

# **Resident landlords**

## **LETTING ROOMS IN YOUR HOME: A GUIDE FOR RESIDENT LANDLORDS**

### **1. Introduction to letting rooms some important principles**

#### **1.1 What types of letting does this booklet cover?**

This booklet deals with many different arrangements, ranging from simply letting a room to a lodger to letting a converted flat in a house.

#### **1.2 Why is it important whether the landlord is considered to be resident?**

Tenancies which do not have a resident landlord are generally regulated or assured (including assured shorthold), depending whether they were granted before or after 15 January 1989 respectively.

There are two main issues where the rights of landlord and tenant differ for resident landlord lets compared with these other types of tenancy: rent and security of tenure. Broadly, someone who lets from a resident landlord does not have a right to challenge the level of rent that he or she has agreed to pay, can be given less notice to leave if the landlord wants to end the letting, and in some situations can technically be evicted by the landlord at the end of the notice if he or she refuses to leave.

Resident landlords have this greater freedom to end an arrangement because it is acknowledged that, should the relationship between the landlord and the person he or she lets to breaks down, the landlord is more vulnerable in his or her own home.

#### **1.3 How exactly is a landlord considered to be resident in law? Does it make a difference if I don't live in the property all the time?**

For lettings started since 15 January 1989, the important point is whether you are using the property as an only or principal home, both at the start of the letting and throughout it.

It is accepted that, for short periods, a landlord may not live in the property yet still be considered to be resident: so long as he or she intends to return and this is apparent, for example if he or she has left belongings. However, only a court can say for certain whether a landlord has maintained enough residence in the property to count as a resident landlord: if not, then it is possible that the letting arrangement may be deemed to have become a regulated or assured tenancy, depending whether it first began before or after 15 January 1989. The definition of residence for determining how the landlord must give notice or can evict an occupier is slightly different (see [section 1.4](#))

#### **1.4 Are all kinds of resident landlord arrangements treated the same in law?**

No. There are two main considerations:

- a. whether the landlord (or a member of his or her family) shares any accommodation with the person he or she is letting to
- b. whether the occupant has exclusive possession of at least one room

a. This is important in distinguishing whether the occupant is protected by legislation in terms of notice to leave and eviction: a non-sharing arrangement will generally give the occupant greater legal protection than where accommodation is shared. (For this reason, lettings which are outside this protection are known as excluded tenancies and excluded licences). Shared accommodation means any part other than stairs, halls, passageways or storage space; so that while a tenant in a self-contained flat would not be considered to be sharing accommodation with the landlord, even someone who has most of their own facilities but shares a toilet would. However, even if the occupier only shares accommodation with a member of the landlords *family*, the arrangement will still be counted as a sharing one if the landlord himself also lives in the house.

To count as an excluded tenancy or licence, the landlord does not have to live in the house continuously, although it must have been his only or main home both before and at the end of the let.

b. This is about the distinction between tenancies and licences. Whereas the usual assumption for any letting arrangement is that it will be a tenancy, there may be some factors present that will make it merely a licence to occupy. The most usual one is a lack of exclusive possession; but if

- the occupier does not have a right to occupy a particular room or rooms, and/or
- there is no rent payable for occupying the room, *and/or*
- the occupation is not running for identifiable amounts of time, for example by the week or month then the arrangement is also likely to be a licence. Common general examples of licences are staying in a hotel, or having a friend to stay for a few days. Tenants have some rights that licensees do not have.

#### **1.5 So what is the difference between a tenancy and a licence to occupy?**

The most important qualification for a letting to be a tenancy is that the occupier is granted exclusive use of at least one room. So if, for example, he or she has her own room and you do not have the right under the agreement to enter it without permission, the letting would probably be a tenancy. If you agree to provide some form of attendance or service which requires you (or someone working for you) unrestricted access to the occupiers room, the letting would be a licence to occupier. If the occupier has to share his or her

room (or all of his or her rooms, if more than one) with someone he or she did not choose, the letting would be a licence.

To be a tenancy, the letting must also be for a particular room (or rooms) that is, without you being able to move him or her around.

### **1.6 What kind of attendance or services would require me to have unrestricted access to the occupiers accommodation?**

These might include regular cleaning of the occupiers room, removal of rubbish, changing the bed linen, providing meals. But none of these on its own necessarily means there is a licence. It is only if you genuinely need to come and go without restriction and cannot be limited to agreed times of the day in order to provide the services, that the occupier will not have exclusive use of the accommodation. In this type of arrangement, the occupier would usually be described as a lodger.

### **1.7 What if I let to more than one person in the house?**

If each person has his or her own room (or rooms), then whether each arrangement is a tenancy or licence will depend on the factors above.

If a room is let on a shared basis, where each occupier has come to the arrangement separately, or you have made it clear to the occupier that it is likely that he or she will have to share the room, the letting will probably be a licence to occupy.

However, even if more than one person shares a room, the letting can still be a tenancy if the sharers entered the arrangement together (joint tenancy): for example, a couple or friends, or a family sharing a flat.

### **1.8 How do the distinctions between different arrangements work in practice?**

Examples of the most common arrangements are as follows:

- *Non-excluded tenancy*: house divided into self-contained flats, occupier lives in one and landlord in another
- *Non-excluded licence (unusual)*: landlord has right to choose new sharer for occupiers self-contained flat; or has unrestricted access to it for cleaning
- *Excluded tenancy*: houseshare arrangement, where landlord lets room(s) in his or her home and shares lounge etc with the occupier; bedsit arrangements where landlord is not servicing rooms
- *Excluded licence*: lodgers, where the arrangement includes cleaning the room; stay by a friend on a casual basis; room is let as a roomshare with existing occupant

This list only gives an indication of how different arrangements might be viewed: it is not definitive, and the important factor for any particular case is how the arrangement works in practice. Only a court can say with any certainty whether a letting is a tenancy or a licence to occupy; and the fact that a landlord may say that what is being offered or has been granted is a

licence rather than a tenancy (or the written agreement is headed licence), does not necessarily mean that this is what it will be considered to be. If there is a dispute or other issue where the nature of the let could be important, it is advisable to get legal advice.

### **1.9 Does it make a difference whether the accommodation is furnished or not?**

In nearly all cases, no: it may only be relevant for some tenancies dating from before 14 August 1974 (see Appendix B).

### **1.10 What if I move out?**

As described in section 1.3, you would only be considered resident for as long as the house is your only or main home. If you cease to live there, then a tenancy may be deemed to have become an assured shorthold tenancy (if the original tenancy started after 28 February 1997) or an assured tenancy (if the tenancy started before this date but after 15 January 1989), of whichever rooms the tenant was letting. The rules for tenancies started before January 1989 are slightly different see Appendix B. If the letting was a licence to occupy, it would not become one of these tenancies since the nature of occupation would still not fulfil all the requirements for a tenancy such as exclusive use.

### **1.11 What if I sell the property or die?**

There are special rules which can ensure that tenants do not automatically become tenants as soon as a resident landlord sells his or her house, or dies, if the new owner will also be living in the property.

If the house is *sold*, the new owner must

- give notice within 28 days that he or she intends to take up residence, and
- he or she must actually move in within 6 months of the sale

Until the new landlord moves in, the tenant enjoys the same security of tenure as if the tenancy was assured shorthold (or assured or regulated). This protection will then be lost so long as the landlord meets the six-month time limit.

If the landlord dies

- two years are allowed for the winding-up of his or her estate, plus
- 6 months as for the sale of a house

During the two-year winding-up period, tenants do not have the greater level of protection of an assured or regulated tenancy that is, they will be treated as if the landlord was still resident.

### **1.12 Does an existing agreement still apply if the property changes hands?**

If there is an existing *tenant* in the property when the new owner buys or

inherits it, the tenancy will continue with the new owner, and the terms of that tenancy will be binding on him even if he did not know of its existence.

This does not apply to *licences*, which will generally continue only if an appropriate agreement is entered by the new owner. But this may be affected by what is known and agreed to at the time when ownership changes, for example if the licensee was part-way through a fixed-term arrangement.

## **2. Before arranging a let some points to consider**

### **2.1 Does the let have to be for a set period or can it run indefinitely?**

This is something for both parties to agree at the outset. There is no minimum length of time that you must allow the let to run for. Usually it will run indefinitely from one rent period to the next a **periodic** letting; or may be agreed to last for a number of weeks, months or years a **fixed term** letting. The nature and length of the let can be important for giving notice when either you or the occupier wants to end it.

A *tenancy* must be for an agreed term, eg weekly periodic or a fixed term of 3 months. If no term is expressly agreed, the letting will be a periodic tenancy, and the term will be whatever period the rent is payable on (usually weekly or monthly).

*Licences* can be more flexible. Although it is normal to agree a licence to run from term to term, or a fixed length of time, as above, it is also possible for it to be entirely open-ended. This would be common in informal arrangements, for example allowing a friend to stay on an as-and-when basis. But you could not charge rent on an open-ended or irregular basis, in order to call the let a licence, if the reality of all the facts of the situation (especially if the occupier had exclusive possession) pointed to it being a tenancy.

### **2.2 I'm an owner-occupier. Do I need permission to let out part of my home?**

If you own the property outright, you do not need permission from anyone to let.

If you have a mortgage on the property, it is in practice essential to get the mortgage lenders agreement to let part of the property first: otherwise, you are likely to be in breach of the mortgage terms. If you are a long leaseholder, you should check the terms of the lease to ensure that you can let part of the property and, if necessary, get the freeholders agreement first. In either of these situations, if your rights in the property end (eg because the mortgage lender forecloses due to mortgage arrears, or the freeholder terminates the lease because of a breach by the leaseholder), so will the sub-tenants.

### **2.3 I'm a tenant. Can I sublet part of the property or take in lodgers?**

If you are a secure council tenant, you have the right to take in a lodger, but cannot sublet without the council's written permission (see housing booklet *Your Rights as a Council Tenant* the Council Tenants Charter). If you are the tenant of a registered social landlord (such as a housing association), you can probably let any spare accommodation, with your landlord's consent, but should check first. If you are a private tenant, you should check the terms of your tenancy. If there has been nothing agreed to the contrary, in many cases the tenant would be free to sublet. *However*, in practice most private tenancies prohibit subletting: because there is something in the written tenancy agreement to this effect (either absolutely or without the owner's permission) and/or because assured (including assured shorthold) periodic tenancies have this prohibition implied. But a tenant can of course ask his or her landlord for permission anyway.

A tenant who has sublet in defiance of these prohibitions cannot use this as justification for denying his own tenant or licensee her rights, for example by evicting her illegally. Also, these restrictions only apply where the intended arrangement is for the tenant to part with possession of some of the property: if, for example, you were informally having a friend to stay, or taking in a lodger who you would be providing services to, you would probably not be giving exclusive use of any of the accommodation.

Again, if any of these types of tenancies comes to an end, so generally will the sub-tenancy.

### **2.4 Will my home insurance cover be affected if I let part of my home?**

It is very likely that insurance premiums will be increased by allowing someone to share the home, because of factors such as accidental damage. It is extremely advisable to check for both contents cover and building cover; and if existing arrangements will not provide cover if part of the property is let, to arrange to extend the cover. (see also [section 2.10](#))

### **2.5 Do I need planning permission or other consent from the local council?**

If you are intending to make physical alterations to the property, it is advisable to check what is proposed with the local council's Planning Department. New adaptations must also comply with Building Regulations (for safety of buildings), and again it would be sensible to seek prior approval of plans from the local council's Building Control Department. Making these checks is especially likely to be important if you are thinking of doing substantial conversion work, such as turning part of the house into a self-contained flat.

You would not need planning permission simply for letting rooms, so long as the property remains primarily your home: but there could be a planning consideration if you were to use it mainly to earn money from letting accommodation.

If rooms in the house are let to several people, it may be classed as a *house in multiple occupation* (HMO). Local councils have the power to require owners of HMOs to register with them (and conform to certain physical standards see below), in order to protect occupants from problems that can arise in shared accommodation. Again, a landlord who is intending to let rooms to several people who do not form a single family should check with the local councils Environmental Health Department.

## **2.6 What facilities should be provided?**

You are free to decide most of these things with the person you let to, subject to the basic requirements of general housing law: you should provide access to kitchen, washing and toilet facilities (but these can be either the ones that you use or separate).

If the house is an HMO, the local council may require certain facilities to be provided for fire safety, and sufficient amenities for the number of occupants (such as toilets and washing facilities). You would also generally be considered to be the HMOs manager, and as such would be responsible for ensuring matters such as cleanliness of shared areas, safety of means of access, and adequate provision for disposal of rubbish. The other occupants of the house must not do anything that hinders you in these duties. The local council has powers to take action where the condition of an HMO does not comply with requirements.

## **2.7 What steps might I take to help prevent problems in the future? (for example, asking for a deposit)**

It is common to ask the intending occupier for references (personal, or from his or her employer or bank) before agreeing the let. You are also entitled to take a deposit before the person you let to moves in, to act as security in case he or she leaves the property owing you money, or to pay for any damage at the end of the letting. The amount of deposit is negotiable, but a months rent is usual.

In a written agreement, it should be stated clearly the circumstances under which part or all of the deposit may be withheld at the end of the let. It is advisable for both parties to agree a list of furniture, kitchen equipment and other items in the property at the outset of the letting and to have this rechecked when it ends in order to avoid disagreements. In any case, taking photographs of the interior of the accommodation when the let starts can also be a useful way of recording its condition, in case of any later dispute about what damage has been caused. Especially where there is no written agreement, it is a good idea generally to discuss beforehand any issues such as whether guests can stay, when music can be played, to help prevent future friction or misunderstandings.

If you take a deposit, it may be advisable to keep the deposit in a separate bank account so that it can be returned easily at the end of the letting unless the conditions for withholding it are met.

If the person you are thinking of letting to can't afford a deposit, there are schemes operating in some areas which guarantee rent or the cost of damage for a specified period. Check with the local councils Housing Department or Housing Advice Centre.

### **2.8 Does there have to be an agreement in writing?**

Not unless the let is a tenancy for a fixed term of more than 3 years. But it is advisable to have one anyway, as this will make it easier to sort out any disagreements which may arise later. Even if there is nothing in writing, both parties must still do whatever they agreed to, except where this conflicts with their legal rights and responsibilities (see below).

A written agreement between landlord and tenant is a stampable document this means that it should be sent or taken to the Stamp Office for stamping in order to have validity if it is subsequently used in court. More details are in the Inland Revenue leaflet *Stamp Duty on Agreements Securing Short Tenancies*. Ask any Stamp Office for information.

### **2.9 Is there a standard form of agreement?**

You can draw up your own agreement, but it is recommended to seek legal advice to ensure that it does not conflict with the duties imposed on landlords and occupiers by legislation, which will automatically override any contradictory terms agreed. Suitable items to cover might include:

- how long the letting will last (e.g. whether it is for a certain number of months, or runs from week to week)
- how much rent the occupier has to pay, and any arrangements for review if necessary
- how much notice each party will give the other to end the letting (but note that the law generally covers this)
- what meals or services will be provided, if any.

Legal stationery companies produce tenancy/licence agreements which have been drawn up using standard clauses. These can be adapted to suit the arrangements desired, but again, it may be advisable to take legal advice on what adaptations may be necessary for your own situation.

The Unfair Terms in Consumer Contracts Regulations apply to tenancy and licence agreements, and if a term is found to be unfair it is not enforceable. The Office of Fair Trading publishes guidance as to what is and is not considered unfair; this includes issues such as use of plain English in an agreement; and in standard agreements, one party being given more right than the other to cancel a contract, or unreasonable restrictions.

### **2.10 Where can I get further advice?**

Advice on general legal issues can be obtained from Citizens Advice Bureaux, the local authority's Housing Advice Centre or Housing Department, or a solicitor. The Community Legal Service Directory in libraries (see also Appendix C) gives listings of what advice sources are available for the local area.

You may also be able to find out from the local authority how you can join a landlords association, which will be able to give advice on a wide range of issues. Some associations can help landlords to obtain lower insurance premiums through block arrangements they have negotiated with insurance companies.