

Renting rooms in someone's home

A guide for people renting from resident landlords



housing

Who should read this booklet?

You should read this booklet if you rent (or are thinking of renting) in a property where the landlord also lives. In law, a **resident landlord** letting is one where the landlord and the person he or she lets to live in the same building. This includes conversions where they live in different parts of the same property (however long ago it was converted).

However, if the property is split into **purpose built flats**, with the landlord and you in **different flats**, or you do not live in the same property as your landlord you should instead read the booklet *Assured and Assured Shorthold Tenancies – a guide for tenants* if the letting began on or after 15 January 1989; or *Regulated Tenancies* if it began before this date. Details of where to get these and other housing booklets published by Communities and Local Government are given at the end of this booklet. This booklet is addressed mainly at lettings started on or after 15 January 1989, when the Housing Act 1988 introduced changes affecting new lets by resident landlords. A summary of the special rules applying to lettings made before this date is at the end of the booklet.

This booklet does not provide an authoritative interpretation of the law; only the courts can do that. Nor does it cover every case. If you are in doubt about your legal rights or obligations you would be well advised to seek information from a Citizens Advice Bureau, your local authority's housing advice service or a law centre, or to consult a solicitor. Help with all or part of the cost of legal advice may be available under the Legal Aid Scheme.

The terms 'landlord' and 'occupier' are used throughout; 'occupier' is used in this context interchangeably with 'tenant' or 'licensee' to mean the person the landlord is letting to.

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1. Introduction to renting rooms – some important principles

1.1 What types of letting does this booklet cover?

This booklet deals with many different arrangements, ranging from simply renting a room as a lodger to renting a converted flat in a house.

1.2 Why is it important whether the landlord is considered to be resident?

Tenancies which do not have a resident landlord are generally regulated or assured (including assured shorthold), depending whether they were granted before or after 15 January 1989 respectively.

There are two main issues where the rights of landlord and tenant differ for resident landlord lets compared with these other types of tenancy: rent and security of tenure. Broadly, someone who lets from a resident landlord does not have a right to challenge the level of rent that he or she has agreed to pay, can be given less notice to leave if the landlord wants to end the letting, and in some situations can technically be evicted by the landlord at the end of the notice if he or she refuses to leave.

Resident landlords have greater freedom to end an arrangement because it is acknowledged that, should the relationship between the landlord and the person he or she lets to break down, the landlord is more vulnerable in his or her own home.

1.3 How exactly is a landlord considered to be 'resident' in law? Does it make a difference if mine doesn't live in the property all the time?

For lettings started on or after 15 January 1989, the important point is whether he or she is using the property as **an only or principal home**, both at the start of the letting and throughout it.

It is accepted that, for short periods, a landlord may not live in the property yet still be considered to be resident: so long as he or she intends to return and this is apparent, for example if he or she has left belongings. However, only a court can say for certain whether a landlord has maintained enough residence in the property to count as a resident landlord: if not, then it is possible that the letting arrangement may be deemed to have become a regulated or assured tenancy, depending whether it first began before or after 15 January 1989. The definition of 'residence' for determining how the landlord must give notice or can evict an occupier is slightly different (see section 1.4)

1.4 Are all kinds of resident landlord arrangements treated the same in law?

No. There are two main considerations:

- a. whether the landlord (or a member of his or her family) shares any accommodation with the person he or she is letting to;
- b. whether the occupier has exclusive possession of at least one room.

a. This is important in distinguishing whether the occupier is protected by legislation in terms of notice to leave and eviction: a non-sharing arrangement will generally give the occupier greater legal protection than where accommodation is shared. (For this reason, lettings which are outside this protection are known as **'excluded' tenancies** and **'excluded' licences**). 'Shared accommodation' means any part other than stairs, halls, passageways or storage space; so that while a tenant in a self-contained flat would not be considered to be sharing accommodation with the landlord, even someone who has most of their own facilities but shares a toilet would. However, even if the occupier only shares accommodation with a member of the landlord's family, the arrangement will still be counted as a sharing one if the landlord himself also lives in the house.

To count as an excluded tenancy or licence, the landlord does not have to live in the house continuously, although it must have been his only or main home both before and at the end of the let.

b. This is about the distinction between **tenancies** and **licences**. Whereas the usual assumption for any letting arrangement is that it will be a tenancy, there may be some factors present that will make it merely a licence to occupy. The most usual one is a lack of exclusive possession; but if :

- the occupier does not have a right to occupy a particular room or rooms; and/or

- there is no rent payable for occupying the room; and/or
- the occupation is not running for identifiable amounts of time, for example by the week or month;

then the arrangement is also likely to be a licence. Common general examples of licences are staying in a hotel, or staying at a friend's house for a few days. Tenants have some rights that licensees do not have.

1.5 So what is the difference between a tenancy and a licence to occupy?

The most important qualification for a letting to be a tenancy is that the occupier is granted exclusive use of at least one room. So if, for example, you have your own room and the landlord does not have the right under the agreement to enter it without permission, the letting would probably be a tenancy. If the landlord agrees to provide some form of attendance or service which requires him or her (or someone working for him or her) unrestricted access to your room, the letting would be a licence to occupy. If you have to share your room (or all of your rooms, if more than one) with someone you did not choose, the letting would be a licence.

To be a tenancy, the letting must also be for a particular room (or rooms) – that is, without the landlord being able to move you around.

1.6 What kind of attendance or services would require the landlord to have unrestricted access to my accommodation?

These might include regular cleaning of your room, removal of rubbish, changing the bed linen, providing meals. But none of these on its own necessarily means there is a licence. It is only if the landlord genuinely needs to come and go without restriction and cannot be limited to agreed times of the day in order to provide the services, that you will not have exclusive use of the accommodation. In this type of arrangement, the occupier would usually be described as a **lodger**.

1.7 What if the landlord is letting to more than one person in the house?

If each person has his or her own room (or rooms), then whether each arrangement is a tenancy or licence will depend on the factors above.

If the room is let on a shared basis, where you and the other occupier(s) have come to the arrangement separately, or the landlord has made it clear to you that it is likely that you will have to share the room, the letting will probably be a licence to occupy.

However, even if you are sharing the room, the letting can still be a tenancy if the sharers entered the arrangement together (**joint tenancy**): for example, a couple or friends, or a family sharing a flat.

1.8 How do the distinctions between different arrangements work in practice?

Examples of the most common arrangements are as follows:

- **Non-excluded tenancy:** house divided into self-contained flats, occupier lives in one and landlord in another
- **Non-excluded licence (unusual):** landlord has right to choose new sharer for occupier's self-contained flat; or has unrestricted access to it for cleaning
- **Excluded tenancy:** 'houseshare' arrangement, where landlord lets room(s) in his home and shares lounge etc with the occupier; bedsit arrangements where landlord is not servicing rooms
- **Excluded licence:** 'lodgers', where the arrangement includes cleaning the room; stay by a friend on a casual basis; room is let as a 'roomshare' with existing occupant.

This list only gives an indication of how different arrangements might be viewed: it is not definitive, and the important factor for any particular case is how the arrangement works in practice. Only a court can say with any certainty whether a letting is a tenancy or a licence to occupy; and the fact that a landlord may say that what he is offering or has granted is a licence rather than a tenancy (or the written agreement is headed "licence"), does not necessarily mean that this is what it will be considered to be. If there is a dispute or other issue where the nature of the let could be important, it is advisable to get legal advice.

1.9 Does it make a difference whether the accommodation is furnished or not?

In nearly all cases, no: it may only be relevant for some tenancies dating from before 14 August 1974 (see Appendix B).

1.10 What if the landlord moves out?

As described in section 1.3, the landlord would only be considered 'resident' for as long as the house is his or her only or main home. If he or she ceases to live there, then a **tenancy** may be deemed to have become an assured shorthold tenancy (if the original tenancy started after 28 February 1997) or an assured tenancy (if the tenancy started before this date but after 15 January 1989), of whichever rooms the tenant was letting. The rules for tenancies started before January 1989 are slightly different – see Appendix B. If the letting was a **licence to occupy**, it would **not** become one of these tenancies since the nature of occupation would still not fulfil all the requirements for a tenancy such as exclusive use.

1.11 What if the landlord sells the property or dies?

There are special rules which can ensure that tenants do not automatically become tenants as soon as a resident landlord sells his or her house, or dies, if the new owner will also be living in the property.

If the house is **sold**, the new owner must:

- give notice within 28 days that he or she intends to take up residence, and
- actually move in within 6 months of the sale.

Until the new landlord moves in, the tenant enjoys the same security of tenure as if the tenancy was assured shorthold (or assured or regulated). This protection will then be lost so long as the landlord meets the six-month time limit.

If the landlord **dies** two years are allowed for the winding-up of his or her estate, **plus** 6 months (as for the sale of a house).

During the two-year winding-up period, tenants do not have the greater level of protection of an assured or regulated tenancy – that is, they will be treated as if the landlord was still resident.

1.12 Does an existing agreement still apply if the property changes hands?

If there is an existing **tenant** in the property when the new owner buys or inherits it, the tenancy will continue with the new owner, and the terms of that tenancy will be binding on him even if he did not know of its existence.

This does not apply to **licences**, which will generally continue only if an appropriate agreement is entered by the new owner. But this may be affected by what is known and agreed to at the time when ownership changes, for example if the licensee was part-way through a fixed-term arrangement.



2. Before arranging a let – some points to consider

2.1 Are there any general points I should know when looking for or taking up accommodation?

If you are trying to find somewhere to live through an accommodation agency, it can charge a fee for finding acceptable accommodation which you take up. By law, it cannot charge a fee merely for providing you with details of properties. See also section 2.6 about contract terms.

Generally, your rights with a resident landlord would not depend on whether this person owns the property or is a tenant him or herself. If your landlord has let when he or she should not have done (for example, because he or she has not got the permission of his or her mortgage lender or the head landlord), your landlord could not use this as justification for denying you your rights as a tenant or licensee, for example by evicting you illegally. But if a mortgage lender forecloses because of mortgage arrears, or you are letting from someone whose own tenancy is ended, your tenancy will generally end also. So it may be advisable to check as far as possible that your occupancy would not be restricted before accepting the accommodation.

2.2 Does the let have to be for a set period or can it run indefinitely?

This is something for both parties to agree at the outset. There is no minimum length of time that the landlord or you must allow the let to run for.

Usually it will run indefinitely from one rent period to the next – a **periodic** letting; or may be agreed to last for a number of weeks, months or years – a **fixed term** letting. The nature and length of the let can be important for giving notice when either you or the landlord wants to end it.

A **tenancy** must be for an agreed **term**, eg weekly periodic or a fixed term of 3 months. If no term is expressly agreed, the letting will be a periodic tenancy, and the term will be whatever period the rent is payable on (usually weekly or monthly).

Licences can be more flexible. Although it is normal to agree a licence to run from term to term, or a fixed length of time, as above, it is also possible for it to be entirely open-ended. This would be common in informal arrangements, for example if you are staying with a friend on an 'as-and-when' basis. But a landlord could not charge rent on an open-ended or irregular basis, in order to call the let a licence, if the reality of all the facts of the situation (especially if you had exclusive possession) pointed to it being a tenancy.

2.3 What facilities should be provided?

The landlord is free to decide most of these things with you, subject to the basic requirements of general housing law: he or she should provide access to kitchen, washing and toilet facilities (but these can be either his or her own or separate).

If the property is a 'house in multiple occupation' and is subject to licensing the local council will require minimum amenity standards for the number of occupants (such as toilets and washing facilities).

If rooms in the house are let to several people, it may be classed as a house in multiple occupation (HMO). Local councils have the power to licence certain types of HMOs in order to protect occupants from problems that can arise in shared accommodation.

If there are a maximum of two other persons residing in the building, it will not be an HMO at all. If there are four or more other persons and the HMO is three storeys or more it will be subject to mandatory licensing. In any other case the HMO may be subject to licensing, but only if the council has made an additional licensing scheme. (For further information please see the Communities and Local Government booklet *Licensing of Houses in Multiple Occupation in England*.)

For the purpose of calculating the number of persons living in the HMO the resident landlord and his or her household (if any) count as one person.

A landlord who is intending to let rooms to several people who do not form a single family should check with their local council's Housing or Environmental Health Department to enquire about HMO licensing.

2.4 If the property is a house in multiple occupation, will the landlord be subject to management regulations?

If the property is a HMO the landlord will be subject to management regulations. This requires all landlords or managers of HMOs, whether or not they are licensable, to ensure the good day-to-day management of HMOs and that necessary equipment is maintained in good condition. For example, he or she would be responsible for ensuring matters such as cleanliness of shared areas, safety of means of access, and adequate provision for disposal of rubbish. But you and the other occupants of the house must not do anything that hinders him or her in these duties. If you want to check what applies for – or have concerns about – the property you live in, you should ask the Environmental Health Department at your local council.

2.5 What steps might I or the landlord take to help prevent problems in the future? (for example, asking for a deposit)

It is common for a landlord to ask the intending occupier for references (personal, or from his or her employer or bank) before agreeing the let. The landlord is also entitled to take a deposit before you move in, to act as security in case you were to leave the property owing him or her money, or to pay for any damage at the end of the letting. The amount of deposit is negotiable, but a month's rent is usual.

In a written agreement, it should be stated clearly the circumstances under which part or all of the

deposit may be withheld at the end of the let. It is advisable for both parties to agree a list of furniture, kitchen equipment and other items in the property at the outset of the letting and to have this rechecked when it ends in order to avoid disagreements. In any case, taking photographs of the interior of the accommodation when the let starts can also be a useful way of recording its condition, in case of any later dispute about what damage has been caused. Especially where there is no written agreement, it is a good idea generally to discuss beforehand any issues such as whether guests can stay, when music can be played, to help prevent future friction or misunderstandings.

If, at the end of the let, you believe that the deposit has been kept by the landlord unreasonably, you can make a claim through the Small Claims Court for the disputed amount. You should take advice before doing this.

If you can't afford a deposit, there are schemes operating in some areas which guarantee rent or the cost of damage for a specified period. Check with the local council's Housing Department or Housing Advice Centre.

2.6 Does there have to be an agreement in writing?

Not unless the let is a tenancy for a fixed term of more than 3 years. But it is advisable to have one anyway, as this will make it easier to sort out any disagreements which may arise later. Even if there is nothing in writing, both parties must still do

whatever they agreed to, except where this conflicts with their legal rights and responsibilities (see below).

Prior to 1 December 2003 a written tenancy agreement was a stampable document and should have been sent or taken to the Stamp Office for stamping in order for it to have validity if it was subsequently used in court.

Stamp Duty Land Tax (SDLT) was introduced on 1 December 2003 to replace Stamp Duty. Details are in the HM Revenue and Customs leaflet: *A guide to leases*. This is available at www.hmrc.gov.uk, or by Orderline 0845 302 1472.

You can also ask for more advice about Stamp Duty Land Tax (SDLT) by ringing the helpline on 0845 603 0135.

2.7 Is there a standard form of agreement?

A landlord can draw up his or her own agreement (or use a standard one), but legislation on the duties of landlords and occupiers will automatically override any contradictory terms agreed. Suitable items to cover might include:

- how long the letting will last (eg whether it is for a certain number of months, or runs from week to week)
- how much rent you have to pay, and any arrangements for review if necessary
- how much notice each party will give the other to end the letting (but note that the law generally covers this)
- what meals or services will be provided, if any.

The Unfair Terms in Consumer Contracts Regulations apply to tenancy and licence agreements, and if a term is found to be unfair it is not enforceable. The Office of Fair Trading publishes guidance as to what is and is not considered 'unfair'; this includes issues such as use of plain English in an agreement; and in standard agreements, one party being given more right than the other to cancel a contract, or unreasonable restrictions. If you have concerns about possible unfair terms in the agreement you have been given, you can contact your local council's Trading Standards Department.

2.8 Where can I get further advice?

Advice on general legal issues can be obtained from Citizens Advice Bureaux, the local authority's Housing Advice Centre or Housing Department, or a solicitor. The Community Legal Service Directory in libraries (see also Appendix C) gives listings of what advice sources are available for the local area.



3. Rent and other bills

3.1 Are there any rules about the amount of rent the landlord can charge me?

The landlord is free to agree this with you – for resident landlord lettings agreed since 15 January 1989 there is no means for you to object to the amount of rent you are being charged (see Appendix B for rules that apply to most lets started before this date).

It is usual for the landlord to ask for rent in advance, eg at the start of the month if it is paid monthly.

3.2 How often (and by how much) can the landlord put the rent up?

Again, there are no rules specifically about rent increases, but if the landlord has agreed a rise with you, he or she cannot put the rent up by more than this. If the arrangement is for a fixed term, it cannot go up within that time **unless** this has been agreed, for example in a tenancy agreement. The landlord is free to raise the rent at the end of the fixed term, if he or she agrees a new let with you.

If the let is periodic or completely open-ended, then unless the parties have made arrangements for rent review, as above, the landlord can increase the rent from term to term as he or she wishes. In either case it may be helpful to agree when and by how much the rent will go up at the outset, and have this included in an agreement. However, if a standard agreement is being used, any rent review clauses should be reasonably specific about date and amount of increase, in order to comply with the unfair contract terms legislation (see section 2.7).

3.3 Must the landlord provide a rent book?

He or she is legally obliged to provide a rent book if the rent is payable on a weekly basis. Even where there is no requirement to provide a rent book, it is advisable to ask for a receipt to help avoid disagreements later.

3.4 Who is responsible for Council Tax?

If you live in a self-contained flat (even if part of the landlord's house), it is likely that the local council will bill you directly for Council Tax. If you only rent a room or rooms at the landlord's address, he or she will normally be responsible for paying the Council Tax. But the landlord can ask you for a contribution or include an amount to cover the cost of Council Tax in the rent charged. However, who is responsible for paying Council Tax can also depend on the terms of the agreement entered into. If there is any doubt as to who is liable to pay Council Tax, contact the local council.

3.5 What about other domestic bills?

Whether you are billed directly or not is a matter for agreement, although it is unusual for utility companies to send separate bills unless the property has been converted into flats. The more usual arrangement is for the landlord to include an amount in the rent to cover the cost of water, gas and electricity that the occupier uses. Alternatively, for electricity charges the landlord might install a key meter or record your consumption and then recharge you separately for it. The resale of electricity (and gas) is subject to maximum resale prices, which depend on the gas or electricity supplier that the landlord uses. More information on these prices is in the Energywatch leaflet *Maximum Resale Price* – see Appendix C. However, the maximum resale charges do not apply if a flat

rate is charged to cover your usage, or if rent is charged on an all-inclusive basis.

3.6 Can I get help with the rent?

If you are on a low wage or claiming other benefits, you may be able to get housing benefit from the local authority to cover part or all of the rent.

The amount of benefit payable by the local authority will depend on your income and savings. Benefit to meet the full rent can only be paid for rents which are at or below the average level of rent for accommodation of the same size in the locality, where the occupier is in accommodation only as large as he or she needs, and where the rent is not higher than for property in similar condition in the locality. For single claimants under the age of 25, this means that benefit is restricted to the average rent for a single non-self-contained room (ie with shared use of kitchen, bathroom and living-room).

If the rent officer finds that the accommodation is larger than is reasonable for the claimant's needs, the rent will be restricted to the average level of rent for accommodation of an appropriate size.

The rules on housing benefit are complicated, and this is only a very general outline of the rules. The local authority's Housing Benefit Department will be able to provide leaflets and advice about how housing benefit payments are calculated and paid.

3.7 Can housing benefit be paid direct to the landlord?

The local authority can arrange this if you and the landlord agree. Direct payments are also made in some other circumstances – for example, if there are rent arrears. But you should make sure that your landlord understands the rules and procedures for recovering overpayments of benefit before agreeing that he or she will receive benefit direct.

3.8 Is it possible to find out how much rent will be covered by housing benefit before agreeing the let?

You and the landlord can apply jointly to the local authority's Housing Benefit Department for a Pre-Tenancy Determination. The local authority will ask a rent officer to make an assessment of the **maximum** amount of rent which will be met by housing benefit before the let has commenced. This will help decide whether you can afford the rent, although there is no guarantee that benefit will actually be paid at this level.

You can also apply for Housing Benefit without having to tell your landlord that you are claiming. However, in this situation you would not be able to get a Pre-Tenancy Determination.



4. Repairs, maintenance and safety

4.1 Who is responsible for repairs and maintenance?

Responsibility for major repairs generally rests with the landlord. For general information, see the Communities and Local Government booklet *Repairs*, listed in Appendix C – however, the Landlord and Tenant Act 1985 applies to tenancies but not licences. But a home must be fit for habitation whatever the arrangement of people living in it.

It is especially important to agree responsibility for other repairs where you and the landlord live in very separate parts of the house, for example if it is converted into flats. Unless there is express agreement to the contrary, the landlord will retain responsibility for common parts, such as staircases.

A tenant is under a duty to use the property in a proper, 'tenant-like manner', and the landlord is not responsible for repairing damage caused by the tenant's failure to do so.

4.2 Are there any rules about gas and electrical safety I should know?

The landlord must ensure that all gas appliances and installations he or she supplies are maintained in good order and that an annual safety check is carried out by someone who is registered with CORGI (Council for Registered Gas Installers).

The landlord must keep a record of the safety checks, and must usually issue it to the occupier within 28 days of each annual check. You are responsible for maintaining gas appliances which you own or are entitled to take with you at the end of the letting. Further guidance is contained in the leaflets *Gas appliances – Get them checked, keep them safe* and *Landlords – A guide to landlords' duties: Gas Safety (Installation and Use) Regulations 1998*, from the Health and Safety Executive – see Appendix C.

By law, the landlord must ensure that the electrical system and any electrical appliances supplied with the let such as cookers, kettles, toasters, washing machines and immersion heaters are safe to use. If he or she is supplying new appliances, any accompanying instruction booklets should also be provided.

New rules for electrical safety in the home came into effect on 1 January 2005. From this date people carrying out electrical work in kitchens, bathrooms or outdoors or adding new circuits to any part of their house in England and Wales will have to follow the new rules in the Building Regulations. The alternative is to get the work carried out by a suitably qualified electrician. There is further guidance in the leaflet *New rules for electrical safety in the home* or visit: www.communities.gov.uk/electricalsafety.

4.3 What are the rules on fire safety of furniture?

If the landlord supplies furniture or furnishings with the let, he or she should ensure that they meet the fire resistance requirements – sometimes known as the ‘match test’ – in the Furniture and Furnishings (Fire) (Safety) Regulations 1988. The Regulations apply if it is considered that the landlord is acting in the course of a business in letting the property, ie where he or she views the property primarily as a source of income rather than as his or her home. This means that in some resident landlord arrangements it may be unclear whether the Regulations apply, in which case it could be advisable to get legal advice.

The Regulations set levels of fire resistance for domestic upholstered furniture such as sofas and mattresses. All new and second-hand furniture provided in accommodation under a new let, or replacement furniture in existing let accommodation, must meet the fire resistance requirements unless it was made before 1950. Most furniture will have a manufacturer’s label on it saying that it meets the requirements. Your local authority’s Trading Standards Department enforces the Regulations and can advise on their applicability. There is also further guidance in the booklet *A Guide to the Furniture and Furnishings (Fire) (Safety) Regulations*, from the DTI website – see Appendix C.

4.4 Are there any other fire safety issues to be aware of?

Not specifically for rented accommodation (although if the property is a House in Multiple Occupation fire safety could be an important consideration – see section 2.3). But as for any other home, it is generally a good idea to make sure that you ‘know your way round’ the house, to help prevention and escape from fire. It is advisable to fit smoke alarms (either provided by the landlord or yourself), and – particularly if several people are likely to be cooking and/or smoking – a fire blanket in the kitchen and possibly a fire extinguisher could be a sensible precaution. For more information, Communities and Local Government publishes the leaflets *Fire safety – for people in shared or rented accommodation* and *Electrical safety – protect your home from fire*. Alternatively, visit the website: www.firekills.gov.uk for further safety advice.

4.5 What access rights does the landlord have?

The landlord, or his or her agent, has the legal right to enter your accommodation at reasonable times of day to carry out the repairs for which he or she is responsible and to inspect the condition and state of repair of the property. For tenancies, the landlord must give 24 hours’ notice in writing of an inspection. For licences where unrestricted access is agreed, or required for the landlord to carry out his or her responsibilities, it is not necessary to give notice. It may be helpful to include the arrangements for access and procedures for getting repairs done

in a written agreement. In an emergency, the landlord can enter without giving notice.

A tenant has the right to 'quiet enjoyment'. This means that he or she has the right to use the property he or she is renting without unnecessary or unreasonable interference.

4.6 Can I prevent the landlord from entering my accommodation?

You should not stop the landlord from doing repairs or inspections that he or she has a right to do (see above). A landlord can take whatever steps are reasonably necessary to protect his or her own and others' property, particularly in an emergency. He or she may even be under a duty to take prompt action where a problem could affect other people.



5. Ending a letting

5.1 How can a let be ended?

This depends very much on whether it is for a fixed term, or a periodic or open-ended arrangement (see also section 2.2), and also on the nature of the let (see section 1.4). The requirements in this chapter apply to lettings started after 15 January 1989 – see Appendix B for information on lettings started before this date.

If the arrangement is an open-ended or **periodic** one, either you are or the landlord is free to bring it to an end at any time, but must notify the other

party that the letting will be ended. This is known as giving **notice to quit**.

If it is for a fixed term, it will simply expire on the agreed date without either party having to give notice. However, it may be advisable to remind the landlord before the end of the fixed term that you will be leaving. The arrangement cannot normally be ended before the end of the fixed term unless both parties agree.

Whatever kind of arrangement, an offence will be committed if the landlord evicts you before your tenancy or licence has been properly brought to an end (or expired, if a fixed term).

5.2 For a periodic or open-ended let, how much notice must be given to bring it to an end? How should I or the landlord give notice to quit?

For **non-excluded** tenancies and licences, notice must be of at least whichever is the longest of:

- four weeks, or
- the term of the let, if any (for example, a month if rent is paid monthly), or
- whatever has been agreed between the parties and, for a periodic tenancy, end on the last day of a period (usually the day rent is due). It must be served in writing; if it is served by the landlord, it must include certain specified information (see appendix A – pre-printed forms are available from law stationers). Notice to quit should be clear and accurate about the property and the tenant or

licensee it is addressed to. While some minor errors that could not mislead the recipient may be overlooked, defects in the content or timing of a notice will make it invalid.

For **excluded tenancies**, unless you and the landlord agree otherwise, notice must be at least the length of the period and end on a rent day. However, there is no four-week minimum (so, for example, a weekly tenancy could be ended with a week's notice), and you and the landlord are free to agree in advance that notice should be shorter or longer. Notice does not need to be written (so there are no requirements for prescribed form), but it is a good idea to give it in writing anyway, in case of future dispute. However it is served, it must still be clear and be timed properly in order to be valid.

For **excluded licences**, the notice required is simply the longer of whatever has been agreed between the parties (if anything) **and** what is 'reasonable'. Reasonableness can ultimately only be decided by the courts, but is a matter of fairness and common sense: for example, taking into account your conduct, or how easy it would be for you to find alternative accommodation. Notice of the same length as would be required for a similar tenancy would normally be considered reasonable, but if there is likely to be a dispute it would be necessary to take legal advice. Again, there is no need in law for notice to be in writing, but it is recommended to do so.

5.3 Can the landlord end a fixed-term arrangement early?

Yes, if there is something in the agreement allowing him or her to terminate the arrangement if you broke it. But the landlord would not be able to end the arrangement for this reason if, for example, the rule that had been broken came from an unfair term in a standard contract. Depending what kind of arrangement it is, the landlord might still have to get a court possession order if you did not leave – see section 5.5. In that situation he or she would have to prove the breach of agreement to the court. Even for an excluded tenancy or licence (where no court order would be required to remove the occupier at the end of a let), you might be able to bring the case before a court if you challenged the lawfulness of the early termination.

If there is no fault on your part, then the landlord could only end the let early if you agree, or if it is allowed for by a 'break clause' in the agreement.

5.4 Can I leave during a fixed-term let?

If you have a fixed term arrangement but want to move out before the end of the term, you can only end it if the landlord says so, or if this is allowed for by a 'break clause' in the agreement. If neither the terms of the let nor the landlord allow you to end the arrangement early, you will be contractually responsible for ensuring rent is paid for the entire length of the fixed term. However, this does not mean that the landlord should necessarily be able

to claim for the whole term's rent if you leave early: there is also a responsibility on the landlord in this situation to try to cover his or her losses in other ways, notably by trying to re-let the accommodation.

If you are a tenant, it may be that you are able to find someone else to take your place. Unless the terms of the let prohibit this, you will be able to transfer, or **assign**, the tenancy, unless the landlord objects (which he or she cannot do unreasonably).

5.5 Must the landlord get a court order if I don't leave the property?

For a **non-excluded licence or tenancy**, eviction must only be via a possession order from the court.

For an **excluded licence or tenancy**, there is no legal requirement for the landlord to get a possession order so long as notice has been correctly given, although he or she may do so. However, it is a criminal offence for a landlord – or someone working on his or her behalf – to use force to make an occupier leave against the occupier's will, even where the tenancy or licence has been properly brought to an end (or expired, if a fixed term). It is also an offence to use threats of force.

5.6 How does the landlord get a court possession order?

After the landlord has applied to the court, the court will then normally serve the summons and details of the claim by post on you, notifying you

and the landlord of the date of the hearing. You will also receive a defence form, which you should complete and return to the court, especially if you disagree with anything the landlord has said or believe you have a good reason for being given more time to leave: the time limit for this is 14 days. Both parties should attend the hearing.

The landlord may be able to get a court order more quickly – there is a summary possession procedure, but it can only be used if the arrangement was a licence. The landlord has to establish that the licence has come to an end before making an application under it.

5.7 Does the court have to grant possession?

Whether the letting was a tenancy or a licence, the court will award possession to the landlord, where there is no question that it has properly come to an end and where the landlord has followed the correct procedures for regaining possession. The court can, however, postpone the date when the possession order comes into effect: usually for 2 weeks, but this can be a maximum of 6 weeks.

If you do not leave by the date specified, the landlord must apply to the court for a warrant for eviction. The court will arrange for bailiffs to evict the occupier. It is an offence for you to obstruct the bailiffs in carrying out the eviction.

5.8 Rather than seek a possession order, can the landlord change the locks to prevent me from entering the premises?

It is an offence to change locks to exclude any occupier before his or her tenancy or licence has been properly brought (or come) to an end; and in the case of a non-excluded tenancy or licence, unless a court order has been obtained.

For an **excluded tenancy or licence**, a landlord could in principle take steps to exclude you once the letting arrangement is clearly and validly at an end. However, he or she should not damage belongings that you have left in the property.

5.9 What if I'm being harassed by the landlord?

Problems between a landlord and tenant or licensee can be particularly awkward when both parties live in the same house. Sometimes the trouble is due to a clash of lifestyles (for example, loud music) rather than one person deliberately setting out to cause difficulties for another. If this is the case, it may be worth talking over the problem in the first instance. The local council may have a Tenancy Relations Officer who can mediate in cases of dispute (although he or she cannot force either party to do anything).

In the context of letting arrangements, 'harassment' against a tenant or licensee is a very broad term, used loosely to cover a range of activities that are designed either to undermine an occupier's sense of

security, or to force him or her to give up the property. It is a criminal offence for a landlord (or someone acting on his or her behalf) to drive someone out of his or her home – or stop the occupier from using part of it if he or she has the legal right to live there – by bullying, violence, withholding services such as gas or electricity, or any other sort of interference. Local authorities (usually through the Tenancy Relations Officer, or the Housing Department or Environmental Health Department) can take legal action in this situation, including prosecution if they think it is appropriate.

Appendix A: Form of words that must be used in a notice to quit

- (a) *If the tenant or licensee does not leave the dwelling, the landlord or licensor must get an order for possession from the court before the tenant or licensee can lawfully be evicted. The landlord or licensor cannot apply for such an order before the notice to quit or notice to determine has run out.*
- (b) *A tenant or licensee who does not know if he has any right to remain in possession after a notice to quit or a notice to determine runs out or is otherwise unsure of his rights, can obtain advice from a solicitor. Help with all or part of the cost of legal advice and assistance may be available under the Legal Aid Scheme. He should also be able to obtain information from a Citizen's Advice Bureau, a Housing Aid Centre, a rent officer or a Rent Tribunal Office.*

Appendix B: Special rules that apply to lettings made before 15 January 1989

What is different about lettings started before this date?

The legal requirements for giving notice and getting possession of property could in some circumstances be more stringent, although you or the landlord would still be free to bring the arrangement to an end and the court must still award possession so long as the correct procedures have been followed. It would also be easier, if the landlord does not always live in the house, for him or her to still be considered as 'resident'.

A letting made by a resident landlord before 15 January 1989 will probably be a **restricted contract**, whether it is a tenancy or a licence. No new restricted contracts can be created after this date. Someone occupying under a restricted contract would generally have more rights with regard to rent and security of tenure than if his or her letting began after 15 January 1989. If the let started before August 14 1974, he or she may have a full **regulated tenancy**.

What are the provisions on rent?

In a restricted contract, the landlord and you are free to decide the rent as for post-January 1989 lettings, and indeed if you have agreed a new rent since this date the letting will have ceased to be a restricted contract and the rent can only be set as for lettings started since January 1989. If the

landlord is required to provide a rent book (see section 3.3), this must contain the additional information prescribed for restricted contracts.

If you and the landlord cannot agree a change in rent, either party can apply to a Rent Tribunal for it to fix a **reasonable rent**. The rent it sets – which may be higher, the same as or lower than the existing rent – will be the maximum that the landlord can charge. Normally the Rent Tribunal will not consider an application for a new rent within two years of the last registration; the exceptions are either if you and the landlord apply jointly, or that either party applies on the grounds that there has been a change of circumstances which means the registered rent is no longer reasonable.

Either you or the landlord can get an application form for a Rent Tribunal from Rent Assessment Panel offices (a list of these is at Appendix D). Tribunal members may visit the property, and before setting a rent will hold a hearing which both parties can attend.

How must I or the landlord give notice to quit?

The requirements are mostly the same as for equivalent tenancies and licences starting after 15 January 1989 (sections 5.1-5.2). The difference is for tenancies where accommodation is shared between you and the landlord (for definition, see section 1.4-1.5), where the requirements are the same as for **non-excluded tenancies** listed in section 5.2 (minimum 4 weeks, prescribed information etc.).

Must the landlord get a court order if I don't leave?

In almost all circumstances, he or she must get a court order, since it is a legal requirement for restricted contracts even in arrangements which are excluded licences (the only exception is for excluded licences started before 28 November 1980, where it is not necessary to obtain a court order).

What additional rights do restricted contract holders have with regard to security?

If the restricted contract started after 28 November 1980, the landlord has served notice to quit and has brought court proceedings for possession, the court when making an order can defer possession for up to 3 months. The Rent Tribunal does not have any powers to intervene in the notice to quit the landlord gives or the possession procedure.

If the restricted contract pre-dates 28 November 1980 and the landlord has served notice to quit, you can apply to the Rent Tribunal to defer the date when it comes into force – the Rent Tribunal can postpone it for up to 6 months. But the application must be for a rent registration **and** deferral: the Rent Tribunal cannot consider an application for postponement alone. The landlord can apply to have the period of deferral reduced if you misbehave. If you do not leave at the end of the period and the landlord brings court proceedings, the court cannot defer the date of possession.

How is a landlord considered to be resident, and what does this mean for me if the landlord doesn't live there all the time?

Under the Rent Act 1977, a landlord is resident if he or she has used the house as a residence (rather than necessarily his or her only or main home, as for arrangements starting after 15 January 1989) both at the start of and throughout the tenancy. Because someone can have more than one home, this means that even a landlord who spends much of his or her time elsewhere can still be considered to be resident. So it is difficult for a tenancy starting before 15 January 1989 to be 'upgraded' to a regulated tenancy in the way that a tenancy starting after this date can become assured or assured shorthold (see sections 1.3 and 1.10). Even if the landlord does not spend enough time living in the house to count as resident, the tenancy still cannot become regulated if he or she and you share living accommodation (eg kitchen or living-room, but a shared bathroom or toilet doesn't count).

What is the position if the let started before 14 August 1974?

It is likely to be a regulated tenancy, rather than a restricted contract. But only if:

- it is a tenancy, not a licence (see section 1.5)
- the landlord and you do not share any living accommodation (**except** a bathroom or toilet)
- the tenancy is unfurnished (or any furniture provided has relatively low financial value to you).

In practice, any such arrangement that still exists is most likely to be where the landlord has let out a self-contained flat. You would have full security of tenure under the Rent Act 1977 (that is, the landlord must be able to prove one of certain reasons for possession to a court if he or she wants to get a possession order) and the right to have a fair rent registered. More information is in the Regulated Tenancies booklet.

Appendix C: Addresses for other leaflets and booklets

Assured and Assured Shorthold Tenancies – a guide for tenants

Regulated Tenancies

Repairs – a guide for landlords and tenants

'My Landlord Wants Me Out' – protection against harassment and illegal eviction

Your Rights as a Council Tenant

New rules for electrical safety in the home

Fire safety – for people in shared or rented accommodation

Electrical safety – protect your home from fire

These publications are also available on the Communities and Local Government website:
www.communities.gov.uk

For further copies please write to:

Communities and Local Government Publications

PO Box No.236

Wetherby

LS23 7NB

Tel: 0870 122 6236

Textphone: 0870 120 7405

Fax: 0870 122 6237

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or

Welsh Assembly Government

Rhydycar

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CF48 1UZ

**Health and Safety
Executive**

Website www.hse.gov.uk

Telephone 01787 881165

**Department of Trade
and Industry**

Website www.dti.gov.uk

DTI Publications Orderline

Admail 528

London SW1W 8YT

Telephone 0845 0150010

Community Legal Service

Website www.justask.org.uk

Telephone 0845 608 1122

Textphone 0845 609 6677

Energywatch

Website www.energywatch.org.uk

Telephone 08459 06 07 08

Appendix D: Addresses of rent assessment panels and areas covered

1. London – London Rent Assessment Panel

Residential Property Tribunal Service
10 Alfred Place
London WC1E 7LR
Telephone: 0207 446 7700
email: london.rap@communities.gsi.gov.uk

This office covers all the London boroughs.

2. Manchester – Northern Rent Assessment Panel

Residential Property Tribunal Service
First Floor
26 York Street
Manchester M1 4JB
Telephone: 0845 100 2614
email: northern.rap@communities.gsi.gov.uk

This office covers the following Metropolitan districts:

Barnsley, Bolton, Bradford, Bury, Calderdale, Doncaster, Gateshead, Kirklees, Knowsley, Leeds, Liverpool, Manchester, Newcastle upon Tyne, North Tyneside, Oldham, Rochdale, Rotherham, St Helens, Salford, Sefton, Sheffield, South Tyneside, Stockport, Sunderland, Tameside, Trafford, Wakefield, Wigan and Wirral.

It covers the following unitary authorities:

Blackburn with Darwen, Blackpool, Darlington, East Riding of Yorkshire, Halton, Hartlepool, Kingston upon Hull, Middlesbrough, North-east Lincolnshire, North Lincolnshire, Redcar and Cleveland, Stockton-on-Tees, Warrington and York.

It also covers the following counties:

Cheshire, Cumbria, Durham, Lancashire, Lincolnshire, Northumberland and North Yorkshire.

3. Birmingham – Midlands Rent Assessment Panel

Residential Property Tribunal Service
2nd Floor
East Wing
Ladywood House
45-46 Stephenson Street
Birmingham B2 4DH
Telephone: 0845 100 2615 or 0121 643 8336
email: midland.rap@communities.gsi.gov.uk

This office covers the following Metropolitan districts:

Birmingham, Coventry, Dudley, Sandwell, Solihull, Walsall, Wolverhampton.

It also covers the following unitary authorities:

Derby, Herefordshire, Leicester, Nottingham, Telford and Wrekin and Stoke on Trent.

It also covers the following counties:

Derbyshire, Leicestershire, Nottinghamshire, Shropshire, Staffordshire, Warwickshire and Worcestershire.

4. Cambridge – Eastern Rent Assessment Panel

Residential Property Tribunal Service
Great Eastern House
Tenison Road
Cambridge CB1 2TR
Telephone: 0845 100 2616 or 0122 3505112
email: eastern.rap@communities.gsi.gov.uk

This office covers the following unitary authorities:

Bracknell Forest, Luton, Milton Keynes, Peterborough, Reading, Slough, Southend on Sea, Thurrock, West Berkshire Windsor and Maidenhead and Wokingham.

It also covers the following counties:

Bedfordshire, Buckinghamshire, Cambridgeshire, Essex, Hertfordshire, Norfolk, Northamptonshire, Oxfordshire and Suffolk.

5. Chichester – Southern Rent Assessment Panel

Residential Property Tribunal Service
1st Floor
1 Market Avenue
Chichester PO19 1JU
Telephone: 0845 100 2617 or 01243 779394
email: southern.rap@communities.gsi.gov.uk

This office covers the following unitary authorities:

Bath and North-east Somerset, Bournemouth, Brighton and Hove, Bristol, the Isle of Wight, Medway, North Somerset, Plymouth, Poole, Portsmouth, Southampton, South Gloucestershire, Swindon and Torbay.

It also covers the following counties:

Cornwall and the Isles of Scilly, Devon, Dorset, East Sussex, Gloucestershire, Hampshire, Kent, Somerset, Surrey, West Sussex and Wiltshire.

Corporate Unit:

Residential Property Tribunal Service

10 Alfred Place

London WC1E 7LR

Telephone: 020 7446 7751 or 020 7446 7752

email: rptscorporateunit@communities.gsi.gov.uk



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