

Landlord Law Essentials



The ebook

by Tessa Shepperson

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© Teresa J Gee
148 Unthank Road
Norwich NR2 2RS

www.landlordlawblog.co.uk

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The law should be correct up to 30 November 2018.

Contents

Introduction	4
Part 1 : Landlords Responsibilities	6
Part 2 : Legal background	14
Part 3 : Letting Agents	22
Part 4 : Choosing & checking tenants	30
Part 5 : Tenancy Agreements	37
Part 6 : Tenancy Deposits	44
Part 7 : Rent	56
Part 8 : Repairs	63
Part 9 : Health & Safety	71
Part 10 : Shared properties & HMOs	78
Part 11 : Eviction of Tenants	86
Part 12 : Summary & Checklist	96

A person is holding a tablet computer. The image is overlaid with a blue tint. The word "Introduction" is written in large, white, bold, sans-serif font across the center of the image.

Introduction

Introduction

This ebook is a guide to the legal rules and regulations which apply to rented property.

It should be useful for all landlords but will be particularly helpful if you are a new landlord.

Although a short book like this cannot cover EVERYTHING, it does discuss all the main things you need to know and suggest places where you can go for further help and information.

Often the main thing is just to be aware that there is a rule or regulation covering a particular issue. Then you can make sure – if the issue arises, that you are doing the right thing.

For example, many amateur landlords get caught out by tenancy deposits. They take a deposit but have no idea that there are rules which apply. Then they find out, too late, that they have failed to comply and get into all sorts of problems. Don't let this happen to you! (We look at deposits in part 5).

Note that this eBook is a version of my online ecourse. You will find the ecourse on my Landlord Law Blog website at www.landlordlawblog.co.uk. You will find further information on the topics covered in this ebook on the blog and following the blog is a good way to keep up to date with the law.

This is very important as new regulations are being brought in and new cases being decided all the time – please bear in mind that this book only covers the law up to 30 November 2018. But you can read about more recent legal developments on the blog – for example in the Friday Newsround posts.

I hope you enjoy this ebook and find it useful.

Tessa Shepperson

November 2018





Part 1 :

Landlords Responsibilities

**Hello and welcome to this first part of this ebook.
We start off with an article which sets the scene for the
rest of the series.**

The responsibilities of being a landlord

Many people when considering investing in property think just of the return. They think about the finance and tax aspects.

But what they don't always properly appreciate is that the property they are buying as an investment is going to be someone's HOME.

A home is important. It is where you return to after a day's work, where you keep all your things, where you (should) feel safe – your retreat from the world. People's homes are important.

So, if you are in the business of providing homes for people (which is what being a landlord really is), then there are a lot of legal requirements you have to comply with. Quite rightly. So, for example:

- There are legal obligations to keep the property in proper repair
- There are health and safety standards you need to keep, for example under the gas regulations,
- The contents need to comply with legal standards for example under the furniture regulations, and
- Increasingly, there is 'consumer' legislation to protect tenants / consumers against 'unfairness'

It's no longer your property

Another point which landlords often totally fail to appreciate is that, technically, once it is let to a tenant it's not your property anymore! A tenancy is an 'estate in land'. So as long as the tenancy is in existence, your rights over the property are just

- the right to receive rent and
- to get it back at the end of the tenancy (what lawyers call the reversion).

So, this is why you can't just go in when you want.

The Covenant for Quiet Enjoyment

Not only is that a gross invasion of your tenants' privacy, it is a breach of what is called the 'covenant of quiet enjoyment'.

This is the fundamental right of tenants to be able to live in the property in peace, without interference from their landlord. True, landlords do have a limited right to access the property for inspections and in case of emergency, but apart from that they have no rights of access at all.

Indeed, entering without the tenant's permission will usually be considered harassment, which is a criminal offence.

Leading on from this, there are also strict rules about how a tenancy can end.

Part 1 : Landlords Responsibilities

Unless a tenant leaves voluntarily, a landlord **MUST** get an order for possession and tenants can only be physically evicted by the court bailiffs or sheriffs. Again, if you go in and change the locks, this is unlawful, and you can be sued by your tenants for compensation.

There have been cases where tenants have been awarded very substantial sums.

Don't let this all put you off!

Very many tenancies are entirely trouble free. However, this is usually because the property is in tip top condition, and also because the landlord (or his agent) has taken the time and trouble to choose a suitable tenant.

Managing property can be time-consuming, some types more than others.

For example, renting out rooms in shared houses can take up a lot of time, although it can also be very lucrative. Many landlords however, enjoy managing their properties, and the contact with different people and personalities.

The best landlords will take a pride in providing quality accommodation with good service. They are usually rewarded for this by prompt rent payments and few voids.

If you take care to choose good tenants with a reasonable attitude, even if problems do arise, you will normally be able to sort them by agreement.

The 'nightmare tenants' of legend are very much in the minority. Although they do exist. When I was working as a solicitor doing eviction work, I saw a lot of them!

But the fact that your tenant is not behaving properly is not an excuse for you to do likewise. You need to make sure that you are complying with the law at all times. However,

Landlord responsibilities are constantly changing

Housing is important politically, and governments often introduce new regulations in response to problems that may arise, manifesto commitments (particularly with a new government) or as a result of a report they may have commissioned. Sometimes also they are obliged to introduce legislation as a result of EEC directives (although this will cease as and when we leave the EEC).

For example, in the last ten years there have been new laws relating to

- houses in multiple occupation,
- tenancy deposits,
- section 21 notices and
- right to rent' checks.

So, you need to keep your landlord's responsibilities under constant review.

This e-book will help. It contains basic background information about the main areas of landlord and tenant law and practice that you need to know about.

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Part 1 : Landlords Responsibilities

Here are some more suggestions for keeping yourself informed and up to date:

- Read my [Landlord Law Blog](#) regularly. Posts go online most days and I try to cover all the issues that arise (or better still – why not sign up to [get posts delivered to you by email?](#))
- Sign up to the [Landlord Law weekly email news bulletin](#) which goes out every Tuesday morning
- Join my [Landlord Law information service](#) – this has a huge database of information on all aspects of being a residential landlord, which is regularly updated, plus it has tenancy agreements and forms
- Join a landlord's association – they can be very helpful, and you can also learn a lot from talking to other landlords
- Subscribe to one or more of the landlord periodicals – they will also keep you up to date with new developments
- Do some training. Landlord Law Services runs regular workshops, online courses and has an annual Conference. You can read about them on the website [here](#).

Or better still, do all of them! If you do not comply with your landlord responsibilities, you can be prosecuted or sued by your tenants for financial compensation. In some circumstance's tenants may even be able to get a Rent Repayment Order for up to 12 months rent. So take care.

NB Landlord Law in Wales

As you will see as you go through this ebook, much recent new regulation only applies in England. This is because Wales is developing its own landlord and tenant legal system, under the Housing (Wales) Act 2014 and the Renting Homes (Wales) Act 2016.

This ebook is predominantly about the law in England. However much of the law is still the same – until the Renting Homes (Wales) Act comes into force.

Welsh landlords will find guidance on the [Rent Smart Wales website](#).

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Part 2 :

Legal background

In this chapter we are looking at the legal background to lettings. A most important, if often misunderstood topic!

A quick guide to landlord and tenant law for landlords

When you rent out property to a tenant they normally have an assured shorthold tenancy. But what is this? What does it mean?

Let's take a quick look at some basic land law. Generally, land is owned in one of two ways. Freehold and leasehold.

- **Freehold** – is where you own the land indefinitely (unless you decide to sell it or ownership is changed for some other reason).
- **Leasehold** – is where the land is owned by someone but only for a specific period of time (known as a term). Another name for a lease is a tenancy. To a certain extent the words are interchangeable, but in most cases when you say 'lease' you generally mean a long lease (e.g. for 99 years). When you say tenancy, you generally mean a short let for six months or more.

Needless to say, this series is about tenancies.

The statutory codes

Most rented property today is governed by the Housing Act 1988. This is the act which set up the assured and assured shorthold tenancies and which regulates how they work. It applies to all tenancies which were created after 15 January 1989.

Before that most tenancies were governed by the Rent Act 1977. You don't really need to know about that, unless you own a property with a protected tenant, or are buying an investment property with sitting tenants (in which case you need to know what sort of tenancy they have).

Part 2 : Legal background

Under the Housing Act 1988 two types of tenancy are created.

The first is an assured tenancy.

This is not popular with private landlords as the tenants have long term security of tenure which means that they cannot easily be evicted.

However, it is the standard tenancy type used by social landlords such as housing associations.

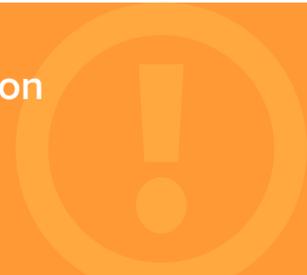
The second is the assured shorthold tenancy (AST).

This is actually a special type of assured tenancy. The 'shorthold' tenancy is one where the landlord can recover possession as of right, without giving any reason, provided

- the fixed term has ended,
- any pre-requisites have been complied with,
- the proper form of notice has been given and
- the notice period has expired.

The details setting out how this is to be done are to be found in section 21 of the act (which is why the notice is called a section 21 notice). Obviously, this right to recover the property is very important and indeed is one of the reasons why we have a vibrant private rented sector now.

Note that there are now considerably more hoops to go through when using section 21 for properties in England as a result of the Deregulation Act 2015. We will talk about these in a later chapter.



Early tenancies

Under the 1977 Rent Act it was often impossible to recover rented property through the courts – which is why so few people were willing to be landlords at that time.

Between 15 January 1989 and 27 February 1997 the ‘default’ form of tenancy was the assured tenancy. At that time in order to create a shorthold tenancy you had to comply with certain conditions, which included

- having a fixed term of not less than six months and
- serving a special form of notice.

Under the Landlord & Tenant Act 1996, from 28 February these preconditions no longer applied and since that date, the ‘default’ type of tenancy has been the assured shorthold tenancy.

So again, you don’t need to worry about the old, pre 28/2/1997 tenancies unless (again) you have one or more assured tenants or are buying an investment property with sitting tenants.

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What the Housing Act 1988 does

There are really five things which you need to know about the Housing Act.

1. It sets out the type of tenancies which it applies to.

This will generally be all tenancies except

- those granted to limited companies,
- tenancies where the annual rent is over £100,000 pa or under £250 pa (£1,000 in Greater London), and
- tenancies where the landlord is living in self-contained accommodation in the same building.
- (There are others, but they are not likely to apply to you)

Tenancies which are not covered by the act are generally known as unregulated or 'common law' tenancies. If you want to see a complete list, this is set out in schedule 1 of the act.

2. It provides for tenancies to 'run on' after the end of the fixed term.

Although strictly speaking what happens is that a new 'periodic tenancy' is created immediately after the end of the fixed term. The rules for this are set out in section 5 of the Act.

So, for example, say you have a tenancy where rent is paid monthly with a six months fixed term. After the fixed term has ended, if the tenants remain in occupation, a new periodic tenancy will be created which will run from month to month, under the same terms and conditions as the preceding fixed term tenancy agreement.

Part 2 : Legal background

If you are happy for the tenancy to run from month to month (or from week to week if rent is paid weekly) it is not actually necessary to get the tenant to sign a new tenancy agreement. This type of tenancy is generally known as a 'periodic' tenancy. As opposed to a 'fixed term' tenancy.

3. It provides a certain amount of rent regulation.

This is mostly concerning the notice which landlords can use to increase the rent if the tenancy is a 'periodic' one.

4. It sets out the procedure for evicting tenants and the 'grounds' or reasons you can base your claim on.

These are set out in section 21 of the act (as discussed above) or in schedule 2.

The most important ground in schedule 2 is the serious rent arrears ground which you can use if your tenant is in arrears of two months / eight weeks or more. To use the grounds in schedule 2 you need to serve a notice first. This is set out in section 8 of the act (which is why the notice is often referred to as a section 8 notice).

5. It sets out succession rules. These say who is entitled to inherit the tenancy when the tenant named in the tenancy agreement dies. However, for ASTs these are less significant as the landlord can, if he does not like the person entitled to succeed, serve a section 21 notice and evict the tenant.

What if your tenancy is a common law one?

For example, if it is a high rent or a let to a limited company? In this case, the special rules set out in the Housing Act will not apply and the tenancy will be governed by the underlying 'common law'. Which is what was there before the statutes were passed to change it.

Part 2 : Legal background

Basically, this means that there is no rent regulation and that the procedure to evict the tenants is slightly different.

Also, requirements which only apply to ASTs, such as the tenancy deposit regulations will not apply.

Other laws

The Housing Act 1988 is not, of course, the only act which applies to tenancies! There are lots of other laws, for example regarding the condition of the property, tenancy deposits, houses in multiple occupation, consumer protection and the like.

There are also a lot of regulations on all sorts of areas – property standards, health and safety (such as the gas regulations), unfair clauses in tenancy agreements and so on.

I will be looking at some of these in this e book.

Further Reading

Landlord Law:

You will find more guidance on the Landlord Law service, including the [Tenancy Trail](#), a free step by step guide which will help you work out what type of tenancy you have.



Part 3 :

Letting Agents

In this chapter I am going to be talking about letting agents.

I have to be really careful when discussing letting agents, as I need to warn you about various things, but on the other hand there ARE some brilliant agents who do a superb job for their landlords.

However, I know that many landlords have suffered through poor service from agents, so let's have a look at

Whether you really need to have a letting agent at all

I usually say to landlords that if they are considering managing their own property (which is much more remunerative than employing an agent to look after things for you) they need to ask themselves the following questions:

Do you live near the property?

It is possible to successfully manage a property yourself if you live in on the other side of the country, or even overseas, but generally it is not recommended.

There are all sorts of things that can happen, from the tenants locking themselves out to boiler explosions, which will require you to attend at the property and sort things out. In particular if there is no-one you know locally who will be able to help out in case of emergency, you should use a reputable letting agent.

Do you lead a busy life?

The perception of landlords is that they just sit back and wait for the money to come flooding into their bank accounts, but real landlords know it is not like that. There is a lot of work involved, and it can be very time-consuming. If you lead a very busy life, again you may be better off employing an agent to take all the work off your shoulders.

Are you good with paperwork?

Because if you hate it, again maybe being a 'hands on' landlord is not a good idea. Renting property is heavily regulated nowadays and this means having all the right paperwork. If you make mistakes you can get into trouble. AND it can cost you a lot in fines and compensation claims.

If you don't like dealing with paperwork you are probably better off using a decent agent.

Are you a people person?

A lot of a landlord's work involves dealing with (and when choosing tenants, summing up) people. Again, if you are not good with people, then a good agent can deal with all this.

However, if you decide you need to use an agent, you need to be careful:

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If you lead a very busy life, again you may be better off employing an agent to take all the work off your shoulders.

Things that bad agents sometimes do:

- Fail to reference tenants properly
- Fail to keep your money in a separate trust account (and in the worst cases, go bust, taking your money with them)
- Take kickbacks from tradesman so that you end up paying more than you need
- Encourage your tenants to leave at the end of the term so they can charge you a fee for finding a new one

It is important to remember that you are personally responsible for everything your agent does as they are seen as acting on your behalf. There is a special law of agency which sets out rules for how this works.

Note – new regulations are due to come into force in 2019 which will require all letting agents to have client money protection insurance, but at the time of writing this the regulations are not yet finalized.



Finding a good agent.

There is no infallible guide. However here are a few clues:

Are they regulated?

The main organisations are

- The Association of Residential Letting Agents (ARLA)
- The Royal Institution of Chartered Surveyors (RICS)
- The National Association of Estate Agents (NAEA)
- The National Approved Letting Scheme (NALS)

Are they a member of a Property Redress Scheme?

All letting agents and property managers need to be a member of one of the two authorised property redress schemes. These are:

- The Property Ombudsman (TPO)
- The Property Redress Scheme (PRS)

Are their staff properly trained?

Reputable agents will ensure that their staff have industry qualifications, such as those provided by ARLA

How long have they been trading?

This is not an infallible sign (and all companies have to start sometime) but usually companies which have been around for a very long time will provide a good service.

What are their agency fees?

Be suspicious if they are a lot lower than those charged by other companies. Note that by law all agents must have their fees clearly set out (inclusive of VAT) in their office and on their website.

What are their terms and conditions?

You always need to read these carefully, and clear and concise terms are another good sign.

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Note that by law all agents must have their fees clearly set out (inclusive of VAT) in their office and on their website.

Further Reading

Here is some extra reading for you

- [Agency law basics for landlords](#)
- [Recent changes to letting agents fees](#)
- [Letting agents agreements and some pitfalls for landlords to watch out for](#)
- [Seven benefits of using a really good letting agent](#)
- [Five things your letting agent may not be telling you](#)
- [Can landlords pass the blame on to their letting agent when things go wrong?](#)
- [Claims against letting agents who let to unsuitable tenants](#)
- [Letting agent fees, Foxtons, and tenancy administration charges](#)

Landlord Law

Help for landlords stuck with unsatisfactory agents

There is a special section on my Landlord Law service which had help for landlords in this situation.

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Part 4 :

Choosing & checking tenants

In this chapter we are going to be talking about
a very important subject

Choosing tenants

Surveys and studies have shown that many landlords do no proper checking of tenants and just take the first person who comes along.

Speaking as someone who has been called in many times to evict a tenant where things have gone wrong, I would definitely say that this is NOT the way to do it!

It is essential that tenants are properly checked and referenced. You may be a very good judge of character, but con men are professionals and appearing respectable and credit worthy is their job.

This is what you need to do:

Take full details from the tenants.

The best way to do this is to use a tenants' information form. This can be used to take details such as their name, address and previous addresses, employers' details, next of kin, vehicles etc.

You also need to check their ID – and make sure they are who they say they are. Remember that criminals often target rented property to use for criminal activities. Often properties are converted to cannabis farms with considerable damage being done to the property in the process. So it pays to take care!

You should also ask for their last three months bank statements, just to check that they can actually afford to live in your property. Many tenants will consider this to be an invasion of their privacy. If they take this attitude, tell them that they don't have to provide them, it is up to them. But you will only be considering them as tenants if the statements are provided. They have the right to refuse to provide the statements, but you have the right to choose who you take on as a tenant.

Take references

These should include:

- **Employer** – probably the most important as their salary will be paying your rent!
- **Bank** – more to check that they actually have an account, as bank references rarely give much away
- **Former landlord** – remember that if they are a bad tenant their current landlord will want to get rid of them so try to speak to an earlier landlord
- **Personal** – but don't rely on this too much as the person will probably be primed to give a good report.

When taking references, you need to take the attitude that everything is false until proved correct. So, make sure that the employer actually exists for example by looking in directories and searching online. Don't take the tenant's word for it – if they are a con man they will be lying.

Arrange for a specialist company to do a credit check and reference

There are quite a few companies which do this. For example

- Experian
- Tenant Verify

are two you could consider. There are others. Your insurers will be able to recommend some.

Checking if they have the right to rent

Under the Immigration Act 2014, from 1 February 2016 all landlords managing rented property in England, must check that prospective occupiers of the property (i.e. NOT just the tenants) have the right to reside in the England & Wales.

It is important that you check everyone who is going to live in the property AND keep a record of the check, so you can prove that it was done if you are called upon to do so by the Home Office. The penalties for non-compliance are substantial.

It is best that you read the online guidance provided by the Home Office to find out what you need to do – you will find it [here](#). Don't rely on printed copies as the online information is updated regularly and you need to have seen the most recent version.

There is a helpful article [on the Landlord Law Blog](#) which provides more information.

You can, if you do not want to do it, pass this work on to your agents, but make sure that there is a written agreement confirming this or you could still be fined if they got things wrong.

Note – there is a legal challenge by way of Judicial Review being brought to the right to rent rules by the Joint Council for the Welfare of Immigrants, which is due to be heard in the courts in December 2018. So, watch out for this.



If you use an agent

Most agents are very careful to vet prospective tenants properly, but sadly this does not always happen. It is sometimes difficult for landlords to check this as agents will often refuse to provide details of the credit reference reports citing the Data Protection Act.

Part 4 : Choosing & checking tenants

As the referencing is to protect YOUR position (and as they are your agents and you have paid for them, the references belong to you anyway) this is not really a very good argument. I would suggest that when you first instruct agents (if you instruct agents) you make it clear that you will want to see ALL references and credit reports on the tenants that they select for your property. This will give them more incentive to do their job properly.

Referencing does not always work

Unfortunately, careful referencing does not always prevent the occasional bad tenant slipping through.

Then there are situations that arise after the tenant has moved in. People lose their jobs, separate from their partners and so on. These all impact on their financial situations and make it hard for them to pay rent. There is not a lot you can do about this but just try to deal with it when it happens.

We talk about this later.

“

People lose their jobs, separate from their partners and so on. These all impact on their financial situations and make it hard for them to pay rent.

Further Reading

Here is some extra reading for you from the Landlord Law Blog

- [Five ways for landlords to protect properties against fraudsters and criminals](#)
- [Are landlords entitled to see tenants' references obtained by their agents?](#)
- [The growing problem of cannabis farms in rented properties](#)
- [Tips for Landlords on doing right to rent checks](#)
- [Claims against letting agents who let to unsuitable tenants](#)



Part 5 :

Tenancy Agreements

Contrary to what many people think, it is actually possible to create a tenancy with no written document. In fact as soon as you give the tenant the keys and let them in, a tenancy will (assuming you are charging rent) have been created.

However, it is a VERY bad idea to do it this way. Here's why:

Five reasons why you need a tenancy agreement

1. So, everyone can remember what was agreed.

Tests show that people often, quite genuinely, have different recollections of events. If it is written down in your tenancy agreement that the rent is £775 pm the tenant cannot argue that they only agreed to pay £725.

2. To protect the landlord's position.

Once the tenant moves in, technically he owns (or has a legal interest in) the property for the duration of the tenancy. For example, under the general law, tenants are only actually forbidden to do major building work. If you don't want them to re-decorate the rooms in different colours, you need to put that in the tenancy agreement.

3. So, you can use the special 'accelerated' possession procedure

Using section 21 of the 1988 Housing Act to evict your tenant is a quicker procedure (although not as quick as its name implies) and cheaper if you are using solicitors. However, it cannot be used if there is no written tenancy agreement (there are a lot of other issues too, which we will be looking at later).

4. If you take a deposit it is essential to have a tenancy agreement.

Your chances of winning a disputed arbitration for deductions from the deposit are virtually zero without one. We will be looking at tenancy deposits later.

5. If your tenant is in receipt of any form of housing benefit

Here the benefit office will not process the claim without proof of the tenancy. Which means a written tenancy agreement.

Not all tenancy agreements are the same

Most people talk about giving ‘a tenancy agreement’ as if there is only one. However, the contents of a tenancy agreement should vary according to the circumstances of the tenancy.

For example, in my Landlord Law service I have different versions of our tenancy agreement for the following circumstances:

- A let of a room in a shared house
- Where the landlord pays the bills
- Where the property is in Wales
- Where the landlord is letting to students
- Where the let is to a limited company
- Where the let is made by a landlord who lives in self-contained accommodation in the same building

The agreements can also be varied depending on whether the rent is paid weekly or monthly, where a guarantee clause is included, and users can also incorporate special clauses such as a break clause, a rent review clause or a clause incorporating the landlord's headlease.

If you are not sure what sort of tenancy agreement is right for your property, I have a special (and free) [Which Tenancy Agreement Guide](#) which you can use to find out.

Amending tenancy agreements

Many landlords, if the form of tenancy they have does not fit their needs, will adapt it themselves. However, you need to be very careful about doing this.

There are special regulations on unfair terms in consumer contracts which apply to tenancy agreements and if a clause is unfair under the regulations, it will be invalid and unenforceable.

Generally, clauses will be unenforceable if they attempt to take away a right a tenant would otherwise have had – but you can't know if you are doing this unless you have a VERY clear understanding of what those rights are in the first place.

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Many landlords, if the form of tenancy they have does not fit their needs, will adapt it themselves. However, you need to be very careful about doing this.

An example – the pets’ clauses

One classic example of how landlords get things wrong is with the standard pets’ clause. Here is my pets’ clause:

You must not keep any pet or any kind of animal at the Property unless you have our written permission (which we will not refuse or delay without good reason).

Now some landlords will say “There are no circumstances under which I will allow a tenant to keep a pet” and delete the wording about asking for permission. But by doing that they invalidate the clause! We know this, because there is a legal case which says so.

However, the fact that a tenant may ask permission to keep, say, a bull terrier, does not mean that you **HAVE** to say yes. If you have a reasonable reason to say no (and you probably will) then you are entitled to refuse permission.

Whereas if you delete the wording in the clause, technically the clause will be unenforceable, and your tenants will be able to keep whatever pets they like.

This is why you should not amend documents without taking advice.

Further Reading

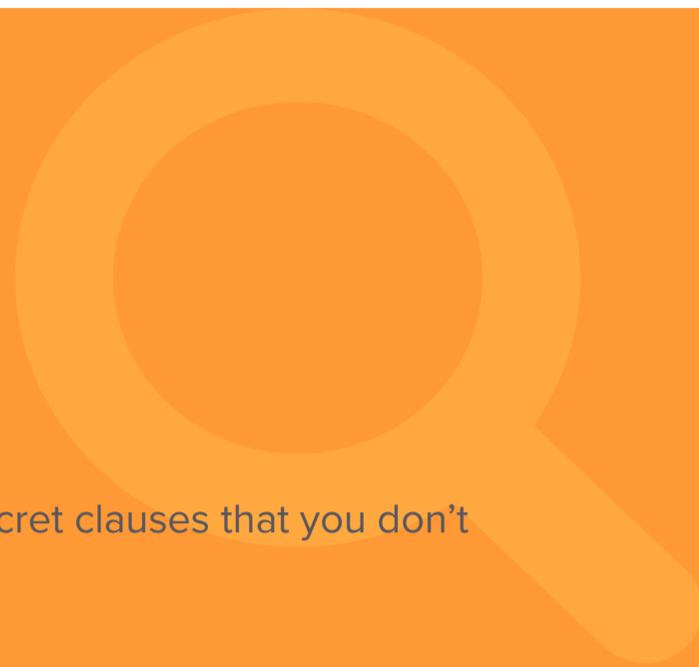
Here is some extra reading for you:

- [Signing tenancy agreements online](#)
- [Why your tenancy agreement is misleading – the secret clauses that you don't know about](#)
- [What happens if you don't have a tenancy agreement](#)
- [Using section 196 of the Law of Property Act 1925 in tenancy agreements](#)
- [Does a tenancy agreement HAVE to be witnessed and signed as a deed?](#)

To find out the most suitable tenancy for you see the free

- [Which Tenancy Agreement Guide And finally ...](#)

Remember – don't alter the pet's clause!





Part 6 :

Tenancy Deposits

Tenancy deposits and tenancy deposit protection is a subject which has caused a few headaches over the past few years.

Part 6 : Tenancy Agreements

It is generally considered essential that landlords take a deposit from a tenant at the start of the tenancy. This is used as a fund for you to use at the end of the tenancy, if the tenant leaves owing money – either to put right problems with the property such as damage or cleaning, or to cover unpaid rent.

There are alternatives –

- taking a guarantee for example, or
- using one of the various insurance products.

However, with a guarantee you have to chase the guarantor – you do not have the money actually there when you need it. And the insurance-based schemes will generally only cover tenancies where the tenants satisfy strict referencing. These are not the ones likely to be causing the problems!

Although landlords often moan about them, nothing really seems to be as satisfactory as taking a deposit – as the prospect of losing their deposit motivates tenants to keep the property in a good condition and leave it clean and tidy when they go.

However, prior to 2007, sadly many landlords abused their position with deposits, often it seemed with impunity. Legally a deposit is the tenants' money and they are entitled to its return unless there is a genuine claim. However, many landlords (not all but a substantial minority) tended to just pocket the money and refuse to return it.

After numerous complaints about this and campaigns by tenant's organisations, regulations for a tenancy deposit scheme were introduced by the government in the Housing Act 2004.

The tenancy deposit protection scheme

This came into force in April 2007 and was then amended in 2012 and again in 2015. It only affects tenancies let on an assured shorthold tenancy – however this is the majority of lets in the private sector today.

The rules provide for the landlord to protect the deposit within 30 days AND serve a notice giving prescribed information. See below for the penalties which apply if this is not done.

There are two kinds of deposit scheme

- Custodial schemes and
- Insurance based schemes

Custodial Schemes

These are free to use, but you need to pay the money over to the scheme administrators who hold it for the duration of the tenancy. The scheme gets its fee from the interest earned on the deposits held.

Custodial schemes have many advantages. For example, landlords who use letting agents are protected from the situation that can arise if their agent goes insolvent taking the deposit money with them (although this will improve once the mandatory client money protection becomes law). This is because the landlord is liable to the tenant to return the deposit at the end of the tenancy, even though it is the agent who lost the money.

It also gives tenants peace of mind as they know that their deposit is held securely and that it will be dealt with properly.

Part 6 : Tenancy Agreements

The disadvantage of the scheme is that it takes several days, and sometimes much longer if one of the parties is unavailable, for the money to be released.

The Three Deposit Companies

There are three companies who are authorised by the government to run tenancy deposit schemes:

- The Deposit Protection Service
- My Deposits, and
- The Dispute Service

The Deposit Protection Service

Website: www.depositprotection.com

This is actually run by a huge organisation called Computerserve. The DPS is the 'default' scheme which will arrange for protection of all deposits even if the other schemes refuse.

Initially the DPS only had a custodial scheme but now they also run a separate insurance-based scheme.

My Deposits

Website: www.mydeposits.co.uk

This scheme was initially aimed primarily at landlords but is now popular with agents too. It was set up by the National Landlords Association and is owned jointly by them and by Hamilton Fraser Insurance.

This is a membership scheme and members need to pay a modest membership fee and then pay a fee per deposit protected. The fees are slightly less for National Landlord Association members, and there are some other discount schemes, for example if you bulk buy.

My Deposits have also run a custodial scheme since April 2016.

Tenancy Deposit Scheme / TDS

Website: www.tenancydepositscheme.com

This company had formerly run a voluntary scheme for ARLA members and therefore for the first few years the scheme was used almost exclusively by letting agents and a few of the larger corporate landlords.

TDS have several services.

The one for agents is a membership scheme like My Deposits but the membership fee is considerably higher, although there are no further 'per deposit' fees after that. The agents just arrange to protect the deposits. There is a scale of fees, with agents who are members of regulatory bodies such as ARLA and RICs paying a lower amount.

In early 2012 a new scheme was introduced for Landlords, in conjunction with the Residential Landlords Association. This scheme, called Deposit Guard, is very similar to the My Deposits scheme. Members of the RLA get a slight discount.

Since April 2016, TDS have also provided a custodial scheme, bringing the number of custodial schemes up from one (just the DPS) to three.

If the parties are unable to agree at the end of the tenancy

All three schemes have free adjudication schemes which can be used as a cheaper and quicker alternative than going to court. However, they are not trouble free and it is essential that the schemes rules are followed carefully. There are strict time limits which must be adhered to.

It's the tenant's money

It is important to remember when bringing a claim, that the starting point is always that it is the tenant's money. So, the burden of proving that the deduction is reasonable rests on you. The tenant does not have to prove anything. Only if

- you are able to show that the damage/claim is for something the tenant is liable for (e.g. that it is not fair wear and tear),
- that he was responsible for it (i.e. there is a significant difference between the check-in and check-out reports) AND
- that the sum you are claiming is reasonable

will your claim be entertained.

Essential evidence

The adjudicators all deal with the cases on a paperwork basis only and do not visit the properties. It is essential therefore that full evidence is provided by landlords to support their claim. This should include:

- A detailed inventory of the property at the time the tenant went in. This must be either signed by the tenant as agreed or prepared by an independent third party such as a letting agent or inventory clerk. If this is not available, then your claim is unlikely to succeed.
- A detailed description of the property at checkout – this should document the difference between the item in question at the start and at the end of the tenancy.
- Estimates and invoices for any cleaning, repair work or replacement items
- A detailed schedule of arrears if you are claiming for rent arrears
- Any photos (or videos) you wish to show the adjudicator to prove the condition of the property. Note however that these must be clear and have evidence to prove the item shown and the date the picture was taken. The best way to do this is to write on the back of photographs and get the tenants to sign and date them at check-in

There is further information and helpful guides available regarding adjudication on all three of the schemes' websites.

Penalties for non-compliance and the changes to the rules in 2012

On the whole, the schemes have worked well, and thousands of deposits have been protected safely. However, many landlords still do fail to protect.

Unfortunately, the penalty rules under the act failed to operate as expected and after a couple of Court of Appeal hearings, the penalty of three times the deposit became virtually unenforceable.

The rules were therefore amended in the Localism Act 2011 and the new rules came into force on 6 April 2012.

The rules now work as follows:

- The deposit and the prescribed information notice must be served within 30 days, but after that, the landlord cannot, as before, rectify the situation by protecting and serving late.
- Therefore, if the deposit remains unprotected after 30 days the landlord will have no defence to a claim by the tenant for the penalty payment, until the Limitation Act takes effect after six years.
- The penalty, however, is no longer a fixed three times the deposit sum penalty, but can vary between the value of one to three times the deposit amount, at the discretion of the Judge.

→ So far as section 21 notices are concerned, if the deposit remains unprotected after the 30 days, the only way a valid section 21 notice can be served is if either the deposit is returned to the tenant, or if outstanding rent or other money due to the landlord is offset with the tenants consent, or if the tenant has made a claim for the penalty which has been dealt with.

There was a period of one month to May 6 2012 during which landlords who had failed to protect were expected to do so. The new rules therefore now apply to ALL deposits taken since April 2007. See below for the new rules for pre 2007 deposits.

Superstrike and the 2015 amendments

As a result of the case of Superstrike v. Rodrigues in late 2013, many landlords unexpectedly found themselves in breach of the regulations. This continued for some time, but the issues were finally resolved in various amendments which came in with the Deregulation Act 2015 which (in this respect) came into force on 26 March 2015.

“

As a result of the case of Superstrike v. Rodrigues in late 2013, many landlords unexpectedly found themselves in breach of the regulations.

Part 6 : Tenancy Agreements

The amendments were as follows:

- The prescribed information notice can name the landlord's agents, if agents are used
- Landlords who took a deposit before 7 April 2007 where the tenancy became periodic after that date, were given until 23 June 2015 to protect the deposit and serve the prescribed information. If this was not done during that time, they will now be in breach
- Landlords who took a deposit before 7 April 2007 where the tenancy continued as a periodic before that date do not need to protect the deposit. However, if they want to use section 21 they must protect the deposit before serving the notice or it will be invalid.
- Landlords who properly protect the deposit and serve the prescribed information during the initial fixed term, do not have to re-serve the prescribed information again in any subsequent tenancies, provided there is no change in the parties or the property let

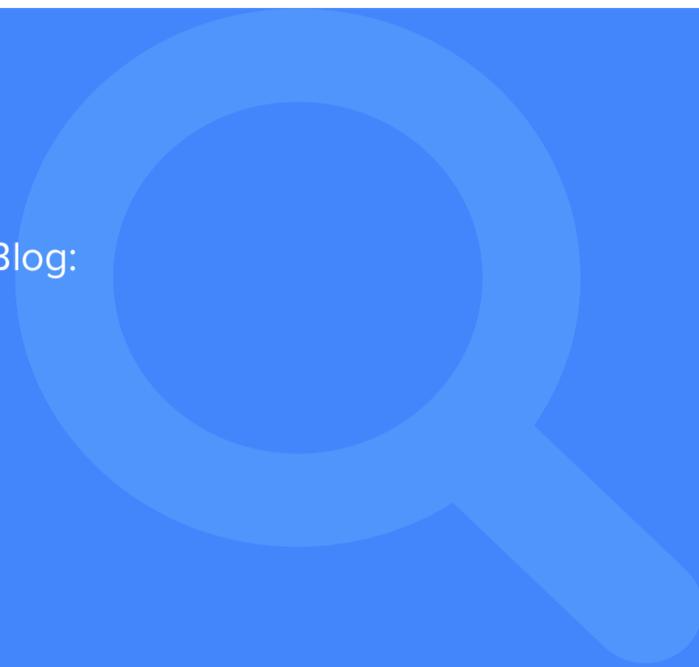
This has been rather a long chapter but a very important one. You may need to read it several times.

We will be looking at rent next.

Further Reading

Here is some extra reading for you from the Landlord Law Blog:

- [Do landlords HAVE to take a deposit?](#)
- [Tenancy deposits – what landlords need to know](#)
- [Tenancy deposits – what tenants need to know](#)
- [The Deregulation Act 2015 explained series of posts](#)





Part 7 :

Rent

The topic in this chapter is fairly fundamental to all tenancies.

In fact, occupation of property is not really a tenancy without it. It's the main reason (along with capital growth) why landlords invest in property and rent it out to tenants. I am of course,

Talking about Rent

A few facts to start with that you may not be aware of:

- **The default position is that rent is payable in arrears.** The reason most rent nowadays is payable in advance is because this is required by the tenancy agreement. So that is another compelling reason to have a tenancy agreement! ¹
- **Rent is due** in the morning of the rent day given in the tenancy agreement (or as agreed if there is no tenancy agreement) but is not overdue until after midnight of that day.
- **If rent is paid weekly**, then you must give the tenant a rent book. However, if you don't do this, it doesn't mean your tenant can withhold rent. You can be prosecuted though.

1. Note that this (i.e. rent being payable in arrears by default) is a [common law rule](#) so I can't point you at any specific act of Parliament. >> [See the blog post on this.](#)

- **However, tenants DO have the right to withhold rent if you fail to give an address in England or Wales** for the service of notices. This is a requirement under s48 of the Landlord and Tenant Act 1987 and rent is not 'due' until you have complied. Just having an address for the landlord in the tenancy agreement (provided it is in England or Wales) will satisfy the requirement. If you have failed to comply, all the back rent will fall due once you serve the notice. So, you will not, long term, lose any money. However, quite a few landlords have lost possession claims based on rent arrears due to this rule. The address does not have to be your home address. So, if you live in Scotland or Argentina, your letting agents address in, say, London, will suffice.
- **Rent demands** also need to have the name & address of the landlord (s47 of the Landlord & Tenant Act 1987) as well as (if you are not resident in England or Wales) the address for the service of documents as in s48 – although this is not critical as payment of rent is not dependent on a demand being made.
- **If you fail to comply with your repairing obligations** (to be discussed in a later article) tenants can get the work done and offset the cost against their rent. However, they need to warn you first, and get estimates first which they need to send you before the work is done. If the landlord still fails to carry out the repairs, they can then get the work done using the lowest estimate and offset the cost against their rent.

So that's a few facts for you. But let's take a look now at the big rent topics.

How to increase rent

It's very important that you increase rent in the proper way. If you don't, the rent increase won't be effective, and your tenant will not have to pay it. If you then go on to issue proceedings based on the shortfall you will lose and may even be ordered to pay your tenant's legal costs.

So it's worth taking the trouble to do it properly. There are three main methods of increasing rent:

- By agreement
- By the statutory notice procedure and
- By a rent review clause in the tenancy agreement.

Of these three, the most common is 'by agreement', which is then confirmed by the tenant signing a new tenancy agreement or renewal form.

If you want to use the statutory notice procedure, this can only be done after the fixed term has ended and you **MUST** use the proper prescribed form. (We have one available for landlords on my Landlord Law site in the forms section.)

Note though that generally, you **CANNOT** increase rent just by sending the tenant a letter telling them their rent is going up. They will normally be quite within their rights to ignore this completely.

Rent arrears

This is every landlord's nightmare! If your tenant suddenly stops paying – what do you do?

Well, my advice first is to make sure you find out if your tenant fails to pay, and that you contact them immediately asking them (nicely) why. Sometimes it may just be a mistake and your tenant will thank you for letting them know.

However, at other times, it will be the start of a long difficult period which may end in your having to evict your tenant.

Perhaps the worst sign is if your tenant just refuses to speak to you. This generally means that they are not going to pay any more, and often they just are waiting for you to evict them. So, the best thing to do is to proceed with a claim for possession as soon as possible. I will be talking about this later in the series.

The most important thing in a rent arrears situation is to do something and not to let things drift. I have known situations where landlords have allowed the rent arrears to reach horrendous proportions before they take action.

Remember – even if everything goes smoothly it will take a minimum of three to four months to recover your property through the courts – and if the tenant is not paying rent during this time your losses can be very serious indeed.

Don't fall into the trap of putting off action because your tenants promise to pay. Tell your tenants you expect them to make at least some payment first and that THEN you will hold off taking action.

It is easy to say you are going to pay, and many tenants have effectively been able to negotiate additional free accommodation for themselves and their families by promising to pay landlords and then failing to do as they promised.

I have written quite a bit about rent arrears and rent problems on the blog and you will find links to several of these below.

Further Reading

Some extra reading:

- Essential points on rent records
- Common law rules about rent – where do they come from?
- Rent arrears – how landlords can deal with them effectively
- Five questions answered on rent review clauses
- Five tips to help you deal with your tenants rent arrears before they happen
- Why landlords should not trust their tenants

The Rent Arrears Action Plan

One very popular part of my Landlord Law service is my Rent Arrears Action Plan.

This gives help and guidance from day one – there are letters, checklists, and forms (including self-calculating rent arrears schedules), as well as possession notices.

There is a considerably smaller free version at www.rent-arrears.co.uk.



Part 8 :

Repairs

My topic in this chapter is often a vexed problem and there are many complaints by tenants about it.

Landlords often justify their failure to take action on the tenant's failure to pay rent and things spiral downwards. Not always of course but I have seen this happen.

What am I talking about?

The landlords statutory repairing obligations

Under section 11 of the Landlord and Tenant Act 1985 a landlord must:

- Keep in repair the structure and exterior of the dwelling house (including drains gutters and external pipes)
- Keep in repair and proper working order the installations for the supply of water, gas, electricity, and for sanitation (includes sinks etc., but not fixtures and appliances for making use of the supply of water gas and electricity) and
- Keep in repair and proper working order the installations for space heating and heating water.

Part 8 : Repairs

However, a landlord will not be responsible for

- Damage caused by the tenant or resulting from the tenant's failure to use the property properly
- Tenants own property
- Rebuilding in the case of fire flood or other inevitable accident
- Doing work where the problem is due to the design of the property rather than disrepair

and the property's age, character, prospective life and its location will be taken into account (for example by a court if a tenant applies for an order that works be done) when determining the standard of repair.

Its important to realise that landlords are responsible under their repairing covenants **WHETHER OR NOT THE TENANT HAS PAID RENT.**

Note also that if your tenant withholds rent because you have failed to carry out essential repairs, and you issue proceedings for possession based on rent arrears, your tenant will have a defence.

You could end up being on the wrong end of a court order, ordering you to do the repairs, and being ordered to pay compensation to your tenants. Depending on how much the arrears are, of course.

The Judge won't make this sort of order if the repairs are minor and the tenant owes £10,000 worth of rent.

Part 8 : Repairs

As discussed earlier in the chapter on Rent, tenants also have the right, in certain circumstances, to get the repairs done themselves and deduct the (reasonable) cost from their rent.

All of which means that you should make sure that the property is in tip top condition at the start of the tenancy and carry out regular inspections and do repair work as and when necessary. Keeping careful records of all that you do.

Flats in larger buildings

If the tenanted property forms part of a larger building (for example a block of flats) which the landlord owns or controls, then the landlord will also be responsible for the repair of the common parts and installations, insofar as they affect the tenants use and enjoyment of his tenancy and the common parts.

So if there is one boiler in the basement which services all the flats and the landlord owns the block he will be responsible for servicing the boiler.

However, if the common parts of the building are owned by someone else, then previously the tenant could not hold the landlord responsible for anything that might go wrong there.

Can you get out of your statutory repairing obligations?

It is virtually impossible to avoid liability. They cannot be excluded by any contract term. So, for example, if you have a clause in your tenancy agreement making your tenant responsible for keeping the brickwork of the property in proper repair, that will be void.

Part 8 : Repairs

You also need to be careful about giving tenants low rents on the basis that they will do repair work which comes under the statutory repairing obligations. You may find that the tenant (once in the property) turns around and refuses to do the work, but continues to pay the low rent. There isn't much you can do about this.

Better to have a market rent and agree to pay the tenant separately for the repair work. And then allow it to be offset against the rent.

The only legal way you can 'get out' of your repairing obligations is by making an application to the court and I have never known of a case where this has happened.

When should you do the repair work?

You cannot be liable to the tenant for failure to do repair work if you have not been told about it (assuming the disrepair is inside the property – if it is outside where you do not need permission to view it, you will be expected to know about it). So, your tenants need to give you notice of the disrepair. Preferably in writing although if they just tell you about it, you still ought to do something.

Tenants also cannot expect you to be liable for compensation for disrepair if they fail to allow you access to do the repair work! Something that happens sometimes.

If it happens to you, best to write to them telling them that if they won't let you in to inspect/repair you cannot be held responsible for any problems that may occur as it will be their fault for failing to allow you access to deal with it.

This of course, leads on to

Inspection visits

You should carry out regular inspections, both to keep an eye on how the tenants are treating your property and to ensure that any minor repairs get dealt with promptly and do not escalate into something more serious (and more expensive).

Sometimes landlords experience problems with tenants refusing to allow them access. Under s11(6) of the Landlord and Tenant Act 1985 you

may at reasonable times of the day and on giving 24 hours' notice in writing to the occupier, enter the premises comprised in the lease for the purpose of viewing their condition and state of repair.

However, notwithstanding this, if the tenant says that he does not agree to your going in to inspect, you should not use your keys to go in and inspect anyway. This could get you into trouble. For example, the tenant may turn malicious and accuse you of theft or something similar. Which may be difficult for you to refute if you went in when the tenant was not there and against his express wishes.

Mind you, if the tenant won't let you in to do inspections, it may be time to consider refusing to renew the tenancy at the end of the fixed term and serving a section 21 notice.

The Anti-Retaliatory Eviction Rules

These were introduced in the Deregulation Act 2015 and are intended to prevent landlords evicting tenants because they have complained about the condition of the property. They only apply in England (i.e. not to Wales)

Part 8 : Repairs

Very basically, if your tenant makes a complaint about the condition of the property you must make an 'adequate response' within 14 days. An 'adequate response' is one in which

- Sets out what you intend to do to deal with the problem raised by the tenant, and
- Your time frame for doing it.

If the tenant then goes to the Local Authority and they serve a notice on you (normally due to your property failing a Housing Health & Safety Rating System inspection, discussed in the next section), you will then be debarred from serving a section 21 notice for 6 months.

We look next at health and safety issues.

Further Reading

Here is some extra reading for you from the Landlord Law Blog:

- The top five laws on disrepair and the condition of rented properties
- Landlords liable for plaster says Court of Appeal
- Edwards v. Kumarasamy – the final decision



Part 9 :

Health & Safety

Renting out property is a serious business. As I said in the introductory chapter it is not just an investment – it is someone's home.

As the provider of this, there are some pretty strict obligations on landlords, not just for keeping the property in repair. There are also

Landlord's health and safety obligations

The law on this is rather scattered about so I will try and draw some of it together for you in this article. I will look first at the best-known health and safety obligation.

The gas regulations

These require all landlords of property where there are any gas installations, to have them checked annually by a gas installer registered with the Gas Safe Register, and to provide a certificate to the tenants (also annually) confirming that this has been done. And that any necessary work has been done.

The obligation to do this is on the landlord and it is not something you can pass on to the tenant. For example, in a clause in the tenancy agreement – if you do this it will be void.

The landlord also has to pay the cost of any necessary repair and maintenance work – unless the work is needed because of damage done by the tenant.

What happens if you fail to comply? Well the tenant can report you to the Health and Safety Executive (HSE) who may, if you ignore all requests, bring a prosecution against you.

The [HSE](#) have a very good web site with a lot of useful information on it, as does the [Gas Safe Register](#). In addition, you can use the Gas Safe Register site to find or to check out a gas installer, to see if they are registered.

Gas safety is extremely important. People have died due to poorly maintained gas appliances.

Note that for tenancies in England which started or were renewed on or after 1 October 2015, you will not be able to serve a valid section 21 notice if you have not served a gas certificate on your tenants before they moved in (assuming there is gas in the property). At the time of writing this is a serious problem as there is no way to remedy it so you may find it is impossible to evict your tenants at all. [See here to find out more.](#)

Electricity

People often think that, because there are gas regulations, there must also be electricity regulations in the same way. Strangely this is not the case, although regulations are planned. At present, there are just the repairing covenants we looked at in the last chapter, which require landlords to keep the “installations for the supply” (i.e. the wiring) in good condition. However, there is (at present) no general obligation on landlords to get the wiring checked.

There are some situations where this is required though – if you are renting out an HMO you need to get the electrics checked every five years and obtain a certificate. And most of the accreditation schemes (for example for student accommodation) will require regular checks.

There are also regulations that relate to electricity and electrical appliances. For example, regulations relating to plugs and sockets, gas cooking appliances and the safety of electrical appliances generally. To protect yourself therefore it is often a good idea to get PAT (portable appliance testing) certificates between lets, if you are providing used or second hand electrical appliances in your property.

Note also now that under building regulations, only properly qualified electricians can do electrical work. So, make sure you only use qualified people and keep careful records to show what has been done at the property and who did it.

Smoke and Carbon Monoxide Regulations

These came into force on 1 October 2015 and only apply in England.

Landlords must provide a smoke alarm on every floor where there is living accommodation and a carbon monoxide alarm in every room where there is a solid fuel combustion heater. Strangely CO2 alarms are not (at present) required where there is oil or gas heating.

The alarms must be tested on the first day of the tenancy by the landlord or his agent, after which the maintenance is down to the tenants.

For more information read the blog post [here](#).

Furniture

Then there are the furniture regulations. These state that all soft furnishings must be complaint, fire retardant and carry the proper labels. This does not apply to furniture manufactured before 1950 or materials used just to cover them.

To protect yourself you should keep records of all receipts for furniture bought. Anything purchased new since about 1993 should be compliant.

Local Authorities and the Housing Health and Safety Rating System

Local Authorities have a statutory duty (under the Housing Act 2004) to try to enforce housing standards in their area. They do this via the Housing Health and Safety Rating System (HHSRS).

If they suspect that a property is below standard – for example if they have received a complaint by a tenant, one of their Environmental Health Officers (EHOs) will go there and carry out an inspection.

Under the HHSRS procedure, the EHO will assess the property against 29 specific hazards. Each of these will be given a score and entered into a computer program which will calculate the results for the property. If the assessment throws up a category 1 hazard, then the Local Authority has a duty to take action. If it throws up a category 2 hazard, then they have a power to take action but a discretion as to whether they actually do so or not.

The normal course of action is to serve an enforcement notice on the landlord ordering him to do specified works to bring the property up to standard.

If the landlord fails to comply with the notice, the Local Authority can do the works themselves and claim the cost back from the landlord. However more usually they will prosecute.

That's all on health and safety. In the next chapter we move on to shared properties.

Further Reading

Here is some extra reading for you from the Landlord Law Blog:

- [Bad news for Landlords on section 21 and Gas Safety Certificates](#)
- [These lunatic smoke and carbon monoxide regulations](#)
- [Landlords obligations regarding electricity](#)
- [Rats, cockroaches, bed bugs and other pests in rented properties](#)
- [The top ten health and safety issues in rented properties](#)
- [Gas safety checks – can landlords do them anyway even if tenants say no?](#)

10

Part 10 :

Shared properties & HMOs

Generally, when you rent out a property there is more than one person living in it. Often it will be to a family or couple. However frequently it will be to a group of people, who are not family, sharing.

There are a number of specific legal issues which this situation throws up which I am going to be looking at in this chapter.

Then, if you want to find out more about the legal issues, I suggest you check out the resources at the end.

Shared houses and flats

There are four main ways that people can share a rented property:

- **First**, where they all sign the tenancy agreement as joint tenants.
- **Secondly**, where a landlord rents out rooms on an individual basis. Here the tenants will have a separate tenancy agreement for their own room and will share the rest of the property with the other tenants
- **Third**, where one or more people are living there as a guest or lodger of the tenant. I am not going to be talking about lodgers here, but you can find a huge amount of information in my special free website [Lodger Landlord](#).
- **Finally**, in a family situation it is not unusual for just one or two people (say just the father or the parents) to be the tenant, but for the rest of the family (partner, children, perhaps other relatives such as a grandparent, and maybe also a nanny or live in nurse) to live in the property also.

I am mostly going to be talking about the first two situations in this article.

Joint tenants

This is where two or more people sign the tenancy together. This is the most popular method of renting to sharers.

- It is popular with the landlord as all the tenants have what is called 'joint and several liability'.
- It is also popular with many tenants as they get to choose who they share with

What is joint and several liability?

This means that all the tenants are, collectively 'the tenant' and are liable, individually and jointly, for everything.

For example, four tenants may have agreed to pay £100 each of a rent of £400 per month. However, the landlord can sue all of them or just one of them for the whole £400 if they fail to pay. If damage is done to the property, the landlord can sue any of the tenants for compensation, not just the tenant who did the damage.

This type of let is particularly popular with students, who will often club together and share a rented house or flat for the academic year.

Problems with ending a joint and several tenancy

Where there can be problems with this type of let is with ending the agreement for just one of the joint tenants. Basically, it is not possible. So, if the tenants come to you complaining about one of the tenants who is behaving in an anti-social manner, you cannot just evict that tenant. You can only evict all of them together.

Part 10 : Shared properties & HMOs

There are also problems if one of the tenants wants to leave and the others want to stay. If this is during the fixed term then probably the best option is for the tenants to find a lodger to take his place and then if the lodger proves satisfactory, they can be signed up as a proper tenant at renewal. They will need your permission for this, but if it is to help pay your rent, then normally you will be happy to agree to this (assuming it does not throw up any HMO issues – see later on this).

After the fixed term has ended, technically one of joint tenants can give notice to quit and end the tenancy for everyone. In this situation the remaining tenants will need to find a replacement tenant and you should then get them to sign a new tenancy agreement with you if they want to stay.

Renting a room in a shared house

If you are renting to individual people who will want to come and go at different times, it is generally more convenient to let property on a room by room basis.

This is generally more work for the landlord, for example, it involves more paperwork. However, the good news is that you can generally earn more per property if you let it out on a room by room basis than you can if you let it as a whole unit.

Finally, note that you must have a tenancy agreement type which is suitable for this type of let. Suitable tenancy agreements are available to all members of my Landlord Law service as part of their membership entitlement.

Houses in Multiple Occupation

When people live together in the same building where they are not family, there are often problems.

Part 10 : Shared properties & HMOs

For example, often this type of accommodation is low quality and the tenants will be people living on the edge of society. Although there are many, many landlords who provide superb facilities for their tenants in shared properties which are in tip top condition, the worst housing is generally of this type.

For this reason, this type of property, known as ‘houses in multiple occupation’ or HMOs, is treated differently and there are additional regulations which apply to them.

There is a very long definition of an HMO in the Housing Act 2004, but basically it is where three or more people who are not family or related to each other, share living accommodation. In these situations the following additional regulations apply:

- **Management regulations** which impose additional obligations on landlords as regards keeping the property in a safe condition and as regards dealing with rubbish. These regulations apply to ALL HMOs whether or not they are licensed.
- **Amenity standards** which set out basic facilities which must be provided in HMOs. For example as regards room size, kitchen and washing facilities.
- **Licensing** – Landlords of some HMOs, but not all, will need to obtain a license from their local authority. All properties with five or more unrelated tenants will need to obtain a license but in some areas landlords of other HMO properties will too.

Note that there was a big change in October 2018 when the three storey requirement for mandatory HMO licensing was removed, which brought many more properties into scope for HMO licensing. It is now really important, if you want to avoid licensing, that you carry out regular inspections of your property to make sure that only four or less people are living there. Otherwise you face serious penalties (see below)

Part 10 : Shared properties & HMOs

One of the problems about writing about HMOs is that the requirements vary across the country. There are the basic legal requirements, but many local authorities have additional requirements for HMO landlords in their area.

Therefore, if you are considering renting a property to three or more tenants, it is best to speak to the Housing Officer at your Local Authority before doing anything, to find out what the requirements are in your area.

Note that there may also be planning implications in renting to three or more tenants, so you may need to speak to the Local Authority planning officer also.

Enforcement and penalties

Local Authorities are becoming increasingly more active in enforcing the HMO rules. You could be faced with any of the following if you fail to comply with Local Authority requests:

- A penalty charge notice which can be for up to £30,000 per offence (so if you breach several of the management rules, this could prove very expensive)
- A prosecution in the Magistrates Courts where fines are now unlimited
- Both Local Authorities (where payment is via some form of benefit) or tenants where they pay the rent, can apply to the First Tier Tribunal for a Rent Repayment Order for up to 12 months rent – this can be VERY expensive
- Where the landlord has a housing-related criminal conviction, Local Authorities can also apply to the First Tier Tribunal for a banning order

Part 10 : Shared properties & HMOs

So if there is any chance that your property is an HMO it is really important that you are aware of all the rules and take care to comply with them.

That is all I am going to say here about shared properties and HMOs.

Further Reading

Here is some extra reading for you from the Landlord Law Blog:

First >> [click here](#) for a 12 part series which I wrote with solicitor David Smith for the Landlord Law Blog. More blog posts:

- [Can you have more than four tenants on one tenancy agreement?](#)
- [HMOs and Council Tax](#)
- [Landlords – are you ready for the new HMO laws?](#)
- [The new Mandatory bedroom sizes in HMOs](#)
- [How Rent Repayment Orders work](#)



Part 11 :

Eviction of Tenants

If you are a long-term landlord, you will be lucky if you never have to evict a tenant. Even if you carry out perfect referencing and are super careful in your choice of tenant, things happen.

Part 11 : Eviction of Tenants

People lose their jobs. Couples break up. And then you might just want the property back for your own use and find that the tenant is unwilling to move voluntarily.

So, this penultimate chapter is going to look at eviction issues.

All the experts will tell you that there are three stages to an eviction:

- Service of notices
- Getting a possession order through the courts, and
- Using the bailiffs to get them out if they still refuse to go

However, I always say that there are actually four stages to eviction. This is the real first stage, and it is the most important of all. It is:

Analysis

Issuing court proceedings is a serious business. It is like getting on to a fast train. Once you start you may not be able to get off. Not without a lot of bother and sometimes considerable expense.

So, it pays to make sure that you are using the right type of proceedings for your situation in the first place. The best way of doing this, is to take legal advice from a specialist eviction lawyer.

On my Landlord Law site I have a special tool for the analysis stage, so you can find the best solution out for yourself. You will find this [here](#).

Notices

For virtually all types of possession claim you need to have served the proper notice first. There are three notices we need to look at:

- Section 21 notices
- Section 8 notices
- Notices to quit

Section 21 notices

This is the notice you serve if you want to use the ‘no fault’ ground for possession. My view is that if at all possible, this is the best route to take. However, it is not suitable for all situations. In particular

- They can only be used for assured shorthold tenancies
- You cannot use it during the fixed term of the tenancy, and
- There is a minimum notice period of not less than two months.

You may not be able to wait this long. However, it is generally a good idea, if you are considering eviction, to serve a section 21 notice anyway – if circumstances permit.

You need to be careful when drafting section 21 notices, as many a landlord has lost his case through failure to comply properly with the rules.

Part 11 : Eviction of Tenants

The law has recently changed on section 21 notices and there are now differences in the notice and procedure depending upon whether the property is in Wales or England and then depending upon whether the tenancy started after 1 October 2015 or not.

Here is a very brief summary.

No section 21 notice will be valid if

- You have not complied with the tenancy deposit regulations or if
- You have not got a license for an HMO property which requires one

If the property is in England:

- You will not be able to serve a valid section 21 notice within 6 months of being served a notice by the Local Authority for failure to comply with the Housing Health and Safety Rating system (there are a few other Local Authority notices which have a similar effect) – see the repair section for more on this.
- You will not be able to serve a valid section 21 notice (for tenancies which started or renewed on or after 1 October 2015) unless you have served on your tenants, before they move in
 - An Energy Performance Certificate
 - A Gas Safety Certificate
- You also need to have served on your tenants the current edition of the governments How to Rent booklet (available [here](#)).

Part 11 : Eviction of Tenants

Note that if the tenant stays after the end of the fixed term, you will need to re-serve the booklet if it has been updated since it was last served on the tenant.

There are also new time limits – the section 21 notice cannot be served during the first four months of a new tenancy, and it cannot be used more than six months after it was served. Plus, there is a new prescribed section 21 form which must be used now.

Be aware that this is a very rough guide and if you need to serve a section 21 notice you need to check out the rules in more detail. For example, I have a [section 21 guide](#) on Landlord Law.

Note also that as a result of a recent case (Caridon Property Ltd v Monty Shooltz) there is at present (as discussed in previous chapters) a very serious problem for post 30 September 2015 tenancies where you cannot prove you served your gas safety certificate on your tenants before they moved in. Unless and until this problem is resolved, if your tenancy predates 1/10/2018 it is best to allow it to continue as a periodic tenancy. If you give a new tenancy agreement or renewal form you may find that you are unable to use section 21 at all. You can read more about this [here](#).

Section 8 notices

These must be used for assured and assured shorthold tenancies where you want to use one of the ‘grounds’ for possession set out in Schedule 2 of the Housing Act 1988. These grounds are divided into ‘mandatory’ grounds where the Judge must make an order for possession and ‘discretionary grounds’ where he does not, if he does not consider it reasonable to do so.

Part 11 : Eviction of Tenants

The most important of the grounds by far is the serious rent arrears ground, ground 8. This is a mandatory ground and provides that so long as the tenant is in arrears of rent on two dates:

- The date the notice is served on him and
- On the date of the court hearing

The Judge must make an order for possession.

Along with section 21, this is the most important ground for possession used by landlords in the private sector. The notice, like the new English section 21 notice, is in a prescribed form, so as long as you use this and complete it properly, you should not have any problems. So far as the notice is concerned anyway.

Note that the section 8 notice prescribed form in England changed with effect from 6 April 2016. Make sure you are using the correct form!

Notice to Quit

This is a very old form of notice, which is used to end periodic tenancies. It cannot be used for assured or assured shorthold tenancies, but it is the notice you need to use for common law tenancies and also for protected tenancies (if you have a ground for possession that you are able to use – it is notoriously difficult to evict protected tenants).

Getting a possession order through the courts

Assured and assured shorthold tenancies

As discussed earlier, it is vital that you issue the correct type of claim here. If at all possible, I would advise using the accelerated possession procedure, which is a special type of procedure used just for section 21 claims.

The accelerated procedure is not as quick as its name implies, but there is no court hearing and, provided you get your paperwork right, there is no defence.

However, note that it cannot be used unless you have given your tenant a tenancy agreement. You also need to make sure that your section 21 notice has no issues. For tenancies in England, things have (as you can see above!) become more complex.

The other type of procedure is the standard possession claim where you have a court hearing before the Judge. This is the procedure used for rent arrears claims – which is the other popular type of claim brought in the private rented sector (although you can use it for section 21 claims too if you wish).

However, evicting on the basis of rent arrears is less certain than the section 21 route, as it is always open to the tenant to raise a defence. For example that they are entitled to compensation (and that therefore this will reduce the amount of rent due from them) because you have failed to comply with your repairing obligations.

If the Judge accepts this, you could find yourself involved in a long complex disrepair claim which will be expensive to run and which you may end up losing.

So, make sure, before you issue this type of claim, that there are no outstanding issues with your tenant, or that if there are, they are resolved before you go to court.

Part 11 : Eviction of Tenants

Note that another common problem is tenants claiming the penalty if you have failed to comply with the deposit rules. So, check that there are no problems as if the Judge awards the 3x the deposit penalty it could wipe out your rent arrears completely (and you could end up owing the tenant money!).

If you succeed in a claim for rent arrears, you will also get a County Court Judgement for the rent due. This is usually not a lot of use, as tenants who are being evicted for rent arrears seldom have any money available to pay it. You cannot get blood out of a stone. However, occasionally you may be able to recover the rent. Don't count on it though.

There are other ways you can get possession, but my advice for landlords of assured and assured shorthold tenancies is to use either the accelerated procedure or the rent arrears ground. Don't issue on any other basis without getting legal advice first.

Note that I have written a free Which Possession proceedings Guide for landlords to help you work out which type of claim is appropriate for your situation. There is also a very comprehensive Eviction Guide for Business members of my Landlord Law site, which you can use to bring a claim for possession without using solicitors.

Common law tenancies

There are comparatively few common law tenancies around and the procedure for eviction is less well known. However actually there is usually no problem in getting an order for possession, provided the fixed term has ended, as there is no defence to a claim for possession where a common law periodic tenancy has been ended by a notice to quit.

If you need to issue proceedings during the fixed term, you can use the forfeiture procedure if the tenant is in arrears of rent. However, I would not advise using forfeiture for any other tenancy breach, not without legal help.

These two types of claim are included in the Eviction Guide on Landlord Law.

Bailiffs

Even though you have an order for possession, it is still unlawful for you to physically evict your tenant other than via the Court Bailiffs. In my experience, the tenants have usually vacated by the time the appointment arrives, but often you need to get the appointment before they will leave. Although I have known instances where the tenant has been going down the stairs, as the bailiffs go up them to take possession.

Some courts, particularly the London courts, have very long waiting lists for getting a bailiffs appointment, so it is best to apply for this as soon as you can.

Many landlords decide to pay more and use the High Court Sheriffs. These provide a superior (and considerably more expensive) service, but you need to get leave of the court to use them, which is not always forthcoming. Note however that there have been issues which have recently come to light about some Sheriffs using the wrong forms (which renders the eviction invalid), so you need to be very careful about going down this route.

Further Reading

Here is some extra reading for you from the Landlord Law Blog:

- [Grounds for Eviction](#) – a series looking at all the different grounds in the Housing Act 1988
- [Five ways to avoid tenant defences to rent arrears claims](#)
- [Evicting housing Benefit tenants – Kate's story](#)

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Part 12 :

Summary & Checklist

This final chapter is essentially a check list summarising much of what I have discussed before. However, it also includes a few things I have not had time to mention yet.

Essential paperwork

Before the tenancy you will need :

- **The tenant information form** (discussed in part 4)
- **An energy performance certificate.** This should be given to prospective tenants at the same time as they receive the property details. It is a legal requirement and you can be fined £200 if you fail to comply. The certificate needs to be provided by an accredited domestic energy assessor.
- **A gas safety certificate** (if there are gas appliances or pipework at your property) which also needs to be given to tenants before they move in, and
- **To have completed a right to rent check against ALL proposed occupiers of the property.** NB If any of the proposed occupiers do not satisfy the checks, you will not be able to rent the property to the tenants.
- **A Data Information Notice** – we have not previously discussed data protection in this ebook, but as a landlord you are a ‘data controller’ under the data protection legislation and need to notify tenants how you will be using their data. You should also, incidentally (save in a few very exceptional circumstances) be registered with the Information Commissioners Office. We have a Data Information Notice which landlords can use on Landlord Law.

You should also protect your property from being fraudulently sold or mortgaged (e.g. by criminal tenants) by registering a separate contact address at the Land Registry. This is VERY IMPORTANT. Find out more [here](#). Needless to say, you should always check your tenants very carefully before they are allowed into occupation.

When the tenant first goes in

You will need the following

- **The tenancy agreement** – we discussed this in part 5
- And a **form of guarantee** if you are using one (this should be signed before the tenancy agreement if so)
- **A standing order form** (for payment of rent)
- If the tenant is paying rent weekly, you will need to give him **a rent book** (this is a legal requirement)
- **Inventory / schedule of condition**, which should ideally be checked with the tenants and signed by them as agreed. This is discussed in part 6.
- **The tenancy deposit prescribed information form** – again this is discussed in part 6. Remember this **MUST** be served within 30 days of receipt of the deposit money.
- A copy of the most recent version of the Government's **How to Rent booklet** – available [here](#)
- **A letter of authority to the housing benefit office**, if your tenants are in receipt of benefit, and maybe even if they are not – just in case. Note that if you don't have one, the benefit office will refuse to speak to you about your tenant's application citing the Data Protection Act, which can be very irritating. Landlord Law members will find a form of letter they can create in the Landlords Letters section.

- **If you have a mortgage** your mortgage company may require you to serve notice of its right to recover possession in certain circumstances
- **The gas safety certificate** – referred to above and discussed in part 9. Make sure you give it to your tenants BEFORE they move in and keep a record so you can prove this. Ideally get the tenants to sign a receipt
- **Any electrical certificate** obtained – again, see part 9.
- It is also a good idea to take **meter readings**, and get the tenants to sign a letter or form confirming these as correct and also authorising you to provide these details to the utility companies. We have a notification form which can be used for this linked from the forms section on Landlord Law
- **Manuals and instructions** for appliances in the property. Some landlords provide a **welcome pack** to new tenants, which includes not only the forms and notices discussed here, the appliance manuals and information about the property, but also your emergency contact details, washing instructions for fabrics such as curtains and soft furnishings, information about local amenities, the nearest health centre and train station etc, and any other information which might be useful. Your tenants will appreciate this and it will help foster a good landlord / tenant relationship.

Warning – DO NOT let the tenant into possession until the first months rent and deposit has cleared into your bank account AND they have signed the tenancy agreement. Ideally, the tenants should not be allowed in either, until after they have checked the inventory and an agreed version has been signed by them as correct. However, this is not always possible.

As mentioned above, no-one should be allowed into occupation until you have completed satisfactory right to rent checks on all occupiers.

After the tenancy has started

In the past, many landlords like to serve a **section 21 notice** at the start of the tenancy as a precautionary measure. However, this will no longer be possible for tenancies in England. The best advice now is to serve it two months before the end of the fixed term (if you want the tenants to leave at that stage and if this is something you are legally entitled to do – see part 11 for more on this).

If you carry out **regular inspections** (which is recommended) you will need to give at least 24 hours **written notice** to the tenants first.

Gas certificates need to be obtained and served on the tenant every 12 months

Notices of rent increase, will need to be served if you use this method of increasing rent – referred to in part 7.

If you rent to someone with **a limited right to rent** you will need to re-check them once their right to rent has expired. If they no longer have any right to rent you must report them to the Home Office (at the time of writing it is not necessary to evict them).

If the tenancy is renewed

- You will need a **new tenancy agreement** or renewal form
- Arrange to **re-protect the tenancy deposit** if appropriate
- Re-serve the How to Rent booklet if it has changed since it was last served on the tenants (for tenancies in England) – NB this needs to be done even if the tenant is not given a new fixed term / renewal agreement

Note however that you do not **HAVE** to give a new tenancy agreement at the end of the fixed term. A new 'periodic' tenancy will be created automatically under section 5 of the Housing Act 1988.

When the tenants leave

- Have a **check out meeting**, preferably with your inventory clerk, when the property can be checked against the original inventory and any damage agreed
- Get **meter readings** and get the tenants to sign a form or letter confirming these as agreed and authorising you to provide this information to the utility companies – again there is a standard notification form for this linked the landlords forms section on Landlord Law.
- **Obtain a forwarding address** from the tenants. This is very important as you will need to be able to contact them if a problem arises.
- **Deal with the return of the deposit** to your tenants, or the retention of money against damage as appropriate.

This is the end of this short ebook for landlords. I hope it has been helpful for you. I wish you all the best and good luck with your lettings

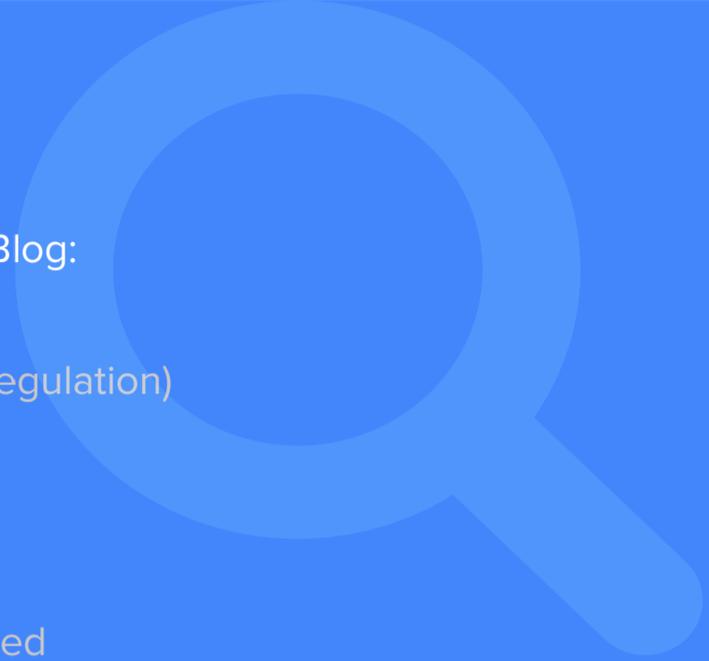
Tessa Shepperson

November 2018

Further Reading

Here is some extra reading for you from the Landlord Law Blog:

- [Landlords and the GDPR \(General Data Protection Regulation\)](#)
- [What are fixed terms and periodic tenancies?](#)
- [Landlord and tenant law – implied surrender explained](#)
- [Five points on selling a property with sitting tenants](#)
- [What do to about forwarding post](#)



Tessa Shepperson

Landlord Law Essentials

The ebook