

LETTING RESIDENTIAL PROPERTY IN ENGLAND AND WALES

General

The letting of residential property in England and Wales is governed by the Landlord and Tenant Acts and by the Housing Acts. The focus of the Landlord and Tenant Acts is on the relationship between landlords and tenants. The Housing Act relates to housing standards and housing policy generally.

As in many countries, the Landlord and Tenant Acts in England provided significant rent control and security for tenants until recent times. However, due to reforms in 1988 and 1996 it is now possible to grant a tenancy without any effective rent controls with a guarantee that the landlord will regain possession at the end of lease term. This type of letting which is by far the most common letting found, is an “assured shorthold tenancy”.

There still exist tenancies governed by older laws which have significant rent protection and security of tenure. It is essential when purchasing investment property to consider whether any such older tenancies still exist which affect the property. The existence of rent control and the inability to secure vacant possession of the property may significantly impact upon the value of an investment property.

Shorthold and Assured Shorthold Tenancies

In 1988, the category of tenancy known as a “shorthold” tenancy was introduced. This type of tenancy still exists and provides for a very limited rent control together with limited security for the tenant. In effect, the landlord is entitled to recover the property provided certain grounds are made out. The position is close to that prevailing under the Residential Tenancy Act in Ireland at present.

It was also possible to create an “assured short hold tenancy” under the 1988 legislation. This letting provides no security of tenure whatsoever and no effective rent control. In effect freedom of contract prevails in respect of the key issues of the duration of the letting and the rent. A key change was made in 1997 so that residential tenancies are now presumed to be assured shorthold tenancies unless the opposite is stated. The effect is that the assured short hold tenancy has now become the normal type of letting.

Assured shorthold tenancies are the type of tenancies which are now generally granted in relation to residential property. They allow for letting of the property at open market value and generally guarantee that the Landlord will be able to recover the property at the end of the term. They will be the most desirable form of letting from the perspective of a residential property investor in England and Wales.

It is possible for an assured shorthold tenancy to exist without a written tenancy agreement. However, the tenant can require the landlord to give full details and particulars of the tenancy terms and conditions. Assured shorthold tenancies can be for a fixed period (e.g. 1 year) or can be periodic tenancies (e.g. week to week or month to month).

An assured shorthold tenancy must be a letting of a dwellinghouse to an individual or individuals. A dwellinghouse can include part of a house, such as a flat or rooms within a flat. However, the tenant must have exclusive use of some accommodation. The tenant must occupy the dwellinghouse as his only and principal home, in order to be an assured shorthold tenant.

There are certain exclusions from assured shorthold tenancy status. The exclusions cover older lettings, property with high rateable values, annual rents exceeding £25,000, business tenancies, agricultural tenancies and holiday lettings.

Terms of Assured Shorthold Tenancy

The landlord and tenant are free to agree the terms and conditions of an assured tenancy or assured shorthold tenancy as they see fit. There are some implied terms, some of which can be modified and some of which are mandatory.

Normally the rent for a private sector landlord will be what the market can bear. There are limited circumstances in which a tenant can refer the rent which the landlord proposes to a Rent Assessment Committee, which has the power to determine the market rent. However, the Committee will only have power to change the rent if there are sufficient comparables in the area and the rent is deemed significantly higher. The parties are free to vary the rent terms by agreement without recourse to this procedure. The effect is that there is little effective rent control.

A tenant cannot assign an assured shorthold tenancy without consent, unless the letting agreement so allows (which it would not normally allow). Where there is a prohibition on the tenant assigning (i.e. transferring the lease) the landlord does not have to be reasonable in deciding to refuse consent. The landlord can refuse consent for any reason.

Generally speaking, it is a matter for the parties to set out in writing and agree the terms of the tenancy. There are certain implied terms which arise. It is implied in every short term lease (less than 7 year term) such as an assured shorthold tenancy, that the landlord shall keep the structure and exterior, the installations for services (water, gas, electrical, drains and heating) in repair and proper working order. The tenant will generally be liable for other repairs. It is implied that the tenant should not assign the lease or sublet any apartment without the landlord's consent. The parties are entirely free to fix the rent as they wish.

In a fixed term tenancy, the rent which the parties agree stands for the whole term. A rent review clause can be provided which can set out the mechanism for review of the rent. Where there is no rent review clause in the lease, the lease rent can be revised at the end of the term. If a landlord wishes to review rent, he must in effect serve the prescribed notice on the tenant. This will only arise in relation to a periodic tenancy (e.g. week to week, month to month) or if a fixed term has expired. The notice must prescribe the new rent and state the dates on which it is to take effect.

There is a minimum period between the date of service of notice and the date upon which the new rent is to take effect. In the case of a periodic tenancy (e.g. monthly) this would be the period. A rent increase can take effect not earlier than one year after the previous rent increase. If the tenant disagrees with the proposed rent it can be negotiated or may be referred by the tenant to the Rent Assessment Committee.

Assured shorthold tenancies do not have to be for a fixed term or made in writing. In recognition of the fact that there is no real security of tenure for tenants, the landlord is entitled to take back possession of the property after the agreed term of the tenancy has terminated. In the case of a letting from period to period, the tenancy can be terminated once the relevant notice periods have expired. Three months notice is usually required to terminate a periodic letting.

This Guide is intended as an overview and broad outline of the matters covered in it. Its purpose is to inform and raise awareness. We are happy to offer specific legal advice on particular circumstances.

This Guide should not be relied on as a substitute for comprehensive legal advice with reference to the particular circumstances.

While we have taken due care in the preparation of this publication, we do not accept legal liability as a result of any reliance placed on anything in this Guide. The reader should rely only on specific legal or taxation advice.