



# Being a tenant

## Types of tenancy

There has been a significant increase in the availability of private rented property over the last few years and therefore an increase in the number of tenants and landlords. As a result it is increasingly important to know and understand your rights and obligations.

Firstly, however it is important to understand and make sure you know the type of arrangement that exists between you as the occupier of the property and the owner. The nature of that arrangement can be dependent on the type of accommodation provided.

The following types of occupation and accommodation (with the exception of council/social housing) do not generally provide enhanced legal protection:

- you live on the premises and you share some of the rooms such as a bathroom, kitchen or other living space with your landlord, you will not be a tenant. Legally known as an excluded occupier, you will often be referred to as a lodger
- you live in a hostel or bed and breakfast hotel as an occupier. You are likely to fall into the same category as above and be an excluded occupier
- you have been granted a license to occupy which creates an agreement for you to occupy the property for a defined length of time. This is often used for very short stays and, again, you are not a tenant but a licensee
- your employer is providing living accommodation as part of your job and as such you may be a service occupier or tenant. This can be quite a complex area of law and further clarification may be required
- you are living in student halls of residence provided by a college or university, and as such will be an occupier who may qualify for basic protection
- you have been granted a Tenancy at Will (where an occupier is in occupation pursuant to negotiations for a lease). This is a flexible tenancy which is indefinite and continues until either party gives notice bringing the tenancy to an end.

If none of the above applies, the rent is paid to your landlord, and you do not share the premises with them, it is likely you have entered into an assured shorthold tenancy (AST). Even if there is no agreement in writing, you will be a tenant.

## Assured Shorthold Tenancy (AST)

An AST is by far the most widely used type of tenancy. These types of tenancies are usually for a minimum fixed period of six months and continue to roll on a month-by-month basis once the initial fixed term has expired – unless a new fixed-term tenancy is negotiated/agreed. This rolling over period is known as a Statutory Periodic Tenancy (SPT). You can view a copy of a model AST agreement here which your landlord may use.

## Assured tenancy

Assured tenancies are those tenancies which are often not for a fixed period and can therefore be significantly more complex to deal with. The grounds for possession for these types of tenancy can also be different and the law more complex if your landlord requires possession.

These types of tenancies can arise in one of three ways:

- if you started to occupy your property between 15 January 1989 and 28 February 1997 and you were not given notice that the tenancy was an AST. If you don't fall into one of the situations listed above you could be an assured tenant.
- you moved in after 28 February 1997 and were given notice stating that the tenancy is an assured tenancy

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- it may also be an assured tenancy if you 'inherited' the tenancy after a regulated tenant died. This generally applies to very old tenancies where the property has been occupied by a Tenant for a very long period of time. If you think this applies to you, you should take legal advice to clarify the situation.

### Landlord responsibilities

Your landlord has a number of responsibilities and obligations to you as a tenant. These are generally set out in your tenancy agreement and include:

#### Not to disturb tenants

It is sometimes necessary for your landlord to access your property and to undertake repairs. However you are entitled to live in your property free from any harassment or unnecessary interference. It is usual in standard tenancy agreements for there to be a clause allowing a landlord entry into the property on giving 48 hours' notice to check the condition of the property and/or to effect repairs.

If after receiving notice from your landlord (or their agent), you do not want this to happen, perhaps it is not convenient for you, then it is possible to object and your landlord should not then use this clause to gain entry at that time without your consent. You do need to be aware, however, that there are statutory inspections, such as those for gas appliances, which are required and access should be allowed for that.

Harassment, is where your landlord or anyone on his behalf, acts in a manner likely to cause distress or make it difficult for you to remain in the property. If this occurs it is possible to report the matter to the police or local authority.

This does not affect your landlord's right to enter the property without notice if there is an emergency. For example, if there is a burst pipe while the property is empty and emergency access is required to stop the water and prevent further damage.



### Carry out repairs

Landlords are responsible for most repairs to the exterior or structure of a property and making sure the property is habitable. Therefore, problems with the roof, chimneys, walls, guttering and drains are the responsibility of the landlord. Landlords are also responsible for keeping the equipment for supplying water, gas and electricity in safe working order.

One of the common concerns tenants call us about relates to the issue of damp within the property.

See below for more details, but generally your landlord will only be responsible for this where it can be demonstrated that the damp problem is caused by a defect in the fabric of the building.

Tenants often have responsibility for some minor repairs and maintenance. This usually relates to:

- internal decorations
- gardens
- small jobs such as changing plugs and lightbulbs
- anything damaged as the result of negligent or wilful act
- we often receive requests for advice from tenants for such things as damp, the failure of domestic appliances or unwelcome guests, such as mice.

Here are some practical points in relation to such matters:

- check the terms of your tenancy agreement to see whether or not the matter complained of is referred to
- damp generally falls into two categories, lifestyle damp and rising/penetrating damp. Lifestyle damp is caused by insufficient air circulating in the property i.e. a lack of ventilation to dry clothes or in the bathroom where steam is not allowed to escape. The mould and the damage caused by such damp will generally be the responsibility of the tenant. It is therefore important to ensure that you have sufficient windows open to allow air to circulate. Rising or penetrating damp is likely to be the result of a structural defect and generally be the responsibility of your landlord. If you have concerns about damp and mould it is possible to ask your landlord for a damp survey or contact your local authority.

Mice and bedbugs are always unwelcome but we are often consulted on whose responsibility it is to pay for any pest control. Generally mice are found where there is food. So if you leave food lying around it is possible mice will follow. If they are present because of your failure to clear away rubbish then they will be your responsibility. With bed bugs if you can show they were present when you moved in then your landlord will be responsible, but if not then it may be your responsibility.



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It is also necessary to check your tenancy agreement for the need to notify your landlord if such an event occurs. This may be relevant in the event your landlord seeks to recover the costs of dealing with this from your rental deposit. Essentially if there is an existing pest control problem when you move in then the landlord is likely to be responsible.

- Domestic appliances are often part of a rented property and are therefore included in the inventory which is checked at the outset of the tenancy. If the appliance stops working during the course of the tenancy, and this is not due to damage caused by your negligence, it should be repaired by your landlord. If this does not happen, you may want to get some quotes for the cost of the repair and give the landlord the opportunity to arrange the repair before getting it done yourself. If you take this course of action you will need to retain all records of any payments made.

### Keeping the tenant safe

Your landlord has a common law duty to make sure that your rented home is a safe place to live. This means the property must be free from danger at all times, such as tripping hazards etc. Where you live in a flat, this duty can also extend to the common parts, such as the entrance hall.

There is a Housing Health and Safety Rating System (HHSRS) which applies to rented property and how hazards are assessed. You can find a copy of the guidance [here](#).

In addition to the general duty and responsibility there are specific statutory obligations to:

- provide a gas safety certificate for every gas appliance supplied, renewed annually
- undertake any work recommended by a gas engineer
- ensure any furniture meets the necessary safety requirement e.g. is fire retardant
- ensure any electrical equipment is safe
- have a working smoke detector and carbon monoxide detector in the property where there is a solid fuel appliance i.e. not a gas appliance. Failure to do so could lead to a fine of up to £5,000

### Assured Shorthold Formalities

If you enter a new AST there are certain requirements that your landlord must comply with. These are:

- to protect your deposit in an approved scheme within 30 days of the start of the tenancy
- to provide prescribed information about the deposit within 30 days of receiving the deposit.

#### Your landlord must also provide:

- an energy performance certificate (EPC). An EPC is valid for ten years and you may be able to check the report for your property [here](#) \*
- a current gas safety certificate \*
- a hard copy or relevant link to a booklet entitled 'How to rent: the checklist for renting in England [here](#).\*

\*Not a requirement in Wales.

Failure by your landlord to provide any of these items could have a significant impact on their ability to be able to apply for possession at the end of the tenancy if you do not leave (see below).

From 1 February 2016 it is also a requirement that your landlord also does a 'right to rent check'. This must be done within 28 days of the start of the tenancy and is required to check your immigration status. Your landlord will need to see your passport and your visa if you have one too. If you have no passport there are other documents you may be able to use to satisfy your landlord's request. You can find a list of them [here](#).

### Immigration Checks

All landlords must now take evidence of a tenant's immigration status. This means for all occupants of the property over the age of 18 the landlord will require evidence to show you are able to live in the UK. Original documents such as a biometric residence permit. You can see [here](#) the type of documents which may be required.

These checks are required where you intend to use the property as your main home and the relevant paperwork is required from everyone before the tenancy can start. These checks will be done by your landlord or their agent.

## Deposits

It is a requirement for all landlords taking a deposit from a tenant in relation to an AST to place that deposit with a recognised deposit service.

There are three such services:

- **Deposit Protection Service – (Custodial and Insured).**
- **My Deposits Tenancy Deposit Scheme**
- **Tenancy Deposit Scheme**

A landlord's duty to protect a tenant's deposit

For all AST's created after 6 April 2007, the deposit must be protected in one of the approved government schemes. Failure by your landlord to do so can have significant consequences. In addition you must also be provided with the prescribed information about the deposit within 30 days of your landlord having received it.

There have been a number of cases about deposits and failure to protect them when a fixed-term tenancy becomes a periodic tenancy at the end of that term. The situation now is that in the event the tenancy continues or is renewed after 26 March 2015, the deposit does not have to be re-protected or re-registered, provided it remains with the same scheme and is the same tenants.

## Information a landlord must provide

Your landlord must provide you with all the information the law requires (known as the prescribed information) within 30 days of receiving your deposit, including:

- **your name and contact details**
- **the amount of deposit received and the address of the tenancy**
- **details of the tenancy deposit protection scheme you are using**
- **a copy of the deposit protection certificate signed by you**
- **information about the purpose of the tenancy deposit protection scheme**
- **how the tenant gets the deposit back at the end of the tenancy**
- **what to do if there is a dispute about the deposit.**

Many landlords use agents to deal with this and the relevant paperwork is often included in the tenancy agreement.

## Types of tenancy deposit protection schemes

The two types of tenancy deposit protection schemes are:

**Custodial schemes** – where the landlord or their agent pays the deposit into the scheme, where it will remain until the end of the tenancy.

**Insurance scheme** – where the landlord or their agent keeps the tenant's deposit but pays an insurance premium to the scheme. This effectively insures the deposit for future return/loss.

To check whether your deposit is registered you will need to check with each of the deposit schemes using the links above and for this you will need to have details of your postcode, the date the tenancy started and the amount of the deposit paid.

## Penalties when a deposit is not protected or is protected late

If your landlord does not follow the correct procedure to protect your deposit, you may apply to the court for compensation of between one and three times the value of the deposit paid.

If your landlord protected the deposit after 30 days of the receipt of the deposit, failed to provide details of the deposit scheme used within 30 days or failed to protect the deposit at all, you can apply to the court during the course of the tenancy or after it has expired for a remedy. A court can also order your landlord to protect a deposit in a suitable scheme.

If this has happened to you there is useful guidance on the Shelter website on what to do next, which you can find here including standard letters and guidance on the relevant court forms to use.

It is worth noting this is not a small claims court process and requires a different procedure called a Part 8 Claim procedure.

## What does it mean if your landlord fails to register your deposit?

With standard ASTs a landlord can decide to evict the tenant after the fixed term has expired by issuing a section 21 notice giving the tenants two months to leave the property. If the tenants do not leave, the next step would generally be for the landlord to issue court proceedings.

However, in order to issue the proceedings your landlord will have to prove that they have protected the deposit and given you the relevant notice containing the prescribed information.

If your landlord has failed to register the deposit, they cannot issue a section 21 notice and cannot therefore gain possession of the property at this time. If your landlord has protected the deposit but has not provided

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you with the prescribed information, they must do so before issuing a section 21 notice.

You may still be subject to eviction proceedings for other matters, such as non-payment of rent, but that is a different matter.

### Return of the deposit at the end of the tenancy

At the end of your tenancy, it will be necessary for the property to be inspected and compared against the inventory which was completed and checked at the outset. The value of items which are missing or damaged due to negligence or misuse may be claimed by the landlord to be deducted from the deposit. Generally, the landlord can only deduct money from the deposit to cover for:

- Unpaid rent
- Damaged property
- Missing items
- Cleaning costs

If there is a disagreement about this the matter will usually be referred to adjudication under the relevant deposit protection rules. You should check with your deposit service how this can be done. The adjudicator will decide the outcome after receiving representations from both the landlord and the tenant. If you would like to see the type of things which are considered please [click here](#) for some case studies or try being the adjudicator yourself [here](#).

We talk to a lot of callers who have concerns about their deposit and if it will be returned in full. It is generally recommended when you move in and out of the property you take photographs of the condition of the property and the contents for reference purposes but worth noting that it is generally for the landlord to prove damage beyond reasonable wear and tear.

### Renting a property in Wales

If you are renting a property in Wales your landlord should be registered with 'Rent Smart Wales' and failure to do so can result in a fine and some difficulty should they wish to apply to the court for possession. Your

landlord must also be licensed to be able to deal with rented property. More information can be found [here](#).

### What if I want to leave the property before the end of the tenancy?

Sometimes circumstances change and you may want to leave the tenancy before it is finished. It may be that a relationship has broken down or an employment change may require you have to move away. If this happens, and you want to leave the property and end the tenancy, you will need to discuss this with your landlord.

First check the tenancy agreement to see if there is a break clause, meaning after a certain point in the tenancy you are able to give notice. This type of clause is more often found in longer tenancies. For example, in a tenancy for 12 months there is often a break clause at the six-month point.

If there is no break clause then generally you cannot leave without your landlord's agreement. You will need to discuss this with them and explain the circumstances you find yourself in. If your landlord agrees, you should sign a mutual surrender agreement. This means both you and the landlord agree the tenancy is at an end and you will not be required to pay any more rent but you will have to pay for any arrears there may be at that point.

If your landlord does not agree for you to leave you may be liable for the rent until the end of the tenancy. If this is the case, please call for further advice.

### Letting agents

We receive frequent calls from tenants who are not happy with the way letting agents deal with them during the tenancy period. In these circumstances it is important to recognise that the agent is acting on behalf of the landlord and as such is employed to protect your landlord's interests.

Most of the complaints concern the delay in getting maintenance and general repairs done in a timely manner. This can be a frustrating experience. It is true to say that some agents are better than others and we never hear about the good ones. However, it is also

the case that some agents have limited authority to deal with small routine matters without the landlord's express authority and this means this type of issue can be dealt with relatively quickly.

In other situations, that may not be the case, and with large expenditure items such as a boiler problem, express instructions will be required from the landlord. This means sometimes letting agents are not in a position to deal with matters as you may like. In those circumstances it may be useful to try and contact the landlord direct if you have contact details. It is lawful for a landlord to provide the address of the agent as a contact point and in those circumstances are not obliged to provide any further personal details.

Finally, all the estate agents must belong to one of the following schemes:

- [The Property Ombudsman](#)
- [The Property Redress Scheme](#)

If you complain to a letting agent and the complaint is not resolved to your satisfaction, you can refer to one of the ombudsman schemes outlined above.

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