

## Being a landlord

### Types of tenancy

There has been a significant increase in the availability of private rented property over the last few years and therefore an increase in the number of private tenants and landlords. It is important to know and understand your rights and obligations whether acting for yourself or using an agent.

Firstly, understanding the nature of the legal framework which exists between you and the occupier is key to understanding your rights. The nature of that arrangement depends on the type of accommodation provided.

The following types of occupation and accommodation (with the exception of council/social housing) do not generally provide enhanced legal protection, including if:

- you live on the premises and share some of the rooms, such as a bathroom, kitchen or other living space, with your occupier they will not be a tenant. Legally known as an excluded occupier, they will often be referred to as a lodger. You can find out more about lodging agreements [here](#).
- you own a hostel or bed and breakfast hotel, your occupiers are likely to fall into the category of excluded occupier
- you have granted a license to occupy which creates an agreement for them to occupy the property for a defined length of time. This is often used for very short stays and, in this case, the occupiers are not tenants but licensees
- you are providing living accommodation as part of an employee's job and as such they may be a service occupier or tenant. This can be quite a complex area of law and further clarification may be required

If none of the above applies and rent is paid to you, and you do not share the premises with them, it is likely you have entered into an Assured Shorthold Tenancy (AST) - even if there is no agreement in writing. The law presumes in these circumstances that an AST has been created for the minimum period of 6 months.

### Assured Shorthold Tenancy (AST)

An AST is by far the most widely used type of tenancy. These types of tenancies are usual for a minimum fixed period of six months and roll on automatically month-by-month basis once the initial fixed term has expired, unless a new fixed term tenancy is negotiated/agreed. This rolling over period is known as a Statutory Periodic Tenancy (SPT).

### Assured Tenancy

Assured tenancies are often not for a fixed period and can therefore be significantly more complex to deal with. The grounds for possession for these types of tenancy can also be different and the law more complex if you require possession.

These types of tenancies can arise in one of three ways:

- if your tenant started to occupy your property between 15 January 1989 and 28 February 1997, were not given notice the tenancy was an AST, and don't fall into one of the situations listed above, they could be an assured tenant
- if your tenant moved in after 28 February 1997 and was given notice stating that the tenancy is an assured tenancy
- your tenant 'inherited' the tenancy after a regulated tenant died. This generally applies to very old tenancies where the property has been occupied by a tenant for a very long period of time.



If you think any of these circumstances apply you should take legal advice to clarify the situation.

## Landlord responsibilities

As a landlord, you have a number of responsibilities and obligations to your tenant. These are generally set out in your tenancy agreement and include:

### Not to disturb tenants

As a landlord it is sometimes necessary to access your property and to undertake repairs. However, your tenant is entitled to live in the property free from any harassment or unnecessary interference. The law provides for a minimum of 24 hours notice, however it is usual in standard tenancy agreements for there to be a clause allowing the landlord entry into the property on giving 48 hours' notice to check the condition of the property and/or to effect repairs.

If after giving notice your tenant does not want to allow you to enter the property, they can refuse. At this point you should not attempt to enter the premises without consent to do so would likely to be a matter of trespass or harassment. It can even be the case that a tenant may continue to refuse access even for a statutory inspection e.g. gas safety. In extreme cases you may be required to get a court order for access.

Harassment, is where you or anyone on your behalf, acts in a manner likely to cause distress or make it difficult for your tenant to remain in the property. If this occurs your tenant may well decide to refer the matter to the police or the local housing department. If successful, claims for damages can be an unlimited fine in a county court or could result in a criminal conviction against you as the landlord.

This does not affect your right to enter the property without notice if there is an emergency. For example, if there is a burst pipe while the property is empty and emergency access is required to stop the water and prevent further damage.

### Carry out repairs

Landlords are responsible for most repairs to the exterior or structure of a property and ensuring the property is habitable. Therefore, problems with the roof, chimneys, walls, guttering and drains are the responsibility of the landlord. Landlords are also responsible for keeping the equipment for supplying water, gas and electricity in safe working order.

One of the common concerns tenants call us about relates to damp within the property. See below for more details but generally you will only be responsible for this where it can be demonstrated that the damp problem is caused by a defect in the building.

Tenants often have responsibility for some minor repairs and maintenance. This usually relates to:

- internal decorations
- gardens
- small jobs, such as changing plugs and lightbulbs
- anything damaged as the result of negligent or wilful act

We often receive requests for advice for such things as damp, the failure of domestic appliances or unwelcome guests, such as mice. Here are some practical points in relation to such matters:

- always check the terms of the tenancy agreement to see whether or not the matter complained of is referred to.

- damp generally falls into two categories - lifestyle damp and rising/penetrating damp. Lifestyle damp is caused by insufficient air circulating in the property i.e. a lack of ventilation to dry clothes or in the bathroom where steam is not allowed to escape. The mould and the damage caused by such damp will generally be the responsibility of the tenant. It is therefore important to ensure there is sufficient air circulation in the property. Some tenancy agreements have a contractual requirement for the tenant to open windows or not to dry washing indoors. Rising or penetrating damp is likely to be the result of a structural defect and will generally be your responsibility as the landlord. A damp survey will help to ascertain the underlying cause.
- mice and bedbugs are always unwelcome and we are often consulted on whose responsibility it is to pay for pest control. Generally, mice are found where there is food and if your tenants leave food around it is possible mice will follow. However, it will be your responsibility to make sure repairs are done so that as far as possible mice cannot get into the property. With bed bugs, if your tenant can show they were present when they moved in, you will be responsible, but if not then it may be your tenants responsibility. It is also necessary to check the tenancy agreement for the need to notify you if such an event occurs. This may be relevant in the event you seek to recover the costs of dealing with this from the rental deposit.

Generally, if there is an existing pest control problem when your tenant moves in then you as the landlord are likely to be responsible for it.

- domestic appliances are often part of a rented property and therefore included in the inventory checked at the outset of the tenancy. If the appliance stops working during the course of the tenancy, and it is not due to damage which has been caused by the tenant, it should be repaired/replaced by you.

## Keeping the tenant safe

As the landlord, you have a common law duty to make sure your rented home is a safe place for your tenant to live. This means all parts of the property must be free from danger, such as tripping hazards etc. Where the rented property is a flat this duty can also extend to the common parts, such as the entrance hall and other access ways.

There is a Housing Health and Safety Rating System (HHSRS) which applies to rented property and how hazards are assessed. You can find a copy of the guidance [here](#).

In addition to the general duty and responsibility there are specific statutory obligations to:

- provide a gas safety certificate for every gas appliance supplied renewed annually
- undertake any work recommended by a gas engineer
- ensure any furniture meets the necessary safety requirement e.g. is fire retardant
- ensure any electrical equipment is safe
- have a working smoke detector and carbon monoxide detector in the property where there is a solid fuel appliance, i.e. not a gas appliance. Failure to do so could lead to a fine of up to £5,000
- keep the property free from health hazards such as legionella. Further guidance on this can be found [here](#).

## Assured Shorthold Agreement (AST)

Ordinarily an AST should be in writing. To assist there is a model agreement with explanatory notes which can be found [here](#). It is not a legal requirement to use this but is available for those landlords who may wish to use a free template. With the guidance notes, it is 50 pages and can be amended if necessary.

## Creating an AST agreement

For any AST there are certain regulatory formalities which you must comply with These are:

- to protect the deposit in an approved scheme this must be done within 30 days of the tenancy starting (see below)
- to provide to your tenant prescribed information about the deposit within 30 days of receiving the deposit

For those tenancies created after 1 October 2015 you must also:

- provide an Energy Performance Certificate (EPC). An EPC is valid for ten years and you may be able to check the report for your property [here](#).\*
- provide a current gas safety certificate, renewable annually\*
- provide a hard copy or relevant link to a booklet entitled 'How to rent: the checklist for renting in England found [here](#).\*

*\*Except Wales where slightly different rules apply.*



For those tenancies created after 1st February 2016 you must also:

- undertake a 'right to rent check' in relation to your tenants immigration status.

This must be done within 28 days of the start of the tenancy and is required to check your tenant's immigration status. Most landlords will do this at the same time as the other checks and reports. You will find a guide [here](#). Landlords who do not check a tenant's right to rent face penalties of up to £3000 per tenant.

If your tenant does not have the right to rent there is a separate faster process of recovering possession of the property. A landlord may in circumstances where they have been notified by the Home Office that the tenant is disqualified from renting the premises because of their immigration status, serve notice on a tenant which will terminate the tenancy within 28 days of it being served. The notice given must be using s33D(3) of the Immigration Act 2014 and can be found [here](#).

At this point the landlord will not be required to obtain a possession order and can instruct High Court Enforcement Officer to remove the tenant at the expiry of the notice.

**Warning**, failure to provide any of these items or do any of the checks outlined above could have a significant impact on your ability to be able to apply for possession at the end of the tenancy if your tenant does not leave.

## Deposits

It is a requirement for all landlords taking a deposit from a tenant in relation to an AST, to place that deposit with a recognised deposit service.

There are three such services:

- [Deposit Protection Service](#)
- [My Deposits Tenancy Deposit Scheme](#)
- [Tenancy Deposit Scheme](#)

## A landlord's duty to protect a tenant's deposit

For all AST's created after 6 April 2007 the deposit must be protected in one of the approved government schemes. Failure to do so can have significant consequences. In addition, you must also provide your tenant with the prescribed information about the deposit within 30 days of receiving it.

In the event the tenancy continues or is renewed after 26 March 2015, the deposit does not have to be re-protected or re-registered provided it remains with the same scheme and the same tenants remain in occupation.

## Information a landlord must provide

You must provide your tenant with all the information the law requires (known as the prescribed information) within 30 days of receiving their deposit, including:

- your tenant's name and contact details
- the amount of deposit received and the address of the tenancy
- details of the tenancy deposit protection scheme being used

- a copy of the deposit protection certificate signed by the tenant
- information about the purpose of the tenancy deposit protection scheme
- how the tenant gets the deposit back at the end of the tenancy
- what to do if there is a dispute about the deposit

Many landlords use agents to deal with this and the relevant paperwork is often included with the tenancy agreement. Each deposit scheme provides its own copy of the relevant form which you or your agent should give to the tenant.

## Penalties when a deposit is not protected or is protected late

If you do not follow the correct procedure to protect the deposit, your tenant may apply to the court for compensation of up to three times the value of the deposit paid, either during the course of the tenancy or after it has expired. A court can also order you to protect a deposit in a suitable scheme if you have not done so. This may apply if you:

- protected the deposit after 30 days of the receipt of the deposit
- failed to provide the tenant with details of the deposit scheme used within 30 days
- failed to protect the deposit at all

If your tenant makes a court application they must do so under Part 8 of the Civil Procedure Rules (i.e. not a small claims application). For this reason you will be at risk of costs and an order to pay your tenant's legal expenses if they are successful.

## What does it mean if a landlord fails to register a deposit?

With standard AST's a landlord may decide to evict the tenant after the fixed term has expired by issuing a section 21 notice giving the tenants two months to leave the property. If your tenants do not leave at the end of that time the next step would generally for you to issue court proceedings.

However, in order to do this you will have to prove that you have protected the deposit and given your tenant the relevant notice containing the prescribed information within prescribed time.

If you have failed to register the deposit, or registered it late, you cannot issue a section 21 notice and cannot therefore gain possession of the property at that time. We are often asked how to remedy the situation should this arise. There are generally three options: return the deposit in full to the tenant and the tenant must accept this back, create a new tenancy but this would have to be for a minimum of 6 months or obtain a court order compelling the tenant to accept the deposit.

If you have registered the deposit but failed to serve the prescribed information this must be done before any possession proceedings can be started.

## What does it mean if a landlord fails to provide other documents?

The list of documents a landlord is required to provide at the outset of the tenancy has grown longer (see above). The penalty for non-compliance is that no section 21 notice can be issued until the documents have been served. So if you have failed to provide an EPC, gas safety certificate, or a copy of the right to rent information at the outset, you will need to do so before issuing the section 21 notice.

## Return of the deposit at the end of the tenancy

At the end of the tenancy it will be necessary for the property to be inspected and compared against the inventory completed and checked at the outset. The value of items which are missing, or damaged due to negligence or misuse, may be claimed by you and be a matter for discussion with your tenants.

If there is a disagreement about this the matter can be referred to adjudication under the relevant deposit protection scheme rules. You should check with your deposit service how this can be done. The adjudicator will decide the outcome after receiving representations from both the landlord and the tenant. If you would like to see the type of things which are considered please click [here](#) for some case studies or try being the adjudicator yourself [here](#).

As a landlord, you should produce evidence to the adjudicator of any damage or loss. We understand landlords frequently fail to do this. Examples of evidence which can be supplied include: inventories and check-in reports with notes of condition, photos and video, invoices/receipts and any correspondence or emails.



We also speak to landlords where they have had some difficulty tracing a tenant when they leave and getting them to respond to the deposit service. In such circumstances you will need to liaise with the deposit service directly to discuss your options.

## What if my tenants want to leave the property early?

Sometimes circumstances change and your tenant may want to leave the property before the tenancy is finished. It may be that a relationship has broken down or there is a change in employment which means they have to leave.

If you are approached about this check the tenancy agreement to see if there is a break clause, meaning that after a certain point in the tenancy the tenant can give notice. This type of clause is more often found in longer tenancies. For example, in a tenancy for 12 months there is often a break clause at the six-month point.

If there is no break clause then generally your tenant cannot leave without your agreement. If you agree that your tenant can leave it is advisable to sign a mutual surrender agreement. This means that both you and the tenant agree the tenancy is at an end. They will not be required to pay any more rent but they will have to pay for any arrears there may be at that point.

If you do not agree to a surrender your tenant may be liable for the rent until the end of the tenancy. However, this does mean the property should not be re-let during this time. Taking possession of the property can be seen as acceptance of a surrender and from that point the rent would not be recoverable from the former tenant. If this is the case please call for further advice.

## What if my tenant does a runner?

Sometimes a tenant just disappears without warning and the first a landlord may hear is the agent or a neighbour commenting, or when no rent is paid. It very often the case that the tenant owes rent and may leave without taking all their belongings.

This situation can be very problematic for landlords. In legal terms, leaving the property is an implied surrender of the tenancy. Some landlords refer to notices of abandonment in these circumstances although these can be risky. The reason is that the Protection from Eviction Act 1977 makes it a criminal and civil offence to repossess a property in any way other than a possession order.

As of the 30th march 2018 Part 3 of the Housing and Planning Act 2016 introduced a new abandonment procedure for Landlords. It allows a landlord to bring an assured shorthold tenancy to an end on the day on which the abandonment notice was given provided that:

- a) The tenancy relates to a premises in England
- b) The unpaid rent condition is met – this is at least 2 months or 8 weeks rent arrears
- c) The landlord has served all relevant notices under section 59
- d) The tenant or any named occupier has not responded to these notices within the dates and time frames expected within the warning notices

This process is extremely complex and in all the circumstances great care must be taken and further advice should be sought before using this procedure

## Letting a Property in Wales

If the property you wish to let is situated in Wales, in order to comply with relevant legislation to let the premises you must be registered with '[Rent Smart Wales](#)'. Failure to do so can lead to a fine and significant difficulty in recovering possession of the property should you need to do so. You must also be licensed to let the premises and to obtain this you will need to attend a course. More information can be found [here](#).

## Letting agents

We frequently receive calls from landlords who are not happy with the way letting agents deal with them and their tenants. The agent is employed to act in your best interests and provide professional guidance as part of the process. If the agent is instructed to let the property they should deal with all reference and financial checks, as well as getting the tenant to sign the necessary paperwork.

There is a Private Rented Sector Code of Practice issued by RICS which you can find [here](#) and which may help with any concerns about your agent.

All letting agents must belong to one of the following schemes:

- [Property Ombudsman](#), where you will also find a code of conduct.
- [Ombudsman Service](#)
- [Property Redress Scheme](#), which also has a good resource section.

If you complain to a letting agent and the complaint is not resolved to your satisfaction you can refer to one of the ombudsman schemes outlined above.

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