

LETTING

WHAT TYPE OF
TENANCY AGREEMENT
IS RIGHT FOR ME?



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As a prospective landlord, it's important to know which type of tenancy is most suitable for you and your property.

There are two main types of tenancy agreements in the private residential sector:

1. Assured Shorthold Tenancy (AST)

This is the most common type of tenancy agreement and is generally for a fixed period, although this isn't essential. If there is no fixed term or the fixed term is less than six months, you can't recover possession of your property until six months after the start of the tenancy. Thereafter, if the correct notice is served at the correct time then you can recover possession even if the tenant has not breached the terms of the agreement. An AST can be used for both houses and flats as long as they are self-contained units. It can also be used where a house or flat is rented as a whole to a group, such as a group of students or young professionals.

On the other hand, if you are renting out individual rooms in a property then normally an 'Assured Shorthold Tenancy Agreement – Room Only' is a more appropriate variation of an AST. This is used in circumstances where a non-resident landlord rents out individual rooms or bedsits to tenants in a shared house. The accommodation isn't self-contained so a tenant will share facilities, e.g. a bathroom and/or kitchen, with other tenants in the same property.

In either case, the tenancy created is an Assured Shorthold Tenancy within the Housing Act 1988 and any deposit paid must be protected under a Government-approved tenancy deposit scheme. At the end of the fixed term, the tenancy automatically continues unless you take steps to end it. In the event that the tenant refuses to move out, you can use the Section 21 procedure (an eviction notice that a landlord gives to a tenant to regain possession of the property) and, in the event of tenancy arrears or other tenancy breaches, you can serve a Section 8 notice, for example by relying on ground 8 for rent arrears.



NB: If you are protecting the deposit with DepositGuard, a service only available to members of the Residential Landlords Association, providing a more cost-effective alternative to other insurance-based deposit schemes (where you can hold onto the deposit yourself), you must use the DepositGuard Compliant Assured Shorthold Tenancy Agreement.

2. Assured Tenancy

This type of tenancy can last for many years and gives the tenant security of tenure. There are a limited number of ways that you can recover possession of the property from a tenant who refuses to leave but unless specific grounds apply, the tenant can remain in the property indefinitely and is effectively a 'sitting tenant'.

Exceptions

At Urban Spaces we generally advise our clients to opt for an Assured Shorthold Tenancy. However, there are some exceptions to the rule and if any of the following apply to you as landlord you should consider an alternative form of agreement:

- you are renting out your property as a holiday let
- you are renting out your own home which you have occupied in the past as your only or main home or, if there is more than one landlord, at least one of the landlords has occupied the property as his/her only or main home
- you are resident in the same property and you share living accommodation, e.g. a bathroom, toilet, kitchen and/or a living room, with the tenant
- you reside in the same building but you do not share any living accommodation with the tenant, i.e. you do not share a bathroom, toilet, kitchen or living room, and your own residence in the property is your only or main home
- the rent you will receive is less than £250 per year, or no rent at all is involved
- you are certain that this will be a second home for the tenant, i.e. the tenant's only or main home is somewhere else and will remain elsewhere during the tenancy
- the tenant to whom you let the property is a limited company, limited liability partnership (LLP) or other incorporated body, i.e. the tenant (or tenants, if there is more than one tenant), are not individuals

If any of the above scenarios apply, you should opt for one of the following agreements instead of an AST:

1. Excluded Tenancy Agreement (Lodgers' Agreement)

This agreement should be used if you are a resident landlord and you share living accommodation with your tenant. This does not create an assured shorthold tenancy or a non-shorthold assured tenancy. It is outside the scope of the

Protection from Eviction provisions. This means that as long as you give the proper notice as required by the agreement you can evict the tenant without a court order. The normal four-week minimum period of notice is not required either and if you take a deposit it does not need to be protected under one of the Government's deposit schemes. However, you must not use this agreement unless you actually share the accommodation. Simply sharing an access is not enough.

2. Company Let Agreement

This form of agreement is used where the tenant is an incorporated body, e.g. a limited company, LLP, etc. and, where there is more than one tenant, they must all be incorporated bodies rather than individuals. The tenancy is not an assured tenancy and if you take a deposit it does not need to be protected under one of the Government-approved tenancy schemes. If it is a common law tenancy, you do not need to serve a Section 21 Notice or a Section 8 Notice to obtain possession. A company let is a fixed-term tenancy which continues automatically as a monthly tenancy at the end of the defined period and you will need to give notice in order to terminate the agreement.

3. Owner Occupier Tenancy Agreement

This type of agreement is used when you let your own home. It is only suitable if you have actually lived in the property yourself and, when you lived there, it was your only, or main, home. It does not matter how long ago that was; and nor does it matter if you didn't actually own the property when you lived there. If there is more than one landlord, then only one of the landlords needs to have lived in the property as his/her only, or main, home at the time. The agreement creates a non-shorthold assured tenancy and, unlike an AST, the tenant does not have the guarantee of a minimum of six months' right of occupation from when he/she originally moved in. However, the tenant can live in the property for as long as is



stipulated in the agreement itself, assuming they pay the rent and comply with the terms of the agreement. Thus, if you give the tenant a 12-month tenancy, he/she has the right to stay there for the entire period.

If you want to regain possession of your home, you will have to give two months' notice using a Section 8 Notice relying on Ground 1 to end the tenancy and then obtain a court order if the tenant will not vacate. You will not be able to obtain a court order unless the fixed-term tenancy has run out before you start court proceedings for possession, although you can serve the Ground 1 notice prior to this. It doesn't matter if there is a monthly tenancy in place rather than a fixed term. In that situation you can obtain possession once the two-month Ground 1 notice has run its course. You can also rely on Section 8 and grounds such as rent arrears or another breach of the tenancy terms to regain possession.

The agreement contains the statutory Ground 1 notice warning the tenant that this is an owner occupier agreement and that Ground 1 applies. As the tenancy is a non-shorthold agreement, you can take a deposit and you do not need to protect it under one of the statutory schemes.

4. Non-Assured Tenancy Agreement

This type of agreement can be used in the following situations:

- Where the rent does not exceed £250 per annum
- Where the tenant's only or main home is elsewhere or, if there are joint tenants, where all of their only or main homes are elsewhere. You need to be sure of this situation and as certain as you can be that it will continue for the duration of the tenancy. For example, in instances where a tenant lives with his family elsewhere and uses your property during the week, returning to the family home at weekends, this situation would apply

- You are resident as landlord but do not share living accommodation with the tenant. This means that you must not share a toilet, bathroom, kitchen or a living room with the tenant. However, your residence elsewhere in the same property must be your only or main home and not your second home

In all cases, as the tenancy is not an assured tenancy you can take a deposit without having to pay it into the Government's tenancy deposit scheme.

To end this tenancy you do not need to serve a Section 21 or Section 8 Notice. This is because it is a common law tenancy. The tenancy starts as a fixed-term tenancy which means that the tenant can stay there until the end of the fixed term as long as he/she pays the rent and complies with the tenancy terms. You will then need to give notice to terminate the tenancy which has to be on a prescribed form.

NB: Previously, this type of agreement could also be used in instances where the rent exceeded £25,000 per annum, however the maximum rent level for an assured tenancy was raised to £100,000 effective from 1st October 2010. After this date, all tenancies where the rent was between £25,001 and £100,000 automatically became assured tenancies whenever they were created. The provision is retrospective as long as the tenancy first commenced after the 28th February 1997. The Residential Landlords Association (RLA) therefore no longer provides an agreement for this situation.

If you'd like any help or advice before deciding which type of tenancy is right for you, please call us on our number below and one of our dedicated Account Managers will be happy to discuss your situation further and answer any questions you may have.

For more information about buying, selling or letting your home, contact one of our dedicated Account Managers.

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