

# The Landlord's guide

As a legal firm specialising in property, Fosters Law have substantial experience in working with investment buyers and landlords of property, dealing with the initial acquisitions of the property, preparation of tenancy agreements, and (if necessary) possession proceedings in the County Court if tenancies do not run smoothly. We have prepared this guide to assist landlords in making initial decisions on tenancy matters, and in an effort to clarify the solicitor's role in this particular area of law. It should be stressed that each particular case will differ on its own facts, and accordingly, advice should be sought from one of our property professionals in the event of any specific queries or issues arising.

We therefore set out, below, some of the typical questions we receive from landlords, and the guidance which we would usually give.

## Do I need a written tenancy agreement?

Since 28th February 1997, and the coming into force of the Housing Act 1996 (which amended the Housing Act 1988), it has been the case that every new residential tenancy created is an Assured Shorthold Tenancy. This is the case unless there is something in writing to the contrary (for example, local authorities and housing associations may have different types of tenancy agreement, and there may be long leases prepared in respect of residential property). Although this means that a new Assured Shorthold Tenancy can be created without any written agreement, it is always better to have a written tenancy agreement in place, so that there is certainty as to the terms agreed between landlord and tenant. This can include the rent payable, any deposit payable and any obligations upon the tenants.

## What is an Assured Shorthold Tenancy?

An Assured Shorthold Tenancy is a type of residential letting, which was created under the terms of the Housing Act 1988 (subsequently amended by the Housing Act 1996). An Assured Shorthold Tenancy provides a form of protection for both landlord and tenant, in that (unless there is something specifically in writing to the contrary) the tenant is guaranteed to have a term of occupation of the property of at least 6 months from the commencement date of the tenancy. This also therefore means that the landlord is able to recover rent for at least that period.

At the end of the initial tenancy term (usually 6 months) the landlord is able to recover possession of the property by serving at least 2 months notice on the tenant. If the notice is served during the currency of the initial tenancy term, then at least 2 months written notice (in a prescribed form) must be served upon the tenant. If, however, the tenancy term has already expired, and the tenant is still in occupation of the property (see below for further details), then the landlord will have to serve at least 2 months' written notice (in a prescribed form) upon the tenant, such notice to expire on a rent day. It is extremely important that the notice is accurate, since it may affect the landlord's ability to recover possession of the property in any future possession proceedings in the County Court.

## Do I need a Guarantor?

In situations where a tenant's financial arrangements are questionable, or where a landlord requires further peace of mind, it can be beneficial to require a Guarantor to join in the tenancy agreement.

A Guarantor is someone who agrees with the landlord to perform all the tenant's obligations under the tenancy agreement, if the tenant himself fails to do so (for example, payment of the rent). It is advisable to have a Guarantor who is a home owner, and enquiries should be made at the outset as to the Guarantor's financial standing.

Either we, or the managing agents, can advise further about these issues.

## What happens if the 6 month tenancy has already expired?

At the expiry of the initial period of the tenancy (whatever term has been agreed between the landlord and the tenant, but usually 6 months), it is open to the tenant to vacate the property. If the tenant decides to stay in possession of the property, the tenant then becomes what is known as a “periodic tenant” and holds the property on a periodic tenancy. This means that the tenancy continues on the same terms as before, but the tenant is effectively granted a new tenancy of the property at the expiry of every rent period (for example, if the rent is paid monthly, the tenant obtains a new monthly tenancy at the end of every month).

If the landlord is happy for the tenant to do so, the tenant can remain in occupation as a periodic tenant, since the terms of the tenancy will be the same as before. The landlord is still able to recover possession of the property, provided he serves the tenant with at least 2 months written notice, to expire on a rent day. If however the landlord wishes to change the terms of the tenancy (for example, to impose a higher rent) then this will need to be dealt with by way of another notice being served upon the tenant, or alternatively, by a new tenancy agreement being prepared.

#### [I want to take a deposit from the tenant. What do I need to do?](#)

Since 6th April 2007, and the coming into force of Schedule 10 of the Housing Act 2004, any Landlord or managing agent who wishes to take a tenancy deposit from a tenant must comply with the various rules and regulations concerning Tenancy Deposits. This applies both to new tenancies and to tenancy renewals.

The rules are too numerous to set out in their entirety here, but include the following:

- ✿ Any deposit must either be paid into a Tenancy Deposit Protection scheme, or alternatively, an insurance policy must be taken out
- ✿ In the event of dispute about whether or not a tenant is entitled to his deposit back at the end of the tenancy, the matter is dealt with under arbitration proceedings
- ✿ If a Landlord (or his managing agent) breaches the rules about Tenancy Deposits, the Landlord must repay the full deposit to the tenant, as well as paying a penalty of three times the amount of the initial deposit
- ✿ If the Landlord has failed to comply with the Tenancy Deposit rules, then he will be unable to take possession proceedings against the tenant until such time as the rules have been complied with.

The area of tenancy deposits is a veritable minefield, and Landlords are urged to take advice at the earliest possible opportunity, to avoid facing financial penalties.

#### [The tenant has breached the terms of the tenancy agreement. What can I do?](#)

In some unfortunate cases, landlords have difficulties with tenants, in that they breach the terms of the tenancy agreement. More often than not, this is because the tenant fails to pay the rent. In those circumstances, it is possible for the landlord to serve notice upon the tenant (a “Section 8 Notice”) confirming the tenant’s breach of the tenancy agreement, and requesting that the tenant vacates the property within a certain period (usually 2 to 4 weeks). Upon service of that notice, the tenant must vacate the property by the designated date. If the tenant does not do so, possession proceedings will need to be issued in the local county court (see below for further information).

#### [The initial 6 month term of the tenancy is about to expire, and I want to get the property back. What do I do?](#)

As referred to above, a landlord can terminate an Assured Shorthold Tenancy of a residential property by serving 2 months’ written notice upon the tenant at any time. The notice period cannot expire earlier than the contractual term of the tenancy, but can in most cases, be served right at the very start of the tenancy agreement, if required.

If the tenancy has continued after the contractual expiry date, and has become a periodic tenancy, then the tenant must be given at least 2 months’ notice, to expire on a rent day.

The notice period has expired, but the tenant has not vacated. Do I need to go through the County Court?

Regrettably, the answer is “yes” in every case. If the tenant is not prepared to vacate the property at the end of either a Section 8 Notice period or a 2 month notice period served pursuant to Section 21 of the Housing Act 1988 (as amended), then the only option for a landlord wanting to regain possession of the property, is to issue formal possession proceedings in the County Court. Proceedings will need to be issued in the County Court which is local to the property itself, which means, for example, the Thanet County Court if the property is in within the areas covered by Thanet District Council.

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## Residential Property

- ✿ Buying or selling residential property
- ✿ Remortgages
- ✿ Transfers of equity
- ✿ Retirement homes
- ✿ Home Information Packs (HIPs)

## Commercial Property

- ✿ Buying or selling a business
- ✿ Buying or selling commercial property
- ✿ Acting for developers
- ✿ Plot purchases

## Private Client

- ✿ Wills
- ✿ Probate & administration of estates
- ✿ Deeds of variation
- ✿ Trusts & estate planning
- ✿ Powers of attorney
- ✿ Court of Protection matters

## Family

- ✿ Divorce and separation
- ✿ Matrimonial finance & ancillary relief
- ✿ Children matters – private law (not care proceedings)
- ✿ Cohabitation and pre-nuptial agreements
- ✿ Separation agreements
- ✿ Injunctions

## Mental Health

- ✿ Mental Health advice
- ✿ Tribunal representation

## Contact us

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## Dispute resolution

- ✿ Mediation services – civil and private family
- ✿ Landlord and tenant – residential
- ✿ Landlord and tenant – commercial
- ✿ Debt recovery and civil litigation

## Employment

- ✿ Unfair dismissal
- ✿ Discrimination claims (sex, race and/or disability)
- ✿ Compromise agreements
- ✿ Advice on redundancy
- ✿ Company restructuring
- ✿ Breach of contract
- ✿ Drafting employment contracts and directors' service agreements
- ✿ Tribunal representation

## Personal injury

- ✿ Accidents at work
- ✿ Assaults
- ✿ Road Traffic accidents
- ✿ Slipping and tripping accidents

## Clinical negligence

- ✿ G.P. negligence
- ✿ Birth trauma cases
- ✿ Failures to diagnose
- ✿ Psychiatric claims
- ✿ All other types of medical negligence