

## **AGREEMENTS FOR LETTING RESIDENTIAL PROPERTIES ON AN ASSURED SHORTHOLD TENANCY**

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Over the last few years more and more people are becoming Landlords. This leaflet is designed to give some general information regarding the letting of residential properties on an Assured Shorthold Tenancy basis. It is intended to cover both furnished and unfurnished premises. It is not intended to cover holiday lettings or student lettings where separate rooms are let or where the Landlord is a private registered provider of social housing. For this type of letting specialist advice will be required. Please note if the Landlord is to live in part of the building then it may not be an Assured Shorthold Tenancy and there are certain rent or rateable value limits which we can advise you on if required.

### **THE TENANT**

This needs to be an individual or group of individuals NOT a Company. If you let to a Company it cannot be an Assured Shorthold Tenancy and will be a non-Housing Act tenancy. Letting to a Company can also cause problems with payment of the rent as sometimes companies with no assets are used or the company is struck off later and this leaves the landlord with no one to sue for the unpaid rent.

### **THE PROPERTY LET**

Licensed premises and property which has more than 2 acres of agricultural land cannot be subject to an Assured Shorthold Tenancy. If your letting has agricultural land you do need special clauses added to your tenancy agreement to deal with the maintenance of the land as this often causes many problems.

### **THE TERM**

The length of the letting should be stated in the Agreement. There is no minimum or maximum period for an Assured Shorthold Tenancy. However, six months or one year are the normal terms.

You should not have a term of more than three years as you may have to pay Stamp Duty and lettings of more than seven years would have to be registered at the Land Registry. Other reasons for having fairly short terms are:-

- Unless you have some special clauses which provide for the rent to be altered you will have to keep to the rent set out in the Tenancy Agreement for the term of the tenancy. It cannot be increased by the Landlord. If, however, you have short terms you can review the rent when the term comes to an end either by trying to agree to a new tenancy

agreement or by service of a prescribed notice proposing an increased rent but we can advise further on that if required.

- It is possible for a Tenant to apply during the first 6 months of the fixed term to a Rent Assessment Committee for the rent to be reviewed. If the rent is found by the Rent Assessment Committee to be too high the rent will be reduced and this figure will then apply for the rest of the term. This does however only apply to the current letting. Therefore once you have terminated the Agreement with the existing Tenant you will still be able to rent the property to a new Tenant at a higher rent. It is therefore sensible to keep the rent term quite short. In addition, with short lettings it is less likely that the Tenant would make an application to the Rent Assessment Committee.

## **TENANCY CONDITIONS**

The Consumer Protection Regulations 2008 will apply to you. It is essential the tenant has very clear information about what must be paid. You also need to make sure the tenancy conditions are in simple language that can be easily understood.

Landlords must disclose to a prospective tenant any information which might affect their decision to rent a property. For example – if a Landlord knows that building work is to be carried on next door to the rental property he must tell the prospective tenant at the first viewing .

Also, the prospective tenant must be given time to read the terms of the tenancy and take advice before the agreement is signed. You may be advised to send a draft of the agreement to the tenant in advance and recommend they take advice from Citizens Advice Bureau or a solicitor.

Ask your tenant to sign or initial all pages of the Agreement so they are unable to suggest clauses were not in the agreement they originally signed.

## **DEPOSIT**

The law now requires the Landlord to safeguard any deposit paid by the tenant with one of the Government authorised tenancy deposit protection schemes and to give written prescribed information to the tenant relating to the deposit (such as details of the Scheme with which it is held, confirmation that the Landlord has complied with the initial requirements of the Scheme and of that Scheme's terms relating to disputes about the deposit) within 30 days of receiving the deposit. Further details can be obtained from [www.gov.uk/tenancy-deposit-protection](http://www.gov.uk/tenancy-deposit-protection).

If the Landlord does not comply with these requirements the Tenant can apply to Court for repayment of the deposit and for up to 3 times the deposit as compensation. In addition, it will not be possible for the Landlord to serve a valid Notice under Section 21 of the Housing Act 1988 (see below) to bring the Tenancy to an end until the procedure has been followed.

At the end of the tenancy the Landlord should try to agree with the Tenant how much of the deposit should be returned taking account of any deductions that the Landlord feels

are necessary. If there is a disagreement about the amount to be returned the dispute resolution procedures of the Scheme under which the deposit is held should then be used.

Remember to state in the tenancy agreement which rent deposit scheme is being used.

### **RENT PAID IN ADVANCE IN FULL**

Sometimes Landlords wish to collect the rent for the whole period in advance. However be aware that if after the tenancy ends and the tenant is allowed to stay on at the property the Landlord will now need to give at least 6 months notice requiring possession. To prevent this you should consider having only part of the rent in advance. So e.g. have a 7 month tenancy with the first 6 months paid in full and the last month payable at the end of the 6 months. By doing this it will only need the usual 2 months notice if the Landlord later wishes to bring the tenancy to an end.

### **LANDLORD'S MORTGAGE**

If the Landlord has a mortgage he must make sure the tenancy complies with the requirements of the lender. For example - some lenders will not allow lettings to Companies, or for more than 12 months, or if notice has not been served under Grounds 1 & 2 of the Housing Act prior to the tenancy commencing. Be very careful to make sure your tenancy complies with the requirements of your Lender. Also, if you mortgage or re-mortgage the property whilst the tenancy is in place you must be sure your letting is acceptable to the new lender. If you do not comply with the requirements of your lender the lender could ask for the loan to be repaid in full.

### **INSURANCE**

Landlords do need to arrange for buildings insurance and be sure the insurance company are aware this is a let property and consent to this. Make sure you also have third party liability cover. Many landlords do not take out contents insurance but remember items such as carpets, curtains, white goods are not covered under buildings insurance. Landlords whose properties may be affected by flooding should also be aware that the 'Flood Re' scheme will not apply to them if they arrange the insurance on the property.

### **BRINGING THE TENANCY TO AN END**

The Landlord must serve written notice upon the tenant in the correct form to bring the tenancy to an end. The Notice required depends on whether the fixed term tenancy was granted before or after 1 October 2015:

#### **For Fixed Term Tenancies Granted Before 1 October 2015**

There are two types of notice which can be served under Section 21 of the Housing Act 1988. Unless the tenant leaves voluntarily, when the term specified in the Agreement comes to an end the tenant will be entitled to continue as a tenant on what is known as a 'statutory periodic tenancy'.

The term of the “*statutory periodic tenancy*” will depend on how often the rent was paid in the original agreement so, for example, if the original agreement required rent to be paid monthly the term will continue on a month to month basis.

Under section 21 of the Housing Act 1988 the Landlord can serve a prescribed notice either during the fixed term or after the fixed term has ended.

If that notice is served during the fixed term it must be of at least 2 months but cannot require possession before the end of the fixed term. This is a notice under Section 21(1)(b). If notice under Section 21 is served after the expiry of the fixed term then this must be a notice under Section 21(4)(a) of at least 2 months and expire after the last day of a period of the tenancy.

### **For Fixed Term Tenancies Granted On or After 1 October 2015**

The Landlord has to use a prescribed form of Notice (Form 6A) (and from October 2018 this Notice must be used whenever the tenancy was granted). The Notice required is simpler as whether it is served during the fixed term or after the end of the fixed term it has to give not less than two months’ notice (though it cannot require possession before the end of the fixed term). However, the Notice cannot be given within the first 4 months of the tenancy.

A section 21 Notice service in relation to a fixed term assured shorthold tenancy granted on or after 1 October 2015 will not be valid unless the landlord has complied with items 1 to 3 below:

1. The requirements summarised above relating to deposit protection (which also apply to fixed term tenancies granted before 1 October 2015).
2. The Landlord is required to provide a copy of the Department for Communities and Local Government’s publication “How to rent: the checklist for renting in England” to the tenant by providing a pdf copy (which may be obtained from [www.gov.uk/government/publications/how-to-rent](http://www.gov.uk/government/publications/how-to-rent).) We recommend that this should be given at the start of the tenancy.
3. The Landlord has to provide the tenant with:
  - a) An Energy Performance Certificate (Reg 6(5), The Energy Performance of Building (England and Wales) Regulations 2012); and
  - b) A gas safety certificate (Reg 36(6)(a), The Gas Safety (Installation and Use) Regulations 1998).

The other way to try to obtain possession is for the Landlord to serve a Notice Seeking Possession under Section 8 of the Housing Act 1988 relying on certain statutory grounds. In some cases, such as where the tenant is at least two months in arrears of rent or is in breach of another obligation of the tenancy agreement, the court has power to order possession during the fixed term.

If the Landlord has served the correct notice but the tenant does not leave voluntarily by the expiry date of the notice the Landlord will then have to apply to court for a possession

order requiring the tenant to leave. Further, if a possession order is made but the tenant still does not leave then the Landlord will have to apply to court for the court bailiffs to set a date for eviction. If the Landlord took matters into his own hand by forcing the tenant to leave without following this process he could be found liable for damages for wrongful eviction and prosecuted for a criminal offence. It is therefore important that the correct notice is served so it is sensible to obtain legal advice before serving the notice.

We would also never recommend that you exchange contracts for the sale of a property unless the tenants have actually vacated.

A new mandatory ground for re-possession due to anti social behaviour has been introduced in the Anti Social Behaviour Crime and Policing Act 2014.

### **FURNISHED PROPERTIES**

A detailed list (or schedule) of all items that are at the property together with a note of their condition should be prepared before the Tenancy Agreement is signed. The Landlord and Tenant should attach a copy of this schedule to the Tenancy Agreement and make sure it is signed by both the Landlord and the Tenant. This will help if there are any disagreements later as to damage caused to any furnishings at the property. We would recommend that you and the tenants sign or initial all pages so the tenant cannot suggest the agreement was changed at a later date.

### **LETTING OF FLATS/MAISONNETTES/LEASEHOLD PROPERTY**

1. As the owner of the property you will be obliged to obey various clauses that are in the Lease of your property. If your Tenant is responsible for breaching those clauses you could still have to pay for the damage done. You should therefore add an additional clause to the Tenancy Agreement stating that the Tenant must observe all the covenants in the Lease. You should give the Tenant a copy of those clauses that they have to obey.

2. You need to read through your Lease carefully to establish whether you are allowed to sub-let your property and if so what terms must be observed. Sometimes the Tenant has to enter into a Deed of Covenant with the Landlord. On other occasions you have to get the consent of the Landlord. The clause may state you cannot let it. You may have to register the Tenancy with the Landlord and pay a fee. It is important that you follow all the requirements in your Lease.

3. Some Leases do not allow properties to be let to Tenants who are in receipt of Benefits from the Department of Work and Pensions. This therefore needs to be checked.

### **LAND REGISTRY PROTECTION**

There have recently been cases where a mortgage has been obtained on a property without the owner being aware. It is possible for property owners to take some steps to prevent such fraud and to protect their ownership by registering a LL Restriction at the Land Registry. We have a separate leaflet "How to protect against property fraud" that explains this to you.

When you come to sell the property you will need to produce evidence of identity to the Land Registry. As you are not resident at the property it is recommended that you register this restriction. You must have an Energy Performance Certificate for a property before it can be let. If you have recently purchased the property you may be able to use the EPC that was obtained for the sale.

### **EPC (Energy Performance Certificates)**

You must have an Energy Performance Certificate for a property before it can be let. If you have recently purchased the property you may be able to use the EPC that was obtained for the sale.

From April 2016, the MEES (Minimum Energy Efficiency Standards) will come into force. Tenants will be able to request Landlords carry out improvements.

From April 2018, properties will require a "E" rating or better unless they are already let.

From April 2020, all privately rented property must be "E" or better.

It is likely that minimum standards will become more stringent and a requirement of "D" by 2025 and "C" by 2030 will be brought into force.

There are currently some proposals in the Energy Act that will prevent a property being let where the EPC rating is "F" or "G". We are currently waiting for more information as it is believed certain properties such as Listed Buildings may be exempted. Full details are not yet available.

### **REPAIR**

Landlords must keep the main structure of the house in repair. They must also make sure all sanitary appliances, installations for space heating, waste, gas and water are all in working order. Where repairs are required they must be carried out within a reasonable time of the landlord being notified – otherwise the Tenant is entitled to compensation.

Landlords are required to obtain a Gas Safety Certificate annually which covers inspection of gas appliances and flues. Carbon monoxide detectors must be installed in all properties.

All electrical appliances must be PAT tested regularly. Landlords should have an electrical certificate carried out before they start renting and certificates are valid for 10 years.

Chimneys must be swept annually and smoke alarms must be installed.

### **HOUSES IN MULTIPLE OCCUPATION**

This leaflet and the draft Tenancy Agreement provided is not intended to relate to a House in Multiple Occupation (HMO) as a HMO is essentially a building consisting of 1 or more units of living accommodation not consisting of a self-contained flat or flats, which is occupied by persons who are not all members of the same family and where the persons share basic amenities such as a toilet or cooking facilities. A HMO usually has to be licensed by the local authority and might commonly cover student lettings.