

TENANCY AGREEMENTS

The purpose of tenancy agreements are to set out the obligations and expectations of both parties. These will include how much rent you pay, how long you are entitled to stay in the property and who is responsible for repairs. It is vital that you thoroughly read and understand your agreement before you sign it. If there is anything you do not understand seek an independent view or advice.

When checking over your agreement check the following,

- The name and address of the landlord or landlord's agent to whom rent is payable and repairs reported. Who will be responsible for the management of the property? If you found the accommodation through an Accommodation Agency will they be managing the property or should you deal directly with the landlord if a problem arises?
- The amount of rent and how often it is paid?
- If you have to pay a returnable deposit, how much it is and how it will be protected?
(for further information about Deposits please see information on page 4)
- What is included in the rent? If heating, lighting and hot water are extra for example, how are they paid and how much will it cost?
- The length of the agreement and when it starts. Consider how long you need the property for and check when your course ends. Once you commit to an agreement your landlord is unlikely to release you early unless there is a replacement for you and even if there is there is you may incur additional charges.
- What happens at the end of the initial period, is there an option to renew, does it become a periodic tenancy?
- Is there an option to break or end the agreement early?
- If you are entering an agreement with others is the tenancy offered as a joint tenancy? If it is a joint tenancy you need to be aware of the rules around this. Joint tenants are responsible for paying rent and bills as a collective and you may be pursued for fees should another tenant not pay their share. There is more on this below
- Any restrictions on visitors or use of facilities (e.g. telephone, kitchen, bathroom).
- Any other terms that appear to place an unrealistic burden or financial penalty upon you

The two most common agreements for students are tenancy and license agreements. It is important to know which you have as the rules for each are slightly different.

Please note that the laws effecting tenancies can also vary depending on the date they were created. If you are unsure about your security of tenure you should seek further advice.

Licence:

There is some legal debate about the definition of a "Licence". However, you are probably a licensee if:

- You are a lodger/have a room in your landlord's primary residence.
- You share a bedroom with another lodger or a member of the landlord's family.
- You do not have exclusive use of your room i.e. the landlord has unrestricted access to your room, for example, to carry out cleaning or to provide services.
- You are a relative of the landlord or you are staying on an informal basis with a friend.

In broad terms, you are a tenant if you have a legally binding right to occupy a property (or room) and to exclude other people from it. A licensee is someone who merely has the permission of the owner to be in the property.

Security of Tenure:

This phrase is used to describe a licensee's or tenant's right to occupy the property.

Licensees have a limited security of tenure. If you have signed a licence agreement for a fixed period of time you will normally have the right to remain there for the whole of the period.

If you are sharing living accommodation with your landlord you are classed as an "excluded occupier". You are entitled to "reasonable" notice or as much notice as the agreement between the licensee and landlord requires. Notice can be given verbally or in writing. This does not have to be four weeks long; it can be a week or a month, usually depending on how often the rent is due. Your landlord does not need a court order for possession and once the notice has expired, has the right to evict you by changing the locks to your room while you are out, if you do not leave.

If you have a resident landlord you will need to be particularly considerate about how you use the accommodation since you will be sharing their home. It is a good idea to establish some ground rules at the beginning of the agreement to help ensure that misunderstandings do not occur at a later date (e.g. use of the living room, any restrictions on visitors or overnight guests, use of the washing machine, etc.).

Assured Tenancy:

To be an Assured Tenant:

- The landlord must not be resident in the same property.
- You must have exclusive possession of at least part of the property (for example, a room). This means that the landlord or the landlord's agent cannot enter the property without reasonable notice or by prior arrangement.
- You would normally have some cooking facilities.
- The tenancy agreement does not need to be in writing under the terms of the 1988 Housing Act, but from 28 February 1997, unless it is stated **in writing** in your agreement that it is Assured, it is likely that it will be an **Assured Shorthold Tenancy** (see next section).
- Assured Tenancies can either be "fixed term" or "periodic". If it is "fixed term" you are contracted to pay rent for the whole period. If the tenancy is "periodic" it will run from week to week or month to month (depending on how frequently rent is due).

Security of Tenure:

The landlord can gain possession of the property only under certain circumstances. You must be given a written notice called a "Notice of Intention to Seek Possession", containing prescribed information including the grounds on which possession is sought. The length of notice will either be two weeks or two months depending on the ground. After the notice expires, the landlord must obtain a court order for possession before you are obliged to leave.

Joint Tenants:

Groups of students moving into self-contained flats and houses will usually be offered a joint tenancy. This means that you share the responsibility with your fellow tenants for ensuring that all the conditions and obligations of your tenancy are met. If your tenancy states that you must not play music after 11.00pm, for example, you are all equally responsible for ensuring that this obligation is met.

As a joint tenant you are jointly **and** individually responsible for paying the rent and bills. If one of your group did not pay their share of the rent the other members would be equally as responsible for making up this shortfall as the group member who did not pay.

In view of this it makes sense to get to know the people whom you intend to share accommodation with before you sign an agreement, which is legally binding. However, this is not always possible. Even if you are a group of friends, living together may expose another side to people you thought you knew!

If something does go wrong, for example one of you does not pay a bill, you may wish to take action against your fellow tenant, through the Small Claims Court, to recover the money. Please be warned: This process can take a long time.

Also if one of the group serves notice that they are leaving the accommodation this action will make your current tenancy void and you may need to renegotiate with the landlord to remain in the property.

Subtenants:

A subtenant is a person whose immediate landlord is himself a tenant. This situation could arise for example, when a sole-tenant moves out of a property and issues a tenancy agreement to another person who moves in, without the original tenancy being brought to an end.

Most written tenancies include a clause that prohibits subletting outright although some tenancies merely state that subletting is not permitted without the consent of the landlord. If you are a tenant who is subletting to another person without the landlord's permission you could be in breach of your contract.

A subtenant has no legal relationship with the landlord. The subtenant's legal status is dependent on his relationship to the tenant. In many cases, especially involving house and flat shares, where one person moves out and is replaced by another without the original (joint) tenancy being brought to an end, the subtenant will in fact be a licensee. The licensee will have less security of tenure than the other sharers, but will not be jointly and severally liable for the whole rent.

Security of tenure:

If the subtenant is lawful (i.e. the tenant is not in breach of his contract granting a sub tenancy). The subtenant is entitled to remain in the property for as long as his contract with the tenant continues. If the landlord obtains possession against the tenant, he can also do so against the subtenant whose right to occupy is dependent upon the tenant.

If the sub tenancy is unlawful the subtenant does not have many rights against the tenant's landlord if the landlord obtains possession against the tenant.

Information about Deposits that landlords must give tenants

Within 30 days of getting your deposit, your landlord must tell you:

- the address of the rented property
- how much deposit you've paid
- how the deposit is protected
- the name and contact details of the tenancy deposit protection (TDP) scheme and its dispute resolution service
- their (or the letting agency's) name and contact details
- the name and contact details of any third party that's paid the deposit
- why they would keep some or all of the deposit
- how to apply to get the deposit back
- what to do if you can't get hold of the landlord at the end of the tenancy
- what to do if there's a dispute over the deposit

If you have any more questions please get in touch using the options below.

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