



## Landlord & Tenant Helpsheet

Legalhelpers is strongly committed to providing quality legal assistance to landlords and tenants alike. Therefore, we have produced a range of documents obtainable to both parties, for the creation, alteration and subsequent termination of some of the most common tenancy situations.

### **Why use Tenancy Agreements & Notices?**

When premises are let, it is always best to do so with a legally valid and clearly written agreement between the parties. Furthermore, it is a legal requirement for the landlord to provide a written statement of the main terms of a tenancy agreement if requested by the tenant.

For the landlord, a tenancy agreement allows them to secure certain legal undertakings from the tenants. Commonly, that they will not damage the property during the tenancy and will leave the premises promptly and in good order and repair at the end of the tenancy. For the tenant, it allows piece of mind that their occupation of the premises will be peaceful and without interruption, so long as they act within their agreement. Additionally, a good tenancy agreement will make clear all the obligations of both parties, so that should something go wrong during the tenancy, both parties know their respective responsibilities and duties, thereby resolving potential disputes before they occur.

Notices are likewise an extremely important, but an often neglected area of tenancy law. Unfortunately, all too often, disputes will end in the courts because there was no notice served, or the notice served was invalid. Different tenancy agreements require different types of notice. In the case of an Assured Tenancy, a Section 8 Notice is always required, and the grounds within it must be formally stated. With regard to Assured Shorthold Tenancies, a Section 8 and / a Section 21 Notice may be used to end the agreement. Finally, with regard to House & Flat Share Agreements, although a Notice to Quit may not be required in some circumstances, it is always best practice to serve one.

### **The Forms:**

We have endeavoured to make all Legalhelpers forms user friendly by removing as much legal jargon as possible.

Nevertheless, there are still some terms within the forms, with which you may be unfamiliar, or would like some clarification. Therefore, we have produced this help sheet to provide you with some assistance. However, should you still be experiencing difficulties or feel uncertain as to any area of the forms, please do not hesitate to contact us.

Below is a brief description of the various tenancy agreements that Legalhelpers provides, so that you will be able to decide which type of tenancy agreement is the most appropriate for your own particular situation. After this, there is a list of some common words and expressions used within landlord & tenant law and a brief explanation of each.

## **The Different Types of Tenancy Agreements:**

### **Assured Tenancy Agreements**

Assured Tenancy Agreements and Assured Shorthold Tenancy Agreements are in themselves very similar documents. As a result of the similarity of their content as well as their names they can often cause unnecessary confusion to many people. With regard to the agreement itself, there are only a couple of significant differences between the two, primarily to do with the length of the tenancy and the protection granted to the tenant.

An Assured Shorthold Tenancy Agreement, is usually used with the intention of granting the tenant a tenancy for a shorter period!

If you wish to create an Assured Tenancy Agreement, this will have to be clearly stated at the top of the tenancy agreement. If such a tenancy is created, the tenant will have more security of tenure, in other words the procedure and amount of time required to end the tenancy agreement is much more complicated and lengthy than for an Assured Shorthold Tenancy.

Ordinarily, Assured Tenancies are only created where it is the intention of both parties that the tenant should have possession of the premises for a longer time. To take repossession of an Assured Tenancy, the landlord will have to state very specific grounds, contained within the Housing Act 1988. Therefore, such an agreement should only be created when it is intended to create a long-term tenancy agreement, granting the tenant extensive possessory rights.

### **Assured Shorthold Tenancy Agreement**

As mentioned above, an Assured Shorthold Tenancy Agreement, is merely a type of an Assured Tenancy Agreement and many of the provisions operate in exactly the same manner.

Today, the Assured Shorthold Tenancy Agreement is the most commonly used type of tenancy agreement, and the one usually implied if the parties do not state what type of tenancy agreement they wish to create. Importantly, an Assured Shorthold Tenancy Agreement can allow either the landlord or tenant to end the tenancy after an initial six month period, by simply serving upon notice upon the other. For the tenant this is usually one month and for the landlord two months, please see our Section 21 Notice for more information.

In relation to Assured Shorthold Tenancy Agreements, the relatively new Tenancy Deposit rules apply and you may wish to read our Tenancy Deposit help sheet.

### **House and Flat Share (Lodger) Agreements**

Both resident landlords and non-resident landlords can use these agreements. The main purpose is to create a tenancy agreement, which will not have the force of an Assured Tenancy or even an Assured Shorthold Tenancy Agreement. Thereby allowing both the tenant and the landlord the opportunity of ending such an agreement quickly should they wish, these are regarded in law as 'licence agreements'.

With regard to a non-resident landlord in a house or flat share agreement, the tenant must be given at least four weeks notice after the date when a notice to quit is given to them. With regard to resident owners, although there is no prescribed period for giving notice in a house or

flat share agreement, it is advisable to provide four weeks. Furthermore, in both instances if there is a written condition in the tenancy agreement that is longer than this, this should be used.

Non-resident landlords can create House and Flat Share Agreements, which will act as licence agreements, rather than tenancy agreements. However, this is a complicated area and there are several cases on it. If in doubt, the landlord should create an Assured Shorthold Tenancy Agreement.

Nevertheless, some landlords like to create licences and therefore there is a little more detail contained here. The most important case for the landlord which supports the licence argument is *A. G. Securities v Vaughan*, which is still good law and the key case, despite its age! This case involved a landlord letting rooms in the property to four people on licences. The House of Lords (the highest Court at the time) decided it was a licence rather than a tenancy. The key principle was that the landlord had not let the property, nor indeed any part of it, to the occupiers with exclusive possession. Specifically, no particular rooms had been prescribed for any of the particular occupiers. Should landlords seek to create this type of agreement, they are strongly recommended to read the case in full. We can forward a copy to you should you wish.

Importantly, no individual rooms (bedrooms) were granted to any of the occupiers. Rather they all came and went at different times, on different rents, and simply took informally whichever bedroom was available to them. Had the landlord specified a room, there was some uncertainty as to whether that would have granted a tenancy. However, that doubt is now gone as per the case of *Uratemp Ventures Ltd v Collins*, which is an example at the other extreme, where a hotel room was decided to be capable of being a tenancy.

Thus in simple terms:

i) A single room in a property can be a tenancy and let as an Assured Shorthold Tenancy Agreement.

However,

ii) A landlord could let several people have the use of a property, on individual licences, so long as they do not have exclusive possession of the property, or any part of it. i.e. they are not given a specific room for themselves. Rather, they would simply be allowed to have use of what was available. As mentioned, this is a tricky area and landlords should only attempt to set up these types of agreements with care.

### **High Rent / Common Law Tenancies**

Nowadays most landlords create Assured or Assured Shorthold Tenancy Agreements. However, when the rent is above £100,000 per annum, which is annualised, meaning £8,333.33 per month for a shorter periods the letting cannot be an Assured or an Assured Shorthold. We have created a tenancy agreement for High Rent situations, frequently called a Common Law Tenancy.

Our 'High Rent / Common Law Tenancy Agreements' are designed for all situations where the rent exceeds £100,000 per annum. Importantly, the Tenancy Deposit Schemes do not apply, nor many of the various statutory notices to quit / regain

### **Buy to Let**

Our Buy to Let Agreement is a variation of the Assured Shorthold Tenancy Agreement, which contains certain notices frequently requested by Banks and Building Societies for buy-to-let mortgage purposes. In many respects the information provided for the Assured Shorthold is exactly the same.

### **Student Letting**

There is a difference in student letting agreements made between private landlords (general public) and those granted by Local Authorities and Educational Institutions. Our Student Letting Agreement is for use by private landlords.

Essentially, the student letting agreement is a variation of the Assured Shorthold Tenancy Agreement, allowing the landlord to regain possession fairly easily if required. However, it is tailored to the typical student letting scenario, taking into account multiple persons in one property and possible variation of rent according to holidays and different lengths of letting.

### **Holiday Lettings**

A Holiday Letting Agreement is simply an agreement between the landlord and the holidaymaker for letting premises, with the intention of them being used for holiday accommodation. As such, the Housing Acts make clear that this type of tenancy can not be an Assured Tenancy, which would give the holidaymaker(s) a greater right to occupy the premises. Importantly, the term of the letting agreement will ordinarily be quite short, often one or two weeks, and usually less than three months.

## **Meaning of Common Words and Expressions:**

**Contents List or Inventory:** simply a list of the contents of the rented premises. Often such lists will be attached to the tenancy agreement and signed by both the tenant and the landlord or the landlord's agent, with both parties agreeing to what was and was not let as part of the premises. It can include everything from the beds and wardrobes to the cutlery and crockery.

**Deposit:** an amount of money that the tenant leaves with the landlord during the tenancy. Commonly this will be equal to one months rent. This amount will usually be paid back to the tenant at the end of the tenancy, so long as the premises and contents are left undamaged, other than fair wear and tear and the full rent has been paid. If the tenancy agreement is an Assured Shorthold, please ensure you have read the help sheet on Tenancy Deposits.

**Guarantor:** a person who guarantees to the landlord that should the tenant be unable to pay the rent, or otherwise breach the tenancy agreement, they will pay any losses directly to the landlord.

**Joint & Several:** all persons who are made 'joint and several' are made responsible for each other. This term is often used in tenancy agreements regarding rent and allows a landlord to take an assurance that each tenant will guarantee the rent of the other tenants. Should one tenant fail to pay their rent, the landlord is then able to recover this against the other tenants.

**Landlord:** person or persons who lets premises for a rent to the tenants. Importantly, the landlord must provide the tenants with a contact address within England and Wales. This may either be his or her own address, or someone who is acting as an agent for them.

**Landlord's Agent:** this expression can have two common meanings. Firstly, it may be someone employed by the landlord for the renting of the premises being a person who deals with both the landlord and tenant. Alternatively, it can also mean much more broadly anyone employed by the landlord to carry out any repairs or maintenance to the premises. Landlord's agents can be formally appointed such as letting agents or can simply be family and friends who act under the landlord's instructions.

**Notice to Quit:** a formal written statement given by the landlord or the landlord's agent informing the tenant that possession of the premises is required and the date upon which it is required. In order to be valid a notice to quit must satisfy certain conditions. If you require more information upon these documents, please contact Legalhelpers.

**Rent:** an amount of money paid usually by the tenant to the landlord, in exchange for living in the landlord's premises.

**Section 8 Notice:** this is the type of notice that is required to be given to the tenant by the landlord, if the landlord seeks to gain possession of premises let upon an Assured Tenancy Agreement, or an Assured Shorthold Tenancy Agreement. The grounds contained within a Section 8 Notice are strictly regulated by statute, and you may wish to contact Legalhelpers for further assistance within this complicated area.

**Section 21 Notice:** this type of Notice can only be used for Assured Shorthold Tenancy Agreements and enables the landlord to bring the tenancy to an end without having to allege any fault against the tenant. Ordinarily, two months notice is required, but there is a statutory

formula and it can sometimes be longer than this. Please see the our website where we deal with Section 8 and Section 21 Notices for more information.

**Tenancy Agreement:** formal document, which sets out the terms and conditions upon which the landlord is renting out the premises to the tenant. Ordinarily included will be conditions as to rent, length of the tenancy, and repairing obligations of the parties.

**Tenant:** a person who rents premises from another person, the landlord or the landlord's agent.

Should you require any further help or assistance, please do not hesitate to contact us.

## Contact Us

Please visit our website at [www.legalhelpers.co.uk](http://www.legalhelpers.co.uk) for more information. Alternatively, you may contact us:

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