



AGREEMENTS FOR LETTING RESIDENTIAL PROPERTIES ON AN ASSURED SHORTHOLD TENANCY

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. 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.

If the landlord lives abroad an address for contacting the Landlord within the United Kingdom must be given

Landlords also need to be aware of the requirements of the Immigration Act 2014. Landlords are required to check that a Tenant has a 'right to rent' and continue to have that right throughout the tenancy. There are no problems with British Citizens, EU citizens and those of Switzerland up to 30/06/2021 but great care needs to be taken if a property is rented to anyone from any other country and after June 2021. There are penalties on the Landlord if the Act is not complied with. (Helpline 0300 790 6268) Also, there is a Landlords checking service available on the gov.uk website.

THE PROPERTY LET

Licensed premises and property which has more than 2 acres of agricultural land cannot be 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. All tenants must be given an up to date copy of “How to Rent” at the start of the tenancy.

DEPOSIT

The law 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.

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 is under Section 21 of the Housing Act 1988. Unless the tenant leaves voluntarily, when the term that is 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 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.

Remember you could only serve before the expiry of the fixed term and only after you had complied with the notice requirements relating to the deposit summarised above.

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 hands 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.

The correct procedure must be followed and all forms must be correct. If you would like assistance please contact Mark Blake in our Litigation department. 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/MAISONETTES/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. In addition make sure your address at the Land Registry shows your correct address and not the address of your rental property. You can also sign up for property alerts – you are notified if a request to add a mortgage or change of owner is made.

EPC (Energy Performance Certificates)

You must have an Energy Performance Certificate for most properties 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.

MEES (Minimum Energy Efficiency Standards) now apply so that if the EPC rating is "F" or "G" you must take immediate steps to comply with the requirements and improve the energy rating of your rental property.

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.

HOUSES IN MULTIPLE OCCUPATION

This leaflet 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.

ADDITIONAL LANDLORD REQUIREMENTS

- Gas safety checks are required annually and you must give your tenants a copy of the Landlord Gas safety record.
- Smoke alarms are required on every floor.
- Carbon Monoxide alarms are required in all rooms containing appliances using solid fuel such as coal or wood.
- Electrical safety checks are required at least every 5 years. PAT testing of electrical appliances provided by the Landlord is recommended.
- You must give the tenant 24 hours notice of any visits.

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