

# Letting Your Property



All you need to know in our  
easy-to-read pocket guide



# About The Owen Kenny Partnership

**A**t The Owen Kenny Partnership we are committed to dealing with Letting disputes in a constructive way so we can ensure, in so far as is possible, that issues are resolved with the least amount of acrimony as possible, whilst still protecting your interests.

There are cases that are suitable to be dealt with by alternative dispute resolution methods such as mediation and collaborative law and where appropriate we recommend these to clients, although we recognise that they are not suitable in all cases.

We have been in our offices in Chichester for over twenty years. Our Letting Team is based at our premises at 38 South Street, Chichester (just round the corner from Old Market House).

We will ensure that the individual dealing with your case will continue to act on your behalf throughout. We do, however, operate a team approach and there may be occasions when the individual dealing with your case is unavailable. Should this happen we try to ensure that, where necessary, an appropriate alternative advisor is made available to help you.

In this booklet we have tried to give you some information which we think will be of help to you. This information is to be used as a guide only, as each situation will be different depending upon the issues which affect you.

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## 1

# Introduction

This guide is designed to help and inform those of you who are considering letting a residential property. It is not a substitute for detailed advice relevant to your own circumstances. However we hope that you will find this guide helpful and informative.

Whether you are letting your own home or a house you have bought for investment purposes, it is important

that you take steps to ensure that you can regain possession if things go wrong.

You should bear in mind that there are always risks in letting a property, e.g. the tenant may disappear owing you money. We will help you to reduce those risks wherever possible, but it is never possible to eliminate them completely!

## 2

## A Written Tenancy Agreement

Whatever the situation, we always recommend that you have a written agreement with your tenant. This is necessary to protect your interests and to ensure that you have the best chance of regaining possession of your property at the end of the agreement. We have a basic form of agreement for each type of letting arrangement. This is then adapted to take into account your particular circumstances.

Our agreements have been developed over the years in the light of experience and taking into account changes in the law. It is not safe to rely on an older form of agreement as the law changes frequently.

**“** *Never let your tenant take up occupation until he or she has signed the Tenancy Agreement and paid the deposit.* **”**

# Some Terms Explained

The following are some terms that you may hear in relation to your letting:

- Landlord - The person or persons who own the property and who wish to let it.
- Tenant - The person or persons who are going to rent the property.
- Premises - means the same as property or house/flat.
- Deposit - A sum put up by the tenant to cover damage or rent arrears.
- Fixtures & Fittings - The items you let with the property such as carpets and furniture
- Inventory - a list of fixtures and fittings
- Schedule of Condition - a detailed statement specifying the exact condition of the property and the items on the Inventory.
- Assured Shorthold - The most common type of tenancy used for letting a residential property.

You will find that many of these terms are used in these notes and in most tenancy agreements. If you need further details of their meaning, please do not hesitate to ask.

# What Type of Tenancy?

The most common type of tenancy is known as an Assured Shorthold tenancy. This is the one that we normally recommend. The main features are:

- The letting must be to an individual (not a limited company)
- It must be the letting of a residential dwelling
- There is no minimum term, but you should note that no order for possession can take effect earlier than six months from the date of the start of the tenancy. This means that you can be confident that you could get the tenant out in six months or shortly thereafter by having, for example, a four month tenancy and then applying to the Court.
- Provided that the proper notice is served, you are entitled to possession, once the initial term of the tenancy has come to an end.
- In addition, you can bring the tenancy to an end earlier and obtain possession if, for example, the tenant is in arrears with rent or is breaching the terms of the tenancy.
- The court procedures for obtaining possession are fairly straightforward.

You should avoid an Assured tenancy because such a tenancy will continue indefinitely and you can only get the tenant out if he/she is in breach of the terms of the agreement (eg by being in arrears with rent). If they are not breach, you cannot get them out, even if you want to go back and live in the property yourself.

“ It is a criminal offence to evict a tenant from a dwellinghouse without a court order. ”

If you are sharing accommodation with your tenant then you are what is known as a Residential Landlord. It is usually straightforward to remove your lodger but it can save costs and problems if you have a written agreement.

It is a criminal offence to evict a tenant from a dwellinghouse without a court order.

You should always seek advice before taking any steps to evict your tenant.

# Before You Let

Before you let your property we recommend that you take the following steps:-

1. If you have a mortgage, contact your lender. It will usually be a condition of your mortgage that their consent will be required before you let. Consent may be forthcoming, provided that the tenants sign a proper tenancy agreement. Some lenders have particular requirements, and some charge a different rate of interest if the house is let.
2. Notify both your buildings and contents insurers of your plans. If you do not, you may find that your insurer will not meet any claims. Ask your insurer whether they have any special requirements.
3. Obtain an up to date Inspection certificate for any gas appliances from a registered CORGI installer. This is mandatory and failure to comply can be a criminal offence.
4. Make a detailed note of the state and condition of the property, to use as a reference point if later there is a dispute over the condition of the property. Photographs can be invaluable. Alternatively, ask your managing agent to prepare a Schedule of Condition.
5. Prepare a detailed inventory of any furniture or furnishings included in the letting.
6. If you are letting your property on a furnished basis, then any soft furnishings should contain fire retardant material. Most modern sofas and cushions do, but older furniture does not. Check the labels and replace as necessary. The Trading Standards Department of your local authority can provide additional guidance.

“ Notify both your buildings and contents insurers of your plans. ”

## 6

## Selecting a Tenant

Finding the right tenant is the most important aspect of letting a property. If you are using a letting agent, then the agent will of course deal with this. If you are not using a letting agent, then we hope that these comments will be of use:-

- Always meet your tenants and interview them as to their suitability.
- Obtain references, including one from a previous landlord, if appropriate, a bank reference and another reference, preferably from his/her employer.
- Check who will be living with the tenant.
- Does the proposed tenant have pets? If so, is this acceptable to you?
- Is the tenant in work? If not, will Housing Benefit cover the rent you are expecting?
- Does the tenant or members of his/her family smoke? If so, is that acceptable to you?
- Is the tenant likely to get on with your neighbours? If not, you will get the blame! This is particularly important if you are letting a flat.
- Make sure that the tenant knows that he will have to sign the tenancy agreement and pay the deposit and first months rent before moving in.
- Tell the tenant that he should arrange his own contents insurance to cover any personal belongings.

## 7

## Managing Agents

It may be worthwhile employing a managing agent to manage the letting of your property. They can help you maximise your income, and help select the right tenant for your property. Most agents charge fees based on a percentage of the rent. They can help to resolve problems that might arise during and at the end of the tenancy. A managing agent may be particularly helpful if you do not live in the area or are unfamiliar with letting properties.

If you do decide to use a managing agent, check to see whether they are a member of a nationally recognised association eg; ARLA or have a qualification such as a Surveyor or Valuer.

## During the Letting

If you have a managing agent, they should deal with most matters that may arise. If your tenant falls into arrears, then we suggest you take early legal advice. See below for details of who to contact.

If you do not have a managing agent, we recommend that you inspect the property regularly. This should be every 3 to 6 months. It is appropriate to give the tenant reasonable notice of your intended visit (unless it is an emergency).

This is a good opportunity for you to get to know your tenant and to spot problems that are beginning to arise.

It may be a good idea to speak to your neighbours to see whether they have encountered any problems.

**“Remember that you have agreed to give your tenant “quiet enjoyment” of the property. You should not do anything that could be regarded as harassment.”**

## Your Legal Responsibilities

In almost all lettings of residential properties, the landlord has various legal obligations, which cannot be excluded in the letting agreement. The main obligations are as follows:-

- You must keep the property “wind and watertight”. This may mean carrying out repair work as and when required.
- You are responsible for the water supply and for drainage including the pipes and drains.
- You are also responsible for the supply of gas (if connected) and electricity. This includes the boiler and/or the immersion heater.
- You have to fulfil your responsibilities even if the tenant is in arrears with the rent!
- You should also keep the Gas Certificate up to date.
- You may also be liable if the property is defective and the tenant or a visitor is injured. This is one reason why you should keep the property insured and tell your insurance company that you have let the property.
- You must ensure any deposit is held in a Government backed Tenancy Deposit Protection Scheme.

# Tenancy Deposit Protection Schemes

The Government has awarded contracts to three companies to run Tenancy Deposit Schemes. There are two types of tenancy deposit protection schemes available for Landlords and Letting Agents, insurance based schemes and custodial schemes. All the schemes provide a free dispute resolution service.

- i) The Tenancy Protection Service (The DPS) is the only custodial deposit protection scheme that is free to use and open to all Landlords and Letting Agents. The service is funded entirely from the interest earned from the deposits held. For more information telephone 0870 7071707.
- ii) Tenancy Deposit Solutions Limited (TDSL) is a partnership between the National Landlords Association and Hamilton Fraser Insurance. This Insurance based tenancy deposit protection scheme enables Landlords either directly or through agents to hold deposits. For more information telephone 0871 7030552.

- iii) The Tenancy Deposit Scheme (TDS) is an insurance backed deposit protection and dispute resolution scheme run by the dispute service that builds on a scheme established in 2003 to provide dispute resolution and complaints handling for the lettings industry. The new scheme enables Letting Agents and Landlords to hold deposits. For more information telephone 0845 2267837.

“ There are two types of tenancy deposit protection schemes available for Landlords and Letting Agents ”

If the deposit is not held on a Government backed deposit scheme you would be liable for a fine and would not be able to obtain possession under Section 21 of the Housing Act.

For more information go to [www.direct.gov.uk](http://www.direct.gov.uk)

# Housing Benefit

Your tenant may either at the outset, or during the tenancy, be in receipt of Housing Benefit. This is the benefit which covers rent when the tenant is in receipt of welfare benefits. There are a number of perhaps surprising points about Housing Benefit:-

“ This is the benefit which covers rent when the tenant is in receipt of welfare benefits. ”

- The amount of Housing Benefit is calculated by a formula, which almost always means that the amount paid will be less than the rent due under the contract.
- The Housing Benefit may also be less if it is felt that the house is too large for the tenant.
- The Housing Benefit is usually paid direct to the tenant.
- You can arrange for the Benefit to be paid direct to you if the tenant is in arrears or if the tenant agrees. However, you should bear in mind that, if the Benefit is paid direct to you and it subsequently transpires that it was not payable, you and not the tenant will have to repay it! This is the case even if you could not have been aware of the overpayment. The only exception is if the over payment was by official error - this is sometimes difficult to prove!

# Multi Occupancy Homes

**M**ulti occupancy properties are often referred to as HMO. Multi occupancy properties are defined in part 7 of the Housing Act 2004. The definition is complex and are defined according to the following:

**Standard Test** – generally for shared houses with communal facilities.

**Self Contained Flat Test** – for shared flats with communal facilities.

**Converted Building Test** – for buildings containing living accommodation which is not entirely self contained flats, either a mix of self contained flats or other units sharing facilities or flats at least one of which have more facilities outside the entrance of the flat even if for exclusive use.

A converted block of flats for buildings which are converted into entirely self contained flats and the conversion work does not meet the standards under the Building Regulation 1991 and less than two thirds of the flats are owner occupied.

All HMO's must contain two or more households. The household can be a family, a couple or a single person. If people are unrelated they would generally be treated as separate households.

## HMO Licensing

HMO Licensing commenced on 6th April 2006. Certain HMO's are required to be licensed by the Council and failure to obtain a licence could lead to a fine of up to £20,000.

HMO's with three or more storeys and five or more occupants (and contain at least two households) will require a mandatory licence to operate except for those converted into entirely self contained flats. Basements and attics accessed by a staircase will count as storeys.

The Landlords responsible for submitting a licence application to the Council and failure to do so after operating a licensable HMO is an offence. Landlords who have not done so are advised to contact the Private Sector Housing Team (previously part of Environmental Health) to notify the fact that they are operating a licensable HMO. Licensing application packs are available on request by contacting Private Sector Housing.

For more information go to [www.direct.gov.uk](http://www.direct.gov.uk)

# Bringing the Tenancy to an end

Most tenancy agreements are for a fixed period. However, the tenant is usually entitled to remain in possession of the property after the end of the tenancy. The tenant's right to occupy the property can only be brought to an end by an order for possession. This right cannot be taken away from the tenant.

This means that the giving of notice to bring the contractual tenancy to an end is a first and vital step that has to be taken if you wish to obtain possession of the property.

If you do not give the correct notice then this may delay or even prejudice your right to obtain possession of your property.

There are 3 situations where you need to give notice:-

- **When possession is required at the end of the Contractual term** - a "Notice to Resume Possession" must be given under s21 of The Housing Act 1986. This notice must be given at least 1 month prior to the end of the contractual term. We recommend that 2 months' notice is given so that your tenant has time to find somewhere else.
- **When possession is required after the end of the original term** - the same notice is served, but at least 2 months notice is required. The time is calculated by reference to the end of the tenancy. Thus if the tenancy ended on the 9th of a month, the notice would have to expire on the 9th day of at least 2 months ahead.

- **If the Tenant is in breach of the Tenancy agreement** - e.g. is in arrears of rent. In these circumstances a notice in the prescribed form under s.8 of The Housing Act 1986 needs to be given. In some cases 2 months notice has to be given, but usually only 2 weeks notice is required before proceedings can be issued (if the Tenant is still in breach of the agreement).

We can prepare and serve the notices for you. Sometimes it may be quicker to serve a 2 months' notice to bring the tenancy to an end even if the Tenant is in breach. That is because the Accelerated Possession procedure (see below) may be the quickest way of obtaining possession.

Most tenancies are for a fixed term, at least to start with. Neither party can bring the tenancy to an end during the fixed term without the agreement of the other.

After the expiry of the original fixed term, if the tenancy continues, the tenant will also have the right to bring the tenancy to an end. Your standard tenancy agreement states how much notice the tenant must give. If a tenant gives a written notice, but does not leave the property, then this gives you a ground for taking proceedings.

# Taking Possession Proceedings

If, having given notice, your tenant does not leave, it will be necessary to take court proceedings to obtain possession of the property.

The most straightforward case is where you have given a Notice to Resume Possession. Usually, you can use the **“Accelerated Possession Procedure”**. This means that you issue proceedings in the specified form, which includes an affidavit by you giving details and attaching the relevant documents. The papers are then served by the court on the tenant, who has 14 days to respond to the court. Unless the tenant can show the Judge that there is some defect in the tenancy or the procedure, the Judge will then make a Possession Order to take effect in 2 to 6 weeks. The tenant cannot defend this type of proceedings on the basis that he or she has nowhere to go.

There is no formal court hearing with this type of procedure and therefore it is quicker and the costs are less.

The more difficult type of procedure arises when the tenant is in breach of the Tenancy. This will involve a court hearing. You should bear in mind that there are 2 types of breach. For one group of breaches, the Court has discretion whether to give possession, but for the other, possession is mandatory. A good example is in relation to rent arrears. If the arrears are less than 2 month’s rent, possession is discretionary. If however, the rent arrears at the date of service of the notice and at the date of hearing are at least 2 months, then the court must make a possession order.

If you take proceedings for possession and are successful, then the Court will normally also order the tenant to pay any arrears and contribute to the costs you have incurred. Whether you will be able to collect any money from the tenant is another matter!

**“Remember, to evict a tenant without a court order is a criminal offence and you will also have to pay the tenant compensation.”**

Once you have obtained your order for possession, if the tenant does not leave on the due date, you must apply for a Warrant for possession. The Court then fixes a date for the court bailiff to go to the property to physically evict the tenant, should this be necessary. You will need to make arrangements to have a locksmith present in case the locks need to be changed. In most cases however the tenant will leave the property prior to the attendance of the court bailiff.

# Who To Contact

For advice and assistance in setting up your Tenancy Agreement, contact Sara Fildes at our office at 38 South Street, Chichester, West Sussex (telephone 01243 790532).

They will be pleased to assist you with the creation of the Tenancy Agreement and will also be able to assist with the formal notices, when you wish to begin the process of obtaining possession.

If difficulties arise during the tenancy, or if the tenant will not leave and possession proceedings are needed, please contact **Sara Fildes** at our office at 38 South Street in Chichester (telephone 01243 790532). They will be able to assist in this respect

# Our Charges

Where possible, we undertake work in relation to landlord and tenant matters on a fixed fee basis. Our current level of charges are as follows:-

Preparation of Tenancy Agreement	£275.00
Preparation and service of Notices under s21 of the Housing Act 1986	£90.00
Preparation and service of Notices under s8 of the Housing Act 1986	£110.00
Accelerated possession proceedings	£375.00
Normal possession proceedings	£500.00

All of the above figures are exclusive of VAT. In relation to court proceedings, you will have to pay a court fee (currently £150) and you may have to pay a fee of £90 for the Warrant for Possession. Most of the costs involving court action (but not necessarily all) can be recovered from the tenant.

We will of course be happy to advise you of exactly what is covered by each fee at the appropriate time.







# Other services offered by The Owen Kenny Partnership

Although the contact that you will have had with us at the present time relates only to matrimonial and family matters, the partnership as a whole offers a wide range of other basic and specialised services. Set out below is a list of some of the other more common services that we offer and the person to contact, should the need arise.

• Buying and selling a house	Carol Laurence Julie Molloy Richard Ayling Tracey Longdon-Bolt
• Buying and selling a business, Commercial property or retail unit	Jonathan Hall
• Tenancy Agreement or landlord/tenant problems	Paul Fleming
• Wills, Trusts, Probate, Powers of Attorney	Emily Allchurch Rhiannon Stonehouse David Thornton Laura Marsh Julie Jones
• Civil or Contract disputes	Paul Fleming
• Boundary and building disputes	Paul Fleming
• Debt Recovery	Paul Fleming

This list is not exhaustive but is a guide only.

If you have a problem which you think we can help with, please call the receptionist and she will point you in the right direction for someone who can assist you.

All you need to know about letting your property in our easy-to-read pocket guide.

This informative guide covers all the main issues and allows you to make an informed and educated decision based on your own individual circumstances.

Guide includes;

- Landlord
- Tenant
- Premises
- Deposit
- Fixtures & Fittings
- Inventory
- Schedule of Condition
- Assured Shorthold

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