

Residential Tenancies

What is a Tenancy?

A tenancy is an "estate in land" granted for a determined period of time - "term of years" or "fixed-term".

For example: a tenancy may be 6 months, 1 year, 21 years, 99 years etc.

Alternatively a tenancy may be granted for a specific shorter period - a periodic tenancy - yearly, monthly, weekly, even daily).

In return for the "time limited" but **exclusive use** and possession of the land (and any building/s on that land) the tenant pays his landlord **rent**.

The landlord may be the freeholder (owner for life - life tenant) or a tenant herself. e.g.:

Freeholder (owner) Landlord grants tenancy to:

- Tenant A (Head lease holder)
- - Tenant A grants a tenancy to "B" (sublease holder)
- - - Tenant B grants a tenancy to "C" etc.

So long as each subsequent **sublease** is shorter in length than the previous one there is no problem.

A tenancy gives a tenant a "legal interest in the land" and he or she cannot easily be deprived of that interest by the landlord. The landlord would need good reason to terminate the tenancy (breach of contract) and would ordinarily need a court order to do so.

To all intents and purposes, whilst a tenancy is in force, the tenant occupier is the **owner of the land** and can act as any other owner would, so long as it's within the terms of his lease agreement and current statutory requirements (Acts of Parliament).

Tenants have a right to "**quiet enjoyment**" which means the freedom to enjoy the property as any "owner" would - free from unnecessary interference by the landlord.

Tenancy agreements are partly contractual, i.e. an **agreement between landlord and tenant** which can be enforced by a court of law. They are also controlled in England and Wales by long established common law property laws. And, particularly with residential tenancies (as opposed to commercial or business tenancies), they are partly governed by **statutory** (Parliamentary) **rules** which cannot be over-ridden by the contractual common law rules.

An important point to remember is that **residential** tenancy agreement terms must be deemed "**fair**" by the **Unfair Terms in Consumer Contracts Regulations 1999**. See the Office of Fair Trading's [Guide to Unfair Terms in Tenancy Agreements](#).

An unfair term in a tenancy agreement may well reassure the landlord, or indeed the tenant, on some point, but it would be **unenforceable at law**.

Fixed Term & Periodic Tenancies

Tenancies usually start with an **agreed fixed-term**, (for example 6 or 12 months) during which time both parties are contractually bound - the tenant to **pay rent for the full term**, and the landlord to allow the tenant exclusive possession and quiet enjoyment.

Once the **fixed-term** of a tenancy has expired, however, unless a new fixed-term is agreed, all tenancies automatically become **periodic tenancies**. These are based on the rent payment period - **weekly or monthly** etc. The periodic tenancy can thus continue until one side, landlord or tenant, gives [notice](#).

At the end of the fixed-term the tenant can leave, but if he or she stays on, even for just one day, a periodic tenancy is automatically created - there is no legal requirement for either party to do anything at all - the tenancy can **continue on indefinitely** on a periodic basis and on exactly the same terms as the original agreement, which still fully applies.

What is a Licence?

A tenancy gives the tenant a legal interest in the land - in effect, legal ownership for the period of the tenancy. The tenancy can even be sold (assigned) to another tenant, though residential tenancies usually forbid this.

The **grant of a license** does not create an estate in land and the licensee does not gain an interest in the property, purely permission to occupy it. Stays in Hotels, Hostels, Lodgings (where the "landlord" is resident but the tenant does not have exclusive possession of any part) letting a room in your own home, holiday lettings, employees of a business living on the premises, and some houses in Multiple Occupation (HMOs) are all license agreements. See [Licenses](#).

Licenses

A **tenancy** gives the tenant a legal interest in the land and property - in effect, legal ownership for the period of the tenancy. Tenancies can take several forms:

- Rent Act or Regulated Tenancies - pre
- Assured Tenancies
- Assured Shorthold Tenancies (default)

A **license** is different - it gives the "tenant" permission to occupy only. The tenant therefore gains no interest in the property or land, merely a consent from the landlord to occupy for a period of time.

The grant of a license does not create an estate in land and the licensee does not gain an interest in the property, purely permission to occupy it.

Stays in Hotels, Hostels, Lodgings (letting a room in your own home) holiday lettings, employees of a business living on the premises, and some HMOs are on license agreements.

Occupier with Basic Protection - Common Law Tenancy

Interestingly, there is in fact a half-way house between tenant (full tenancy rights) and lodger (licence to occupy) - it's called an "Occupier with BASIC PROTECTION" or a Common Law Tenancy. This situation arises where the tenant shares a house or building with the landlord, but not the accommodation, and has exclusive possession of one part, normally a self-contained flat. In this situation the tenant is a common law tenant having reduced protection as compared to a tenant or tenants occupying a separate property with an Assured Shorthold (Housing Acts 1988 & 1996) tenancy. With a Common Law Residential Tenancy any deposit taken is not subject to the Deposit Protection rules and the complicated Housing Act possession procedures. The landlord can merely forfeit the tenancy for breach of contract.

Long Tenancies or Leases

Residential landlords are mainly concerned with letting on short tenancies (up to 7 years) but if they let out flats they may themselves have bought a long lease on the flat - usually anything up to 999 years.

A long lease involves the purchase or payment of a premium (purchase price of the lease) along with usually an annual ground rent and service charges. See [Long-Leasehold](#).

Multiple Tenants

When more than one residential tenant occupies a property it is common to have all the individuals sign the lease agreement (Joint Tenancy) so that all have **joint and several** liability. If one tenant absconds, all the others, or if the landlord can find only one, just one of the others, is responsible for all the rent and expenses.

Tenants should ensure that their sharers in a joint tenancy are responsible people, or they may find themselves footing the bill!

Creating a Tenancy

A tenancy can be created by the conduct of the parties and does not need to have a written agreement to be legally binding.

Once a person is given possession (exclusively) of land or property (usually evidenced by possession of the keys) and the owner accepts rent payments, a tenancy comes into existence.

Creating tenancies on a casual basis such as this (even for friends, perhaps especially for friends) is not the sort of thing any sensible landlord would do! A written agreement or lease is absolutely crucial to any successful tenant / landlord relationship.

Any landlord (or tenant) without a written agreement is "in the lap of the Gods" or, more specifically, the civil court judges. The relationship is then governed entirely by whatever statutory rules exist and the ability to provide evidence other than a written agreement as to the rent payable, when it is due, and when the tenancy started.

Modern agreements aim to strike a fair balance between the interests of both the tenant and the landlord and should be in plain English.

It's good practice for landlords to make sure that tenants understand their agreements (obligations) at the signing of the agreement, by discussing the terms.

Tenants in any doubt should seek legal advice, though reputable "standard" residential tenancy agreements often afford some reassurance.

Tenancy Agreement or Lease?

Ordinary written residential tenancy agreements can be bought "off the shelf" from various sources. see the LandlordZONE Agreements and Documents sections.

So long as these agreements have been well drafted they often suffice quite nicely for residential tenancies. Experienced landlords and agents often like to include specific clauses of their own, and may have them prepared by a solicitor.

An ordinary written agreement cannot be used for a tenancy exceeding **three years in length**. Tenancies for longer periods need a **lease** drawn up and signed as a deed. .

What kind of Residential Tenancy?

There are currently 5 kinds of residential tenancies:

1. The **Protected (Rent Act) Tenancy** - tenancies entered into before 15 January 1989.
2. The **Assured Tenancy** - introduced by the Housing Act 1988.
3. The Assured Tenancy - Housing Act 1988
4. The **Assured Shorthold Tenancy** - introduced in 1988 but amended by the 1996 Housing Act.
5. The Common Law Tenancy - as explained above, where landlord live in the same building

The Rent Act Tenancy

These tenancies give the residential tenant considerable security of tenure and they also regulate the level of rent payable by the tenant.

Basically these are uneconomic to operate and landlords need to exercise caution when purchasing properties with existing tenants (sitting tenants), in case there are any Rent Act tenants.

As a general guide a property with a sitting Rent Act tenant is worth considerably less than its vacant possession value. These properties regularly go through auctions as "reversionary investments, where landlord investors purchase for their reversion value, expecting to gain when the sitting tenant passes on. It is important to realise here that under the Rent Act rules members of the tenants family, in some circumstances, have succession rights to the tenancy.

The [Residential Property Tribunal Service](#) can determine Fair Rents and Market rents for Regulated (Rent Act) and Assured tenancies.

The Assured Tenancy

The modern assured tenancy still affords tenants security of tenure but enables the landlord to charge a market rent and to regain possession on certain grounds, as laid down in the Housing Act 1988. For example, if the tenant falls behind in his rent payments by more than 2 months the landlord can apply to the courts for a possession order.

The [Residential Property Tribunal Service](#) determine Fair rents and Market rents for Regulated (Rent Act) and Assured tenancies.

The Assured Shorthold Tenancy

A special kind of Assured Tenancy is the Assured Shorthold which has one additional special ground for possession - it is a guaranteed granting of a possession order after an initial agreed period (the shorthold period) of usually 6 months.

All new tenancies since 28 February 1997 are automatically Assured Shortholds, unless the agreement has specified an Assured Tenancy.

Shorthold Tenancies granted after 15 January 1989 and before 28 February 1997 are only enforceable by the landlord if the correct notice was served at start. A prescribed form Section 20 Notice was needed.

Point to Watch for Landlords:

1. Once a tenancy has been created it cannot be changed to another type of tenancy by or on renewal.
2. Rent Act Tenancies can seriously damage your wealth, and perhaps your health as well!
3. Beware when buying properties with sitting tenants. Are there any Rent Act tenants?

4. If there are early Shorthold tenants, has a **Section 20 Notice** been properly served, can you prove it, and does a proper Shorthold agreement exist?
5. Never, ever create a tenancy on a casual basis - always have a substantial written agreement which is properly witnessed on signing.
6. Make sure that all occupants in your property are documented tenants, having signed an agreement. New arrivals should be put on the agreement as soon as possible.
7. Never try to force a tenant to leave - a court possession order must always be obtained if the tenant won't leave and the landlord wishes to end a tenancy - see [Harassment](#).
8. If in doubt about the financial security of the tenant or for younger tenants always try to obtain a surety agreement (guarantee) from parents or another home-owner willing to stand surety in case of default or damage.
9. Always screen and [verify tenants](#) very carefully before handing over the keys to your property. Remember, you are handing over a very valuable asset when you let out your property - would a bank lend you money without doing thorough checks?

Tenancies brought into existence before **15 January 1989** are governed by the Rent Act 1977. These are uneconomic for landlords to operate - avoid them if you can. Exercise extreme caution when purchasing properties with existing tenants.

Tenancies commencing after 15 January 1989 but **before 28 February 1997** may be either Assured Tenancies or Assured Shorthold Tenancies. The default tenancy here is the Assured one which offers more security to the tenant, unless the landlord can show that the correct Shorthold (Section 20) Notice was served. Again, caution is needed when purchasing with existing tenants.

After **28 February 1997** the default tenancy is the Assured Shorthold Tenancy. This is unless the landlord served a notice specifically stating that an Assured Tenancy was being created.

(Article taken from www.Landlordzone.co.uk)