupants and the property is not adequately ventilated. You should ensure that any extractor fans are left connected and are properly used. It is also important to open windows as necessary to encourage an adequate flow of fresh air through the property after bathing or showering in order to allow damp air a chance to escape. The hanging of washing and wet clothes will also create large amounts of damp air and again, it will be important to provide adequate ventilation in such circumstances.

The presence of mould or dark spots or stains, especially in bathrooms and other wet areas, is a common sign of inadequate ventilation, and it is important to prevent further spread at an early stage before severe and irreversible staining takes place. Mould and similar stains should be removed by wiping the affected areas with a fungicide or mild bleach in accordance with the manufacturers instructions, but do test on a small area first. If the problem persists, then you should inform us.

***PESTS***

Fortunately, with modern building and repair standards, we expect few tenants to be troubled by household pests during their tenancy. An infestation of any kind, be it ants, fungal attack, bedbugs, fleas or wasps makes a property unpleasant to live in and should be eradicated as soon as possible. Regular cleaning and vacuuming will help to prevent any such infestation taking hold, and you are expected to take care of the property in this way and keep a watchful eye for unwelcome visitors as part of your tenancy obligations. During the tenancy, the tenant is responsible for keeping the property free of any pests, and also for any damage that might occur as a result. You should inform the agent if you discover any pest infestation at the property.

***GAS APPLIANCES***

Gas Safety regulations apply to both landlords and tenants in rented property. In order to comply with the regulations, it is necessary:

- that brown or sooty build-up on any gas appliance, or gas escape should be reported immediately to your letting agent **AND** your gas supplier. The number of the gas emergency service is **0800 111 999.**
- that ventilators installed in the premises for the correct operation of the gas appliance should not be blocked.
- that safety checks be carried out every 12 months on any gas appliance in the property by a Gas Safe Register approved engineer. The tenant is required to allow entry with reasonable notice for this purpose. A copy of the gas safety record will be made available to tenants. A reasonable charge may be made for missed appointments to reflect any damages or loss suffered for breach of agreement.

[*Note for Agent/Landlord: You should include a corresponding clause in your tenancy agreement with regard to ensuring any access arrangements are honoured so that inspections and works can be carried out – Letting Centre standard tenancy agreement includes such a clause (Clause 6.6)*]

***ELECTRICAL APPLIANCES***

For safety reasons, tenants are requested to visually inspect all electrical appliances on a regular basis. In use, cables and flexes can become frayed and casings broken. You should contact *ABC Lettings* as soon as possible should any defect be discovered or repair become necessary. Where electrical appliances are used outdoors (e.g. electrical lawnmowers etc.) they should only be used when connected to an RCD (Residual Current Device) protected mains supply. RCD units are available from most hardware stores and should be checked before use.

The tenant is responsible for keeping all electric lights in good working order and in particular to replace all fuses, bulbs, or fluorescent tubes, as and when necessary. Any replaceable or disposable filters, vacuum bags, or other consumable items in appliances and fittings should be replaced as reasonably required and at the end of the tenancy.

***INSPECTIONS AND MAINTENANCE***

If *ABC Lettings* is managing the property, then quarterly inspections will be carried out. It may also be necessary for Contractors to access the property to maintain and inspect electrical, gas and similar appliances, pipework and flues. We will liaise with you to arrange these inspections. It is important that any access arrangements made in connection with inspections or appointments are honoured so that inspections can be carried out and contractors can carry out the work on the agreed day.

At the end of the Tenancy, the Tenant will be requested to attend a check-out process which will be arranged by the Landlord or his Agent. The check-out process will comprise a full inspection of the Property and Contents and any items missing, damaged or otherwise in a different state to their condition at the start of the tenancy will be recorded. If the Tenant or a chosen representative cannot attend the check-out, then the Tenant may prejudice his opportunity to resolve any dilapidation dispute in a timely and efficient manner or take any immediate remedial action.

***TERMINATION OF YOUR TENANCY***

The tenancy agreement is a legal and binding contract for the set term that you have previously agreed and signed for. If due to unforeseen circumstances, you need to leave the property before the expiration of the tenancy you remain liable for the full rent until the end of the tenancy. However, if you do wish to end the tenancy early we may be able to let the property to a new tenant with the express agreement of your Landlord but you would be responsible for the reasonable costs incurred by the Landlord or his Agent in respect of the early termination of the tenancy.

 

Should it not be possible to relet the property immediately, you would be responsible for all rental, gas, electric, water and sewerage, council tax, television licence and telephone charges (if any) until the new tenants have taken up occupation of the property or until the original termination date of the agreement, whichever is sooner.

***COMPLAINTS***

Where the Tenant is unsatisfied with any service provided by the Agent, the Tenant should contact the Agent in the first instance to try to resolve matters using the Agent's in-house complaints procedure. The Agent is a member of *(insert details of the Agent's Redress Scheme here)* and in the event that matters cannot be resolved using the Agent's in-house complaints procedure the Tenant can refer the complaint to this scheme for a further decision. Details of the Agent's in-house complaints procedure and the redress scheme are available upon request from the Agent.

***DATA PROTECTION***

In processing your tenancy application, we shall be required to process and store personal information on your behalf, and liaise with credit referencing agencies and your landlord. We shall make every effort to keep such information safe and secure. Once you have moved into the property, it may occasionally be necessary to share contact information with trusted contractors (for example to arrange access for maintenance work), utility companies and other related parties. We will not divulge or pass on your details to any third party for marketing purposes without prior approval unless this is necessary to comply with a statutory obligation.

Where there are rent arrears or other charges remaining at the end of the tenancy, we reserve the right to pass on your details to a tracing agent or debt collection company to help recover the money owed. Leaving unpaid rent and other bills at the end of your tenancy may affect your credit rating, and your ability to obtain a new tenancy, or other credit facilities.

☐ I, the Tenant, agree that my personal details may be shared with trusted third parties such as utility companies, maintenance contractors, credit and referencing agents and debt collection companies etc as necessary.

Signed…….. Date…….

(Applicant)

 

# Appendix C

## Example Addendum to Tenancy Agreement

 

# *Example*
# Addendum to Assured Shorthold Tenancy

THIS AGREEMENT is hereby attached to and made part of the Assured Shorthold Tenancy Agreement ("Tenancy Agreement") dated 20 between

……, the Landlord, and

……, the Tenant

For the Property located at

……..

……..

It is hereby agreed that:

*[INSERT CLAUSES HERE]*

The above terms are included as terms of the tenancy agreement attached hereto and apply from the date of this agreement. Where there is any inconsistency or conflict with an existing term of the tenancy agreement the terms above will take precedence.

Date: 20

**SIGNED by the LANDLORD(S) :-**

.....

**In the presence of :-**

Name .....
Address .....
.....
Occupation .....
Witness Signature .....

**SIGNED by the TENANT(S) :-**

.....
.....
.....
.....

**In the presence of :-**

Name .....
Address .....…
.....……
Occupation .....
Witness Signature .....

---

## *Important Notes for Landlords and Agents:*

**CLAUSE AMENDMENTS:** Where you are amending or replacing existing clauses you should identify the specific clause.

**JOINT TENANCIES**: For joint tenancies, where there is a change of sharer, the tenancy should be surrendered and a new tenancy agreement entered into. It is not advisable to use an addendum agreement to replace one of the joint tenants as the tenancy is vested in all the joint tenants together and if one tenant gives notice to leave it will generally operate as a surrender and re-grant providing the landlord is agreeable. There are also other factors to consider such as the outgoing tenant being released from liabilities under the tenancy agreement and what happens with the outgoing tenant's share of the deposit etc so safer to draw up a new tenancy agreement. See page 42 for more information on joint tenancies.

**TENANCY AGREEMENT:** It is important to retain copies of the original manuscript tenancy agreement and any subsequent variations to the agreement.

 

# Appendix D

## Statutory Extracts:

## Housing Act 1988, Schedule 2

**(as amended by Housing Act 1996)**

## Sections 11-16, Landlord & Tenant Act 1985

**(Landlord repairing obligations)**

 

# Housing Act 1988, Schedule 2

**(as amended by Housing Act 1996)**

*The 'Prior Notice' Grounds - Part I*

***Ground 1:*** *a prior notice ground*

No later than the beginning of the tenancy the landlord gave notice in writing to the tenant that possession might be recovered on this ground or the court is of the opinion that it is just and equitable to dispense with the requirement of notice and (in either case) -

(a) at some time before the beginning of the tenancy, the landlord who is seeking possession or, in the case of joint landlords seeking possession, at least one of them occupied the dwelling-house as his only or principle home; or

(b) the landlord who is seeking possession or, in the case of joint landlords seeking possession, at least one of them requires the dwelling-house as his, his spouse's or his civil partner's only or principal home and neither the landlord (or, in the case of joint landlords, any one of them) nor any other person who, as landlord, derived title under the landlord who gave the notice mentioned above acquired the reversion on the tenancy for money for money's worth.

***Ground 2:*** *a prior notice ground*

The dwelling-house is subject to a mortgage granted before the beginning of the tenancy and -

(a) the mortgagee is entitled to exercise a power of sale conferred on him by the mortgage or by section 101 of the Law of Property Act 1925; and

(b) the mortgagee requires possession of the dwelling-house for the purpose of disposing of it with vacant possession in exercise of that power; and

(c) either notice was given as mentioned in Ground 1 above or the court is satisfied that it is just and equitable to dispense with the requirement of notice;

and for the purposes of this ground 'mortgage' includes a charge and 'mortgagee' shall be construed accordingly.

***Ground 3***: *a prior notice ground*

The tenancy is a fixed-term tenancy for a term not exceeding eight months and -

(a) not later that the beginning of the tenancy the landlord gave notice in writing to the tenant that possession might be recovered on this ground; and

(b) at some time within the period of twelve months ending with the beginning of the tenancy, the dwelling-house was occupied under a right to occupy it for a holiday.

***Ground 4:*** *a prior notice ground*

The tenancy is a fixed-term tenancy for a term not exceeding twelve months and -

(a) not later than the beginning of the tenancy the landlord gave notice in writing to the tenant that possession might be recovered on this ground; and

(b) at some time within the period of twelve months ending with the beginning of the tenancy, the dwelling-house was let on a tenancy falling within paragraph 8 of Schedule 1 to this Act.

***Ground 5:*** *a prior notice ground*

The dwelling-house is held for the purpose of being available for occupation by a minister of religion as a residence from which to perform the duties of his office and -

(a) not later than the beginning of the tenancy the landlord gave notice in writing to the tenant that possession might be recovered on this ground; and

(b) the court is satisfied that the dwelling-house is required for occupation by a minister of religion as such a residence.

 

# Landlord and Tenant Act 1985 (section 11)

*Section 11 applies to all residential leases of seven years or less granted after 24 October 1961*

**SECTION 11.** REPAIRING OBLIGATIONS IN SHORT LEASES

(1) In a lease to which this section applies there is implied a covenant by the lessor –

(a) to keep in repair the structure and exterior of the dwelling-house (including drains, gutters and external pipes),

(b) to keep in repair and proper working order the installations in the dwellinghouse for the supply of water, gas and electricity and for sanitation (including basins, sinks, baths and sanitary conveniences, but not other fixtures, fittings and appliances for making use of the supply of water, gas or electricity), and

(c) to keep in repair and proper working order the installations in the dwellinghouse for space heating and heating water.

(1A) If a lease to which this section applies is a lease of a dwelling-house which forms part only of a building, then, subject to subsection (1B), the covenant implied by subsection (1) shall have effect as if-

(a) the reference in paragraph (a) of that subsection to the dwelling-house included a reference to any part of the building in which the lessor has an estate or interest; and

(b) any reference in paragraphs (b) and

(c) of that subsection to an installation in the dwelling-house included a reference to an installation which, directly or indirectly, serves the dwelling-house and which either-

(i) forms part of any part of a building in which the lessor has an estate or interest; or

(ii) is owned by the lessor or under his control.

(1B) Nothing in subsection (1A) shall be construed as requiring the lessor to carry out any works or repairs unless the disrepair (or failure to maintain in working order) is such as to affect the lessee's enjoyment of the dwelling-house or of any common parts, as defined in section 60(1) of the Landlord and Tenant Act 1987, which the lessee, as such, is entitled to use.

(2) The covenant implied by subsection (1) ("the lessor's repairing covenant") shall not be construed as requiring the lessor-

(a) to carry out works or repairs for which the lessee is liable by virtue of his duty to use the premises in a tenant-like manner, or would be so liable but for an express covenant on his part,

(b) to rebuild or reinstate the premises in the case of destruction or damage by fire, or by tempest, flood or other inevitable accident, or

(c) to keep in repair or maintain anything which the lessee is entitled to remove from the dwelling-house.

(3) In determining the standard of repair required by the lessor's repairing covenant, regard shall be had to the age, character and prospective life of the dwelling-house and the locality in which it is situated.

(3A) In any case where-

(a) the lessor's repairing covenant has effect as mentioned in subsection (1A), and

(b) in order to comply with the covenant the lessor needs to carry out works or repairs otherwise than in, or to an installation in, the dwelling-house, and

(c) the lessor does not have a sufficient right in the part of the building or the installation concerned to enable him to carry out the required works or repairs,

then, in any proceedings relating to a failure to comply with the lessor's repairing covenant, so far as it requires the lessor to carry out the works or repairs in question, it shall be a defence for the lessor to prove that he used all reasonable endeavours to obtain, but was unable to obtain, such rights as would be adequate to enable him to carry out the works or repairs.

(4) A covenant by the lessee for the repair of the premises is of no effect so far as it relates to the matters mentioned in subsection (1)(a) to (c), except so far as it imposes on the lessee any of the requirements mentioned in subsection (2)(a) or (c).

(5) The reference in subsection (4) to a covenant by the lessee for the repair of the premises includes a covenant -

(a) to put in repair or deliver up in repair,

(b) to paint, point or render,

(c) to pay money in lieu of repairs by the lessee, or

(d) to pay money on account of repairs by the lessor.

(6) In a lease in which the lessor's repairing covenant is implied there is also implied a covenant by the lessee that the lessor, or any person authorised by him in writing, may at reasonable times of the day and on giving 24 hours' notice in writing to the occupier, enter the premises comprised in the lease for the purpose of viewing their condition and state of repair.

 

 

# Appendix E

# Tenancy Deposits and the Housing Act 2004

## Position prior to April 2007

Prior to April 2007 landlords and their agents were free to decide whether to require deposits from their tenants and, whilst the vast majority did require some form of deposit, some did not. The amount of the deposit was normally between four and six weeks rent. Where an agent was managing a property this sum would have been held by him either as agent for the landlord or as stakeholder between the parties.

## Tenancy Deposit Provisions of the Housing Act 2004

The Tenancy Deposit Schemes were introduced in sections 212 – 215 and Schedule 10 of the Housing Act 2004, and came into force on 6 April 2007. These requirements were amended by the Localism Act 2011, the Deregulation Act 2015 and the Tenant Fees Act 2019.

In summary, the provisions require that any form of tenancy deposit, or similar money that is taken at the beginning of a tenancy on or after 6th April 2007 will be subject to the Government's Tenancy Deposit Protection (TDP) scheme, whether it is called a 'deposit' or not. This could include deposits taken before 6th April 2007 where the tenancy becomes a periodic tenancy after 6th April 2007. See 'Renewing or Extending the Tenancy' for more information. The amount of deposit that can be taken is now also capped at five weeks' rent under The Tenant Fees Act 2019.

Whether the tenancy is renewed as a new fixed term or allowed to continue as a periodic tenancy, upon expiry of the initial fixed term, it is important that the landlord or agent contacts the appropriate deposit protection scheme to ensure that any tenancy deposit held continues to be protected.

For tenancies where such deposits are accepted by either landlord or agent, the following provisions will apply:

- The deposit will be required to be protected within one of three statutory schemes within 30 days of receipt
- Landlords and agents will be required to operate strictly according to the scheme rules
- Tenants shall be furnished with prescribed information within 30 days of accepting the deposit

Infringement of any of these three requirements may lead to **onerous penalties** on the landlord. These sanctions operate under s.215 of the Act as amended by the Localism Act 2011:

- That the landlord is prevented from regaining possession of his property under section 21 of the Housing Act 1988 (the most common and straightforward mechanism for legally evicting a tenant) where they have failed to protect the deposit and provide the correct prescribed information unless certain requirements are met. These are set out on page 96.
- That the landlord can be taken to court by the tenant, even after the tenancy has ended, and the court is required to award compensation to the tenant comprising of between one and three times the amount of the deposit.

The deposit provisions in the Act only cover assured shorthold tenancy agreements (section 213) starting on or after 6th April 2007, which includes pre-April 2007 tenancies which become statutory periodic on or after 6th April 2007. It does not cover assured tenancies or other tenancies such as company lettings excluded from the Housing Act 1988 (see Schedule 1).

 

## Statutory Information Requirements for TDP:

One of the key aspects of the TDP legislation is that the landlord or 'person accepting the deposit' shall furnish the tenant with certain prescribed information within **30 days of receiving the deposit**. This information **must** be provided. Failure to provide the correct information will mean severe penalties (as described above) could apply to the tenancy. The general requirement to supply information is contained within section 213 of the Housing Act 2004 as amended by the Localism Act 2011, Deregulation Act 2015 and detailed further within the Housing (Tenancy Deposits)(Prescribed Information) Order 2007 (SI 2007, No.797).

The prescribed information requirements are contained in Statutory Instrument 2007, NI 797. They require that the landlord provides certain information to the tenant(s). This information shall:

1. identify the deposit which has been paid, the address of the property to which the tenancy relates, and
2. provide the name address, telephone number and any e-mail address or fax number of the landlord(s) or initial agent, the tenant(s) (including details for contact the tenant at the end of the tenancy) and any other 'relevant person' to the deposit (i.e. a person who contributes towards, or pays the deposit on behalf of the tenant)
3. define the circumstances when all or part of the deposit shall be retained by the landlord or initial agent by reference to the terms of the tenancy
4. provide confirmation (in the form of a certificate signed by the landlord or initial agent) that the information provided is correct, and that the tenant has been given the opportunity to sign any document containing this information
5. include details of the tenancy deposit scheme being used for protecting the tenancy deposit. These details should include any information contained in a leaflet supplied by the scheme which explains the operation of the tenancy deposit protection provisions under the Housing Act 2004, and details of various procedures that will apply to repaying the money, contacting the parties, and resolving any dispute that may result in relation to repayment of the deposit. (SI 797, Article 2, paras(1)a to (1)f)

*(this is only a summary, see the Statutory Instrument for the full detailed list of requirements).*

There are two main ways to ensure compliance with the tenancy deposit information requirements:

- by supplying the tenant with a Deposit Information Certificate (DIC)
- by incorporating the prescribed information within the tenancy agreement

## Tenancy Deposit Information Certificate

Landlords and agents can comply with the TDP information requirements by ensuring that the tenant is provided with a signed Deposit Information Certificate accompanied by information supplied by the relevant deposit scheme provider. The information must be given to the tenant(s) within **thirty** days of accepting the deposit.

The certificate should contain the information listed under 'Statutory Information Requirements' – see above.

Information items 1 to 4 can be supplied by the landlord or agent using a standard form

Information item no. 5 (scheme details) will need to be obtained from the deposit scheme provider. Different scheme providers have adopted different methods to do this as explained below for each scheme. For example, the Deposit Protection Service send a standard letter to the tenant(s) and any relevant persons identifying the deposit and names of the tenants, and also enclosing a copy of the scheme rules. The landlord is then expected to provide the rest of the information in the form of a signed notice.

The legislation requires that the certificate is signed by the landlord or initial agent and, if possible, the tenant and issued within 30 days of acceptance of the deposit, with a copy given to each tenant, and a copy of the signed certificate retained by the landlord or agent.

Following the recent county court case of *Bali v Manaquel Company Limited*, Lambeth County Court when acting for a landlord who is a limited company care should be taken when signing the deposit information certificate. The tenant argued that the prescribed information had not been validly executed by the landlord company as the company name was written as Manaquel Co. Ltd and signed pp with illegible initials. The tenant argued that for a document to be validly executed by a company it must be signed on behalf of the company by two authorised signatories or by a director of the company in the presence of a witness in accordance with the requirements set out in the Companies Act 2006. The question was whether the prescribed information was a document that required 'execution' and the appeal judge decided that it was as it was a certificate of the accuracy of the information for a 'formal legal purpose.' This is only a county court decision and may yet be overturned but worth noting the details.

If no tenancy deposit is accepted for the tenancy, then no Deposit Information Certificate will be required.

## 'Tenancy Deposit'

A tenancy deposit is defined by Section 212(8) of the Housing Act 2004 as being:

'…any money intended to be held (by the landlord or otherwise) as security for –

a) the performance of any obligations of the tenant; or

b) the discharge of any liability of his;

arising under or in connection with the tenancy'.

This means that any form of money that is taken at the beginning of a tenancy on the understanding that it will be returned to the tenant at the end of the tenancy needs to be safeguarded, whether it is called a 'deposit' or not. The Act only applies where money, either cash or its associated forms, such as a cheque or a banker's draft, is passed to the landlord or his agent from either the tenant or a third party. Third party guarantees or 'promises to pay' are not deposits for the purposes of the Act and therefore may continue to be used. Guarantees offered by local rent deposit schemes might continue to be offered. However, where a rent deposit scheme provides money by way of a loan of the deposit and pays such money to the landlord, this money must be protected by a tenancy deposit scheme under the Act as actual money has passed to the landlord.

## Tenancy Deposit Schemes

At the time of writing there are three companies that run approved tenancy deposit protection schemes; The Deposit Protection Service, The Dispute Service Limited and My Deposits. Each scheme runs an Alternative Dispute Resolution (ADR) service. ADR schemes are intended to provide a no cost method of resolving deposit disputes between landlords or agents and their tenants. The cost of having a dispute resolved through the County Courts has been seen as too expensive for a tenant.

For more information see the following websites:-

| | |
|---|---|
| The Deposit Protection Service | www.depositprotection.com |
| The Dispute Service | www.tenancydepositscheme.com |
| My Deposits | www.mydeposits.co.uk |

At the time of writing, it is understood that all three companies will be providing custodial and insurance-based schemes from 1st April 2016.

## Custodial Deposit Scheme

In this scheme the tenant pays the deposit to the landlord or agent who then pays the deposit into the scheme, which will be the key difference with the insurance scheme (See below). Within 30 days of receiving a deposit, the landlord or agent must give the tenant information about the scheme being used. The interest accrued by deposits in the scheme will be used to pay for the running of the scheme and any surplus will used to offer interest to the tenant, or the landlord depending on the terms of the tenancy agreement. This scheme will have no direct cost to either the landlord or tenant.

At the end of the tenancy, if the landlord and tenant agree how the deposit should be divided, they will tell the scheme, which will return the deposit, divided in the way agreed by both parties. However, if there is a dispute, the scheme will hold the amount until the dispute resolution service or courts decide what is fair. The deposit must be returned within 10 days of the end of the tenancy provided the landlord and tenant have agreed the amount.

## Insurance based Deposit Schemes

Here the tenant pays the deposit to the landlord who retains the deposit and any interest earned on the deposit subject to the terms of the tenancy agreement and pays a premium to the insurer. At present it would appear that the cost of using this scheme will be borne by the landlord or his agent in terms of both an annual fee and a per deposit fee. As with the custodial scheme within 30 days of receiving a deposit, the landlord must give the tenant information about the scheme being used. There are to be two insurance based schemes.

At the end of the tenancy, if the landlord and tenant agree how the deposit should be divided, the landlord returns all or some of the deposit. If there is a dispute, the landlord must hand over the disputed amount to the scheme for safekeeping until the dispute is resolved. If for any reason the landlord fails to comply, the insurance arrangements will ensure the return of the deposit to the tenant if they are entitled to it.

It may be necessary to include specified clauses in tenancy agreements in order to comply with the requirements of some of these insurance based schemes.

 

## Alternatives to deposits

At present not every landlord requires a deposit, this is a brief examination of some possible alternatives. They should not be seen as a recommendation of any or all of them but the introduction of the compulsory statutory deposit scheme may be a good time to look at what function deposits fulfil and whether there are any acceptable alternatives.

**Guarantors**

A contract of guarantee, in the context of lettings, is a contract whereby the guarantor promises the landlord to be responsible for the due performance by the tenant of his obligations under the tenancy agreement if the tenant fails to perform these obligations. This will normally cover the payment of rent and other tenant's obligations.

It will be necessary to find an appropriate guarantor. Similar credit checks and references should be taken on the guarantor as would normally be taken for a tenant in order to establish the guarantor's ability to meet any defaulted rent payments or other costs. Many landlords and agents insist that a guarantor must own their own home so that, if all else fails, then a legal charge can be registered against that property. It would be important, if a guarantee is to be used instead of taking a deposit that the guarantee agreement is both comprehensive and binding. As the courts have held that guarantors can resign from the guarantee, having given a reasonable period of notice that tenancies are granted for the same fixed term as the guarantee. So after the initial fixed term of, say, six months the tenancy should not be allowed to become periodic but, if continued, should be by way of a new fixed term with a new guarantor agreement.

**Insurance**

There are a number of providers of insurance to the private rented sector which cover either non payment of rent or breaches of the tenancy agreement which would cover dilapidations issues. Indeed the new deposit proposals might encourage new policies to be developed by new players to this market. An example of an insurance provision covering the later situation might be as follows-

"An incident or the first of a series of incidents where the Tenant fails to perform his obligations set out in the Tenancy Agreement relating to the rightful occupation of the Insured Property."

The costs involved in taking out insurance policies would then become part of the set up costs of the tenancy and could be passed on to the tenant.

**Rigorous tenant vetting**

Most insurance providers will require tenant vetting either carried out by himself or herself in-house or by an approved provider. Thorough tenant referencing will not prevent a change of circumstances to the tenant; for example, they may lose their jobs or suffer marital breakdown. Tenant referencing would probably only protect the landlord's interests when used in combination with another of these alternatives.

## Alternative Dispute Resolution Services

Each scheme will contain an Alternative Dispute Resolution (ADR) service. When a dispute occurs, and if landlord and tenant both agree to use the service, they will also have agreed to be bound by its decision with no recourse to the courts. Disputes will only go to the courts if the landlord and tenant do not agree to use the ADR service. ADR will be free of charge for landlords and tenants.

In the custodial scheme, where a landlord or tenant does not co-operate to release the deposit, for example, by not agreeing to the release of full or part of the deposit and do not agree to resolve the dispute through ADR or a court action, then ADR will be the default way in which to resolve a dispute. In the insurance-based scheme, where the landlord is in contact with the scheme but is refusing to co-operate with the scheme in terms of choosing ADR or the courts, it will be mandatory for the case to be referred to the scheme for resolution through its ADR service. The same would not seem to apply to a tenant.

## Sanctions

There are sanctions that can be used against agents or landlords who do not comply with the requirements of the Deposit Scheme:

1. They will not be able to regain possession of the property under section 21 where they have failed to protect the deposit within 30 days unless:
   - the deposit has first been returned to the tenant in full, or with such deductions as agreed with the tenant; or
   - any court proceedings brought by the tenant for non-compliance have been concluded, withdrawn or settled.

 

2. Where the correct prescribed information has not been given to the tenant a section 21 notice cannot be served until the correct prescribed information has been provided (but this can be more than 30 days after receiving the deposit).
3. Where the court believes that the landlord or agent has failed to comply with these requirements they will have to pay a fine to the tenant of between one and three times the deposit amount, even where the tenancy has ended.

## Sources for Further Information

· The Letting Centre website: www.letlink.co.uk

· Department of Communities and Local Government website: www.communities.gov.uk and www.gov.uk/tenancy-deposit-protection

 

 