

Landlord and Tenant

A brief guide - from creation to possession



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Topics to be covered

- History of Landlord and Tenant Law
- Types of Tenancies
 - Regulated Tenancies
 - Assured Tenancies
 - Assured Shorthold Tenancies
- Local Housing Allowance
- Rent deposits
- Terms of an Assured Shorthold Tenancy Agreement
- Guarantors
- Possession notices
- Court Proceedings

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History of Landlord and Tenant Law

- Over the years the pendulum of control has swung from Tenant to Landlord and then back towards the middle ground.
- Pre Rent Act 1977 the law favoured Landlords.
- Rent Act tenancies introduced regulated tenancies.
- Housing Act 1988 introduced Assured and Assured Shorthold tenancies, but with the predominance of the Assured tenancy.
- Housing Act 1996 introduced amendments to the Housing Act 1988 by altering the default position to Assured Shorthold Tenancies.

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Types of Tenancy

- Regulated Tenancies
- Assured Tenancies
- Assured Shorthold Tenancies

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Regulated Tenancies

- Granted up to 14th January 1989
- Fair rent provisions
- Security of tenure
- Rights of Succession

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Assured Tenancies

- Most tenancies granted after 15th January 1989 but before 28th February 1997
 - Unless previously a regulated tenancy
- Landlord can obtain possession, but only on limited grounds.
- 8 mandatory grounds and 10 discretionary grounds

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Mandatory Grounds

- Owner/occupier
- Mortgagee in possession
- Holiday homes
- Student lettings
- Minister of religion
- Demolition, construction or substantial works
- Death of a tenant
- Substantial arrears of rent

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Discretionary Grounds

- Suitable alternative accommodation
- Some arrears of rent
- Persistent delay in paying rent
- Breach of obligation of tenancy
- Deterioration of dwelling house or common parts
- Nuisance, annoyance, immoral or illegal user
- Domestic violence where the Landlord is a Registered Social Landlord
- Deterioration of furniture
- Tenancy resulting from employment by the Landlord where the employment has ceased
- False statement by the tenant

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Assured Shorthold Tenancies


- Tenancies granted between 15th January 1989 and 28th February 1997

AND

- Landlord served notice in the statutory form (section 20 notice)
- Upon the tenant
- Before the Tenancy commenced

- Must be a tenancy for not less than 6 months
- Must not contain any provision giving the Landlord the power to determine earlier than 6 months

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Assured Shorthold Tenancies

- All tenancies granted on or after 1st March 1997 are Assured Shorthold Tenancies

UNLESS

- The tenancy is between the same Landlord and the same Tenant where the Tenant was an Assured Tenant immediately before the new tenancy commenced
- The tenancy agreement states that it is not an Assured Shorthold Tenancy or if the Landlord serves notice to this effect.


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What is not an Assured Shorthold Tenancy?

- Tenant is not an individual – e.g. a company;
- Tenant does not occupy as principal home;
- Tenancy at:
 - no rent; or
 - rent higher than £25,000pa; or
 - rent at less than £1,000pa (if property in Greater London);
 - rent at less than £500pa if the property is located otherwise than Greater London);
- Licensed premises;
- Agricultural land;

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- Lettings to students by educational establishments;
- Holiday lettings;
- Resident Landlords;
- Crown Lettings;
- Local authority lettings;
- Temporary housing for the homeless;
- Housing for asylum seekers.
- Business Tenancies

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***If not an Assured Shorthold Tenancy,
what is it?***

- If the tenancy is not an assured tenancy, or a regulated tenancy then:
 - General lease/tenancy agreement;
 - Common law provisions will apply
 - Re forfeiture;
 - Notice provisions;

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***Characteristics of an
Assured Shorthold Tenancy***

- It is a type of Assured Tenancy;
- Grounds for Possession:
 - Assured tenancy Grounds for Possession also apply;
 - Extra ground under section 21 – possession following expiry of the fixed period;

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- The agreement does not need to be in writing; however – Section 20A HA(88) provides that the Tenant may require a written statement of the principal terms of the tenancy by written notice:
 - Date of commencement;
 - Rent payable and when;
 - Any terms relating to rent review;
 - What the fixed term of the tenancy is.
- Failure to provide the information is a criminal offence

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Terms of an Assured Shorthold Tenancy

- Tenant's full details;
- Clear definition of the Premises
- Tenancy Period
- Rent
- Rental Periods
- Rent Days
- Deposit
- Guarantor
- Furnished/Unfurnished – Inventory (photos/video)
- Repairs and condition

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- Outgoings
 - Utilities
 - Council tax
 - TV licence
 - Insurance
- Communal areas
- Late payment of rent:
 - Interest
 - Landlord administration fees

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- Keys:
 - prevention of changing locks
 - Lost key charge
- Use – residential only
- Nuisance
- Landlord's ability to enter and inspect
- Assignment and underletting
- Notices:
 - Main home
 - Mortgage in possession

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Local Housing Allowance

- New provisions introduced from 7th April 2008.
- Tenants renting properties from private landlords.
- Aimed to be a fairer system for claiming Housing Benefit.
- Will be paid to Tenant and not to the Landlord unless:
 - Tenant is vulnerable and cannot manage their own financial affairs; or
 - Tenant is unlikely to pay their rent and has previously been in arrears; or
 - Tenant has rent arrears of 8 weeks or more.

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Rent Deposits

- From 6th April 2007 all deposits must be protected within 14 days of receipt of the deposit by the Landlord or his agent.
- The Landlord can use one of two types of deposit protection:

Insurance

- Deposit paid to the Landlord.
- Landlord retains deposit and pays a premium to an insurer.

Deposit Protection Service - www.depositprotection.co.uk
 Tenancy Deposit Solutions Limited - www.mydeposits.co.uk
 The Tenancy Deposit Scheme – www.thedisputeservice.co.uk

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Custodial

- Tenant pays deposit to the Landlord;
- Landlord pays deposit to the scheme.

Deposit Protection Service - www.depositprotection.co.uk

Landlord must give the following information to the Tenant:

- Details of the scheme that the Landlord has chosen
- The Landlord's or his agent's details
- How to apply for the release of the deposit
- Information explaining the purpose of the deposit
- What to do if there is a dispute about the deposit.

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What happens if the Landlord fails to deal with the deposit properly?

- Landlord is unable to regain possession of the premises using the section 21 procedure;
- Tenant can apply to the Court for an order that the deposit is protected;
- The Court may order the Landlord to pay compensation to the Tenant of three times the deposit amount (payable within 14 days)

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Guarantors

- When use?
- Stand alone document or incorporated into Tenancy Agreement.
- Possible difficulties enforcing the guarantee if the agreement seeks to bind the guarantor during both the fixed term of the tenancy and any periodic tenancy that follows.

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Energy Performance Certificates

- From 1st October 2008
- Valid for 10 years
- Landlord must ensure available for all prospective tenants
- Must be free of charge
- Provided no later than (the earlier of):
 - At the time that written information about the property is provided to the prospective tenant; or
 - When a viewing is conducted; or
 - When contracts are entered into.
- Failure to comply may result in a fine.

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Miscellaneous matters

- If the term of the tenancy is in excess of three years then it must be entered into as a deed;
- If the term of the tenancy is in excess of seven years then it must be registered with the Land Registry (if it commenced on or after 13th October 2003)
- Prior to 1st December 2003 most tenancy agreements needed to be stamped, and the agreement is inadmissible as evidence at Court until it was stamped. Since this date SDLT has replaced stamp duty and is no longer applicable save for in relation to long terms at high rents or tenancies granted at a premium.
- Statutory Obligations – repairs to the building and provision of water etc.

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Insurance Products

Mark Deane – The Mortgage Store

01908 867577



**OBTAINING POSSESSION :
HOUSING ACT 1988**

- During the term and on expiry – Section 8 procedure
- On expiry of term – Section 21

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Protection From Eviction Act 1977

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SECTION 8 and SCHEDULE 2

- Prescribed Form
- Court can dispense with service (save for ground 8) when just and equitable
- Proceedings must commence within 12 months
- Date after which proceedings will commence
- Mandatory grounds
- Discretionary grounds – if reasonable to order possession

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SECTION 8	SECTION 21
<ul style="list-style-type: none"> - 14 days notice - Within and after fixed term - 6 weeks wait for hearing - Discretionary - Objective: arrears recovery 	<ul style="list-style-type: none"> - 2 months notice - Effective from end of fixed term - Accelerated possession proceedings - Mandatory - Objective: possession

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SECTION 21 – Mandatory Grounds for Possession

- Within fixed term – Section 21(1)
- After fixed term or outside contractual tenancy – Section 21(4) – to expire on last day of a period of the tenancy

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Service

- By Hand
- Recorded Delivery
- First Class Post
- Certificates of Service

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The Proceedings

- The Standard Procedure
- The Accelerated Procedure

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The Proceedings

Standard Possession Proceedings

- Court fee £150
- Average 6 weeks to hearing
- Claim arrears
- Section 8 or Section 21
- Oral or written tenancy agreement
- If non tenancy deposit scheme compliant
- Evidence

Accelerated Possession

- Court fee £150
- No hearing
- Cannot claim arrears
- Section 21
- Must be written tenancy agreement
- Must be tenancy deposit scheme compliant
- Evidence

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Time Lines

1	2	3	4	5	6	7	8	9	10	11	Bailliff's Appointment at least 4 weeks
Section 8 Notice	Court processes application	Court sets hearing			Standard possession Order (14 days)						

1	2	3	4	5	6	7	8	9	10	11	12	13	14	Bailliff's Appointment at least 4 weeks
Section 21 accelerated notice				Court processes application	Tenant's time to respond	Court processes Order	Standard Possession Order (14 days)							

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Enforcement

- Fee £95
- Why necessary
- When
- How long?
- Practical tips

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Arrears

- Standard possession proceedings
- Small Claims Court under £5,000
- Statutory Demand over £750
- Guarantors

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Tales from Practice

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