

A tenancy agreement with a rent above £100,000 per annum can not be an Assured and by its definition an Assured Shorthold tenancy agreement, such tenancy agreements are generally referred to as 'Common Law Tenancies'.

Additionally, these other common situations cannot be Assured or Assured Shorthold, please see are Landlord & Tenant General Help Sheet for more information.

- Holiday or business letting, (please see our Holiday Letting Agreement).
- No rent is payable, a low rent of less than £250 or a very high rent of more than £100,000 is payable.
- There is a resident landlord, (please see our House and Flat Share (Lodger) Agreement).

There is no statutory restriction on the rent which the parties may agree.

Under the Housing Act 1988, tenancies where the annual rent is greater than £100,000 cannot be Assured (or AST). 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.

Generally, these tenancies operate primarily under the common law rules and have little statutory security of tenure. The tenancy will simply be of a contractual nature between landlord and tenant with few statutory provisions.

£100,000 a year may seem like a lot of rent, but in a shared house or House of Multiple Occupancy (HMO) the rent is calculated as the combined rent of all tenants living in the property.

In a property with a combined rent of over £100,000 the type of tenancy changes from an Assured Shorthold Tenancy to a Common Law Tenancy. The tenants are therefore not protected by Tenancy Deposit Protection.

Security of tenure and statutory continuation of the tenancy are the other key differences between Assured Tenancies (including Shorthold Assured Tenancies) and Common Law Tenancies.

Other differences in more detail:

In an Assured Shorthold Tenancy a landlord is entitled to a possession order at the end of a tenancy provided the landlord has served 2 months notice. The landlord will have to prove one of the proscribed reasons in Housing Act 1988 legislation if trying to evict a tenant before the end of their tenancy, please see our Section 8 and Section 21 Notices for more details.

In Common Law tenancies, the landlord is entitled to possession of the property at the end of the tenancy, and does not have to serve notice to quit to bring the tenancy to an end. During

the tenancy the landlord can bring the tenancy to an end on any grounds specified in the tenancy agreement; the landlord is not restricted to the prescribed grounds set out in Schedule 2 of the Housing Act. Residential common law tenants still have some statutory protection: they cannot be evicted unless their landlord obtains a court order.

Common Law Tenants still have the protections of the unfair terms in Consumer Contracts Regulations 1999 where they have entered into a standard form tenancy agreement, and many other statutory provisions, such as the landlord's repairing obligations in the Landlord and Tenants Act 1985, also apply.

Common Law Tenancies

There are a number of occasions where the law says an Assured or an Assured Shorthold tenancy cannot be created. Even if you give a tenancy agreement that is described as an Assured Shorthold tenancy, the law will say that you cannot create it.

The most common form of Common Law tenancy is a tenancy granted by a resident landlord, but see the other examples listed at the top of this help sheet.

How do you evict a tenant with a common law tenancy?

If the fixed term has come to an end and the tenant has not gone, provided you have not accepted any rent from the tenant, you can simply bring proceedings to evict the tenant on the basis that the tenancy has 'expired by effluxion of time'.

If the fixed term has come to an end but the tenant has continued paying rent, you can bring the tenancy to an end by serving a Notice to Quit. If the tenant does not leave at the end of the notice period, you can then issue proceedings to evict.

If the tenant is in arrears of rent, you can bring proceedings immediately to forfeit the tenancy on the basis of the tenant's rent arrears. Note however that if the tenant then pays the rent due, he will be entitled to 'relief from forfeiture' and the tenancy will continue. If you want the tenant to leave even if the rent is paid, it is best to base possession proceedings on a Notice to Quit. Note also that if the tenant has a potential defence, such as for disrepair, then it you should take advice before starting your claim.

Note that the Accelerated Possession Procedure is not available for landlords of common law tenancies, this is a remedy only available for Assured Shorthold Tenancy Agreements, where the landlord is seeking to use the Section 21 procedure.

Contact Us

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