

COMMON Q & A

ARE THERE ANY RULES ABOUT WHAT COMES WITH A PROPERTY? (IF IT'S FULLY FURNISHED, PART FURNISHED OR UNFURNISHED)

No, there are no strict rules but both expectations and reality can vary in different areas of the country and even within different niche sectors within the local markets.

Generally, a property offered as "fully furnished" would come with all the main fixtures, furnishings and fittings, white goods etc., plus the standard crockery, cutlery, glassware, pots and pans etc., that a reasonable tenant would normally use on a day to day basis.

At the other end of the scale, an "unfurnished" property would normally be provided only with such basics as carpets, cooker, curtains and light fittings. Clearly, there are infinite variations between these two extremes of what might be included.

Therefore, the critical aspect, whether you are a landlord or tenant, is to make sure that everyone clearly understands what main items are, or are not, included before finalising the tenancy agreement.

WHAT ABOUT SAFETY REGULATIONS FOR A RENTED PROPERTY?

There are specific legal obligations and responsibilities on a landlord with regard to Fire safety for Furniture & Furnishings; Gas supply and appliances; plus Electrical wiring and appliances; these are more fully explained in the information sheet "Lets make it Safe".

WHAT ABOUT INSURANCE?

Landlords and tenants should take care to review any existing policies when renting or letting a property for the first time as some standard insurance products will either not provide cover, or might place restrictions on cover, for rented property and/or its contents. A failure to inform your insurer that you are renting/letting a property could invalidate any subsequent claim. It is for a landlord to insure the building and his/her contents, fixtures and fittings. The tenants are responsible for insuring any of their own possessions. There are various specialist insurance products designed for landlords and tenants and rented property: - Buildings, Contents, Legal Expenses, Emergency Repair cover, Rental Guarantee cover etc. [After the 14th January 2005 it will be illegal for a letting agent (or anyone else) to advise on or sell such general insurance products unless they are authorised by the Financial Services Authority (FSA), or, directly regulated by a broker registered with the FSA.]

WHAT ABOUT AN INVENTORY/SCHEDULE OF CONDITION?

This is an absolutely essential document that provides a written benchmark, which should be amended, updated and recreated before the beginning of each new tenancy. A properly constructed Inventory/Schedule of Condition details the fixtures and fittings and describes their condition and that of the property generally.

Landlord and tenant often share the costs involved in preparing and checking the inventory; such costs should be seen as a necessary investment that helps protect the interests of both landlord and tenant.

WHAT IS A TENANCY AGREEMENT?

A tenancy agreement is a legally binding contract between a landlord and tenant that sets out both the legal and contractual responsibilities and obligations of the two parties. It should be written in plain and intelligible language (no unnecessary jargon!) and its terms and clauses should be fair and balanced, taking account of the respective positions of the parties and should not mislead about legal rights and responsibilities.

Landlord and tenant should take care to individually negotiate any particular terms or conditions that are important to them or especially relevant to the particular let or property.

WHAT KIND OF TENANCY WILL BE USED?

The most common form of tenancy agreement used is an "Assured Shorthold" (an AST) under the 1988 Housing Act (amended 1996). This type of tenancy offers the most flexibility to both landlord and tenant; has straightforward notice procedures for bringing the tenancy to an end and a special Accelerated Possession court procedure should tenants fail to vacate.

If certain specific conditions are met relating to the proposed letting, a "contractual" non-housing act tenancy must be created. One example of this would be what is commonly referred to as a Company Let where the tenant is a bona fide registered company, another would be where the annual rent equates to over £25,000.

Very rarely, a prospective tenant may be offered a full "Assured" tenancy that gives very significant and potentially long-term security of tenure to a tenant and, for which a landlord can only get possession in very limited circumstances.

Most ARLA members will have their own "in-house" agreements which are usually much more comprehensive than ones bought in a local stationers or Post Office etc. Following lengthy consultation with the Office of Fair Trading, ARLA created and now sells a model Assured Shorthold Agreement to both members and non-members.

JOINT & SEVERAL – WHAT DOES THAT MEAN?

Mostly, where there is to be more than one (adult) person living in the property, the tenancy will say they are “jointly and severally” responsible. This expression means that, jointly, the tenants are liable for the payment of all rents and all liabilities falling upon the tenants during the tenancy, as well as any breach of the Agreement.

Individually each tenant is responsible for payment of all rent and all liabilities falling upon the tenant, as well as any breach of the Agreement until all payments have been made in full.

WHAT ABOUT THE TENANCY DEPOSIT?

It is quite common for a deposit of an amount equivalent to between four to six weeks rent to be required to be held during the tenancy against the satisfactory performance by the tenant of all the various obligations under the tenancy agreement - but mainly, those relating to the cleanliness and condition of the property.

The relevant clauses in the tenancy agreement should set out who is to hold the deposit (e.g. agent or landlord), whether interest is to be paid or not, what the deposit can be allocated for and the end of tenancy procedures and timescales for its refund. The best way for a tenancy deposit (bond) to be held during the tenancy is by the agent as “stakeholder” between the parties (landlord and tenant). This means that at the end of the tenancy the agent should get the agreement of both sides before making any deductions for damage, cleaning etc.

We are signed up to the Tenancy Deposit Scheme (TDS) which means that in the event of an unresolved dispute or stalemate over the allocation of the deposit, it can be referred to the scheme for a prompt, independent, third party adjudication - so providing a resolution which is fair to both landlord and tenant.

WHAT IS A “BREAK CLAUSE”?

This is a clause sometimes inserted in a fixed term tenancy, typically if the initial fixed term is for a year or more. A break clause will usually be worded in such a way as to allow either landlord or tenant to give two months written notice at any stage after a particular date or period of the tenancy, thus terminating the tenancy earlier than the end of the original fixed term

WHAT HAPPENS IF EITHER PARTY (LANDLORD OR TENANT) UNEXPECTEDLY WANT TO END AN EXISTING TENANCY EARLY?

There are only limited ways in which this can happen; the landlord cannot make the tenants move out, nor can the tenants lawfully walk away from their obligations to fulfill the contract. Either party might request of the other that a formal "surrender" of the tenancy be allowed. It would then be up to the parties to agree the terms and conditions of such a surrender. This might include some financial compensation for inconvenience or costs incurred.

HOW OFTEN CAN THE RENT BE PUT UP?

In general terms, rent of an existing tenancy can only be increased once every twelve months. Where an assured shorthold tenancy holds over as a statutory periodic tenancy, a specific prescribed form (a section 13 notice) must be used to notify tenants of a proposed increase in the rent.

It is usual, if creating a longer fixed term tenancy at the outset (or one with a binding option to renew), to include a clause that allows for an increase of the rent on an annual basis, typically linked to, or as a multiple of, something like the Retail Price Index (RPIX) or similar.

WHAT ABOUT THE RIGHTS TO ACCESS THE PROPERTY, WHAT ARE THE RULES?

A landlord, or his agent, or someone authorised to act on his behalf has a right to view the property to assess its condition and to carry out necessary repairs or maintenance at reasonable times of the day.

The law says that a landlord or agent must give a tenant at least 24 hours prior notice in writing (except in an emergency) of such a visit. Naturally, if the tenant agrees, on specific or odd occasions to allow access without the 24 hours prior written notice, that is acceptable.

[A clause in the tenancy agreement which tries to diminish or over-ride a tenant's rights in this respect would be void and unenforceable.]

REPAIRS & MAINTENANCE ISSUES

A landlord, in very general terms, has a legal responsibility to repair the structure and exterior of the property, including drains, gutters and external pipes; to keep in working order the installations for the supply of gas, electricity and water; and, for the installations for the provision of space and water heating. The landlord also has other legal responsibilities relating to the safety of such items as gas, electricity and furnishings as well as the general standard or fitness of the property for habitation.

A tenant has an implied covenant to act in a "tenant-like manner". Broadly, this means to report disrepair promptly; to take reasonable steps to ensure that neither the tenant

nor guests damage the property, its fixtures and fittings; to do the minor day to day things any home-occupier would normally do e.g. replace light bulbs, fit a new battery in a smoke or CO2 detector, tighten an odd screw which has come loose on a door handle etc.; to keep the property reasonably warm and aired to help prevent condensation or freezing of pipes; to leave the property secure when absent from it; to keep the garden and other areas reasonably tidy and free from rubbish.

ARE TENANTS ENTITLED TO KNOW THE NAME AND ADDRESS OF THEIR LANDLORD?

Yes, there are two or three bits of law covering this and it is a criminal offence for an agent (or whoever is collecting the rent) to fail to provide, without reasonable excuse, this information within 21 days of formal written request by the tenants

WHAT ABOUT RENEWALS & EXTENSIONS OF A TENANCY?

This is a very common situation and the Agent will normally negotiate between the parties and prepare the necessary formal documentation for a replacement tenancy or fixed term extension.

If no further fixed term is created to follow on from the end-date of original term, and assuming notice to end the tenancy has not been served, the tenancy can simply hold over as a "periodic tenancy" e.g. rolling on with basically the same terms and conditions and in line with how the rent is due to be paid. This is usually two monthly.

HOW IS A TENANCY TERMINATED?

The law around ending a tenancy is relatively straightforward as long as the right timescales and procedures are followed, along with the use of the correct format of notice. The timescales, procedures and format will vary dependent upon the type, and the status of the tenancy at the time you wish to end the tenancy. Your agent will be able to provide guidance on this.

WHAT HAPPENS IF THE TENANT DOESN'T MOVE OUT AFTER THE END OF A TENANCY?

First, try to quickly establish the reasons why. However, if a tenant does not move out after a tenancy has been lawfully terminated then the landlord can apply to the Courts for a possession order. Under the Accelerated Possession Procedure (which can be used where the tenancy was an Assured Shorthold) the process is usually fairly quick and inexpensive.