

Tenants' rights - security of tenure

About this factsheet

This factsheet provides information on the legal rights of tenants to keep their home (security of tenure). It explains how these rights depend on the type of tenancy the tenant has.

For information about other aspects of tenants' rights see the Age UK range of dedicated factsheets.

We also publish a range of factsheets on finding accommodation in both the private rented sector and from social landlords, as well as specialist housing such as retirement housing and park homes.

The information given in this factsheet is applicable in England. Different rules may apply in Wales, Northern Ireland and Scotland. Readers in these nations should contact their respective Age UK organisation for information specific to where they live – see section 14 for details.

For details of how to order other Age UK Factsheet and information materials go to section 14.

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1 Recent developments

Last year the Government introduced the Localism Bill that includes reforms of social housing. The details of proposals were published in consultation paper *Local decisions: a fairer future for social housing* and can be found on Communities and Local Government website (see section 13). It is envisaged that the Bill will come into force in autumn 2011. The proposals relevant to this factsheet include:

- new form of flexible tenure for new social housing tenants for fixed term not shorter than 2 years
- abolishing the Tenant Services Authority and transferring of functions to the Homes and Communities Agency

2 Introduction

If you are a tenant you have certain legal rights. They include your right to keep your home (security of tenure). The rights you have will depend on what sort of tenancy agreement you have.

The law relating to rights for tenants is complicated. This factsheet aims to give basic information about your rights but in many cases you may want to get more detailed advice from a specialist adviser (see section 13).

If you are not sure what tenancy you have, get advice. Or you can use an interactive tool 'tenancy checker' on the Shelter website (see section 13).

Please note that same sex partners who register a civil partnership are treated in the same way as married couples. Same sex partners who do not register but are living together as if they were civil partners are treated in the same way as opposite sex unmarried couples who are living together as husband and wife.

For more information regarding same sex partners see Age UK's Guide *Lesbian, gay man or bisexual person - planning for later life*.

3 Your rights to keep your home

If you are asked to leave or get a notice asking you to leave, seek advice immediately (see section 13).

As a tenant, you can usually only be evicted by your landlord if your landlord gets a possession order from the court. To get a possession order the landlord must first give you a notice in the correct format for the type of tenancy you have. It must include your name and address and your landlord's name and address. It must also give full details of any ground for possession which the landlord is claiming in asking you to leave (see section 5). The notice must also give you a length of time before the landlord will apply to court. For some grounds this must be at least two months from the date when you receive the notice; for others only two weeks or less.

In most cases there must be a court hearing before your landlord can be given a court order to evict you. In some cases there are fast track procedures, which mean that there may not have to be a court hearing. These can include assured shorthold tenancies where the first six months (or fixed term if longer) has come to an end. The court will still have to consider the case and will look at all relevant papers.

If you stay in your home after the notice ends, and your landlord was successful in getting possession order in court, you may have to pay court costs.

Be aware that there are some special types of tenancy or living arrangements that have less protection. In some cases your landlord will only have to give you a reasonable notice. For example, if you share living accommodation with your landlord or if you are a licensee (see section 3) you may have very little protection.

If you have been asked to leave your home by your spouse or civil partner or partner, you may have rights to stay there temporarily or permanently. This may be the case even if she or he is the legal owner of the house or the tenancy agreement is only in her or his name. Get advice immediately (see section 13).

4 Who is a tenant

Most people who live in rented accommodation will be tenants but some may be licensees. Tenants usually have more rights than licensees. The distinction between the two is not clear and is not defined in the law. Seek advice if you are not sure if you are a tenant or licensee (see section 13).

Most people who rent accommodation and have exclusive possession will be tenants. Exclusive possession means that you do not share your home with anyone else, except members of your family or household. You can be a tenant if you have exclusive possession of just one room and you share a kitchen or bathroom with other people. You will not usually be a tenant if your landlord or someone working for your landlord needs to come into your home or your room to provide you with services. These services might include care services or carrying out cleaning, changing linen, etc. For this reason people in care homes are usually licensees. Most people who live in sheltered housing will be tenants.

5 Types of tenancies

5.1 Private tenants

As a private tenant, you will probably have one of three main types of tenancy:

- assured tenancy – private tenants who moved into their homes after 15 January 1989
- assured shorthold tenancy – private tenants who moved into their homes after 15 January 1989 and who were given a specific notice when they moved in saying that their tenancy would be an assured shorthold tenancy; and all new private tenancies which started on or after 28 February 1997 unless they specifically say otherwise
- regulated (protected) tenancy – most private tenants who have been living in their home since before 15 January 1989.

There are some special types of tenancy where you may have less security. For example, if you share your accommodation with your landlord or your rent includes payment for board or for personal services such as cleaning, you may have less protection.

If you are not sure what sort of tenancy you have, seek advice (see section 13).

5.2 Council and housing association tenants

Most people who live in the public housing sector will have one of the three types of tenancies:

- secure tenancy – most housing association tenants who moved in before 15 January 1989 and almost all council tenants
- assured tenancy – housing association tenants who moved into their homes after 15 January 1989
- assured shorthold tenancies – a few housing association tenants may have this type of tenancy. If you have, your tenancy agreement will say so.

Note: Following a local authority transfer of its housing stock to a housing association after 15 January 1989, a new tenancy with the housing association will be an assured tenancy not a secure tenancy, even if it was secure previously. However, tenants will keep some extra rights, for example the right to buy.

Some council and housing association tenants may be on introductory or demoted tenancies which have limited security of tenure (see section 10 for details). If you are not sure what sort of tenancy you have, seek advice (see section 13).

6 Grounds for possession

The law says that for most tenancies the court can only give a possession order for certain specific reasons, or grounds. Some grounds are mandatory, which means that the court must give possession if the ground applies. Other grounds are discretionary. This means that the court may grant a possession order but only if the landlord can prove the case and the court thinks that it is reasonable to grant an order. For example, the court can take into consideration factors such as how serious was the breach of tenancy, what were the reasons for it and what would be the consequences of eviction for the tenant.

The grounds for possession are different for different types of tenancy. Some of them are complicated and very specific to certain circumstances. In this factsheet we cover the main grounds of possession but for further information contact your local advice centre (see section 13).

7 Grounds for possession for private tenants

7.1 Assured tenants

Assured tenants have strong tenancy rights and you can only be evicted if the landlord can prove a ground to the court.

Mandatory grounds

The main mandatory grounds include:

- the landlord has previously lived in the property or intends to do so and they have made the tenant aware of this before the tenancy started
- the mortgage lender is repossessing the property – this ground can only be used in certain circumstances; seek further advice
- the landlord intends to demolish or carry out substantial work to the property
- more than eight weeks' (or two months') rent arrears, both when the landlord gave the notice and when the case comes to court.

Discretionary grounds

These include:

- the landlord can show that suitable, alternative accommodation is available to you (see section 11)
- some rent arrears (but less than eight weeks)
- persistent delays in rent payment
- breaking a condition of your tenancy agreement
- damaging or neglecting the property or furniture
- causing a nuisance or annoyance to neighbours or other people living in or visiting the area

- where the home is occupied by a married couple or civil partners or partners and one has left the property because of violence or threats of violence against them by the other and is not going to return (this ground can be only used by registered social landlords or charitable housing trusts, it cannot be used by ordinary private landlords).

7.2 Assured shorthold tenancies

Assured shorthold tenancies have limited security.

During the first six months (or fixed term if longer) of the assured shorthold tenancies, the grounds for possession are the same as for assured tenancies (see section 6.1).

After the first six months (or at the end of the fixed term if longer), the landlord can get the court order without having to give a reason. But s/he must give the tenant at least two months' notice in writing and they cannot go to court to get a possession order until the notice period expires.

If you are an assured shorthold tenant and you have been given a notice, seek advice (see section 13).

7.3 Regulated (protected) tenants

Regulated tenants have very strong tenancy rights and can be evicted only if the landlord can prove a ground to the court.

The main mandatory grounds

Normally these grounds can only be used if the landlord has notified you in writing before your tenancy started that you may be evicted on one of these grounds (although the court can make an exception). The main mandatory grounds include:

- the landlord is letting out his/her own home or a home s/he intends to retire to and now wants to live there
- the property was intended for a member of the clergy or it was previously occupied by a farm manager, widow or widower and has been temporarily let out to an ordinary tenant

- the landlord is a member of the armed forces and intends to live there after discharge.

Discretionary grounds

These include:

- not paying your rent
- breaking a condition of your tenancy agreement
- damaging or neglecting the property or furniture
- causing a nuisance or annoyance
- renting out the property to someone else without the landlord's permission
- the landlord needs the property for him/herself or for certain members of the family
- the tenant was a former employee of the landlord and the property is needed for a new employee
- there is suitable alternative accommodation available for you (see section 11).

8 Grounds for possession for council tenants

Most council tenants are secure tenants and can only be evicted on limited grounds. There are some exceptions to this such as, for example, tenants who have introductory or demoted tenancies (see section 10) or tenants who are in temporary accommodation because they were accepted by the local authority as homeless.

Mandatory grounds

These include:

- your home is illegally overcrowded
- your landlord needs the property empty to carry out work on it or demolish it.

If the landlord is seeking possession on the above grounds she or he must also prove that suitable alternative accommodation is available for you (see section 11).

Discretionary grounds

These include:

- not paying your rent or breaking a condition of your tenancy agreement
- damaging or neglecting the property or furniture provided by your landlord
- causing a nuisance or annoyance to neighbours or other people living in or visiting the area
- where the home is occupied by a married couple, or civil partners or partners, and one has left the property because of violence or threats of violence against them by the other and is not going to return
- you got your tenancy by giving false information to the landlord.

There are also some grounds that are discretionary and where the landlord must also show that they can provide you with suitable alternative accommodation (see section 10). These include:

- the home is specifically designed or adapted for someone with a physical disability and there is no one with that disability living there
- the property is intended for someone with certain special needs and there is no longer anyone with these needs living there
- the previous tenant has died and the home is larger than the person who has taken over the tenancy needs. This ground cannot be used against the widow or widower or civil partner of the previous tenant.

9 Grounds for possession for housing association tenants

If you are a housing association tenant and your tenancy began before 15 January 1989 the grounds for possession will be the same as for secure council tenants (see section 8).

If your tenancy began on or after 15 January 1989 the grounds for possession will be the same as for assured private tenants (see section 7.1).

Some housing association tenants have less protection, for example starter tenancies or demoted tenancies (see section 10).

10 **Introductory, starter and demoted tenancies**

Introductory tenancies

Some councils make all new tenants introductory tenants for the first 12 months. Councils can extend introductory tenancies by up to six months to tackle anti-social behaviour. It is very easy to evict an introductory tenant. The council must serve notice on a tenant giving its reasons and allowing the tenant 14 days to ask for an internal review. If it decides to go ahead with the eviction, it must tell the tenant why and go to court for an order, which the court must grant. If you are an introductory tenant and are served with a notice you, seek advice immediately.

Starter tenancies

Housing associations may grant starter tenancies to new tenants that last for 12 months after which they become assured tenancies. Starter tenancies are assured shorthold tenancies (see section 7.2).

Demoted tenancies

Demoted tenancies are similar to introductory tenancies but they can be brought in at any time during tenancies. Councils and housing associations can apply to court for a demotion order if a tenant, or another resident of, or visitor to a tenant's home, has used the premises for illegal purposes or caused a nuisance or annoyance to another person. Once the order has been made, the landlord may evict the demoted tenant easily by following the correct procedure.

If you receive notice from your landlord regarding an application for a demoted tenancy, seek advice immediately (see section 13).

11 **Suitable alternative accommodation**

In some cases the court can only issue a possession order if your landlord shows that you are to be provided with suitable alternative accommodation. This accommodation must be suitable for your specific needs. It must be of the size and type that you require and the court must take into account the rent and security of tenure. It does not have to be of the same standard as the present accommodation.

12 The right to inherit tenancy (succession)

The right of succession will depend on the type of tenancy you have (see section 5), how are you related to the tenant who died and how long you lived together. The rules relating to succession are complicated so always get advice if you want to stay in the accommodation and your landlord says you are not eligible to take it over.

12.1 Private tenants

Joint tenants

If a tenancy is in joint names and one of the tenants dies, the remaining tenant automatically takes over the whole tenancy. This also means that the remaining tenant will be responsible for paying all of the rent.

Assured shorthold tenancies

This type of tenancy has very limited security (see 7.2) which means that succession rights are difficult to enforce and may lead to eviction. You may try to negotiate with the landlord to get a new tenancy rather than take over the tenancy by succession.

Assured tenants

Your spouse, civil partner or partner can take over your tenancy if you die. S/he would have to be living in the property as their main home at the time. This can only happen once. Once a tenancy has been passed on to one person it cannot be passed on again should the second tenant die.

Regulated (protected) tenants

If the tenancy is in your name only, your spouse, civil partner or partner can succeed to your tenancy if he or she was living with you. Alternatively, a member of your family can take over the tenancy if they have been living with you for two years. If it is another member of your family rather than your spouse, civil partner or partner who takes over the tenancy, it will become an assured tenancy rather than a regulated one.

Regulated tenancies can only be passed on twice in limited circumstances. Please seek further advice (see section 13).

12.2 Council tenants

Your spouse or civil partner can take over or succeed to your tenancy if you die. Someone else in your family, including an unmarried partner whom you live with as if you were married or in civil partnership, can also take over the tenancy, but s/he must have lived with you for at least a year before the tenant died. If there is more than one potential successor, the spouse or civil partner has priority.

You can also pass your tenancy onto someone else while you are still alive but only to someone who would be entitled to take over your tenancy if you died.

If you do succeed to a tenancy after someone's death and you are not the spouse or civil partner of the deceased tenant, the council can ask the court for permission to move you to suitable alternative accommodation, but only if they can prove that your home is larger than you reasonably need and if they give you written notice between 6 and 12 months after the present tenant's death.

A tenancy can only be passed on once in this way. If you were a joint tenant and the tenancy passed to you on the death of the other joint tenant this too counts as succession. After one succession it is up to the landlord whether you can stay or not.

12.3 Housing association tenants

If your tenancy began before 15 January 1989 you usually have the same type of tenancy as council tenants and the same legal right to succeed (see section 12.2).

If your tenancy began after 15 January 1989 you will have assured tenancy and you will have the same rights as an assured tenant (see Section 12.1).

13 **Illegal eviction and harassment**

In most cases it is illegal for your landlord to evict you without a court order. It is also against the law for your landlord to harass you or withdraw services from you with the intention of forcing you to leave your home or making you unable to live there in peace and comfort. Acts of harassment might include threats or physical violence, withdrawing essential services such as disconnecting the electrical supply or refusing to carry out vital repairs. There is a law called the Protection from Eviction Act 1977, which protects tenants whose landlords illegally try to force them to leave their accommodation.

There is also Protection from Harassment Act 1997, which covers a wider range of harassment (racial harassment, neighbour disputes and harassment by landlords) and is not restricted to residential occupiers. It can be used in addition to or instead of, the Protection from Eviction Act.

If you are being harassed or threatened with illegal eviction, contact your local council. Many councils have tenancy relations officers (TROs) to deal with cases of harassment and illegal eviction. If the council does not have a TRO service, staff from other departments such as the environmental health department or the housing department will take on the role of TROs. The council will normally try first to conciliate between you and your landlord. If this fails it can take legal action against a landlord who is breaking the law. Alternatively, you can take action yourself through the courts; seek advice if you are considering this (see section 13).

14 **Useful organisations**

Age UK Advice Service

Advice Service is part of Age UK; it provides specialist impartial advice to those who own, live in or manage retirement housing.

Information & Advice Services, Linhay House, Linhay Business Park,
Ashburton, Devon, TQ13 7ZZ,

Tel: 0800 169 65 65

Website: www.ageuk.org.uk

Citizens Advice Bureau (CAB)

National network of free advice centres including advice about national housing provision.

Tel: 020 7833 2181 (for contact details only – not telephone advice)

Website: www.citizensadvice.org.uk

Communities and Local Government

Communities and Local Government has a useful website for more information. Free booklets about housing issues may be obtained by calling the publication centre on (national call rate).

Tel: 0303 444 0000

Website: www.communities.gov.uk

foundations

The national body for Home Improvement Agencies.

Foundations, Bleaklow House, Howard Town Mill, Glossop, Derybshire, SK13 8HT

Tel: 08458 645210

Website: www.foundations.uk.com

Housing advice services

In some areas there may be a specific housing advice or housing aid centre, providing advice on a range of housing issues. Your local council or CAB should be able to tell you if there is a housing advice centre in your area.

Housing Ombudsman Service

Investigates complaints made by tenants of registered social landlords, such as housing associations, that are members of the scheme.

Housing Ombudsman Service, 81 Aldwych, London WC2B 4HN

Tel: 0300 111 3000

Website: www.housing-ombudsman.org.uk

Legal advice

Solicitors can advise you on the law and represent you in court if necessary. If approaching a solicitor about a housing matter, check if s/he is experienced in housing law. Your local housing advice centre or Citizens Advice Bureau may be able to refer you to an experienced solicitor. If you are on a low income you may be able to qualify for free legal advice.

For more information see Age UK's Factsheet 43, *Getting legal advice*.

Local Government Ombudsman (LGO)

For advice on making a complaint, or to make a complaint call the advice line on 0300 061 0614 or 0845 602 1983, write to The Local Government Ombudsman, PO Box 4771, Coventry CV4 0EH or fill in the form on the LGO website: www.lgo.org.uk

Shelter

A national charity providing telephone advice to people with housing problems on tenancy rights, homelessness, repairs and housing benefit.

Tel: 0808 800 4444 (free call) (textphone for deaf callers)

Website: www.shelter.org.uk

Stonewall

A voluntary organisation that campaigns on legal equality and social justice for lesbians, gay men and bisexuals.

Tower Building, York Road, London SE1 7NX

Information line: 0800 050 2020

Website: www.stonewall.org.uk

Tenant Services Authority (TSA)

Tenant Services Authority is the new independent regulator of affordable housing in England.

Customer Service Team, 2nd Floor, Lateral, 8 City Walk, Leeds LS11 9AT

Tel: 0845 230 7000

Website: www.tenantservicesauthority.org

Your local council

If you are not a council tenant but are having problems with your landlord, your local council may have a tenancy relations officer who can help you. If your landlord is trying to force you to leave accommodation when you believe you have the right to remain, your local council should be able to advise you. Your local council has a duty to provide advice and help if you are threatened with homelessness.

15 Further information from Age UK

Age UK Information Materials

Age UK publishes a large number of free Information Guides and factsheets on a range of subjects including money and benefits, health, social care, consumer issues, end of life, legal, issues employment and equality issues.

Whether you need information for yourself, a relative or a client our information guides will help you find the answers you are looking for and useful organisations who may be able to help. You can order as many copies of guides as you need and organisations can place bulk orders.

Our factsheets provide detailed information if you are an adviser or you have a specific problem.

Age UK Advice

Visit the Age UK website, www.ageuk.org.uk, or call Age UK Advice free on 0800 169 65 65 if you would like:

- further information about our full range of information products
- to order copies of any of our information materials
- to request information in large print and audio
- expert advice if you cannot find the information you need in this factsheet
- contact details for your nearest local Age UK

Age UK

Age UK is the new force combining Age Concern and Help the Aged. We provide advice and information for people in later life through our publications, online or by calling Age UK Advice.

Age UK Advice: 0800 169 65 65

Website: www.ageuk.org.uk

In Wales, contact:

Age Cymru: 0800 169 65 65

Website: www.agecymru.org.uk

In Scotland, contact:

Age Scotland: 0845 125 9732

Website: www.agescotland.org.uk

In Northern Ireland, contact:

Age NI: 0808 808 7575

Website: www.ageni.org.uk

Support our work

Age UK is the largest provider of services to older people in the UK after the NHS. We make a difference to the lives of thousands of older people through local resources such as our befriending schemes, day centres and lunch clubs; by distributing free information materials; and taking calls at Age UK Advice on 0800 169 65 65.

If you would like to support our work by making a donation please call Supporter Services on 0800 169 80 80 (8.30 am–5.30 pm) or visit www.ageuk.org.uk/donate

Legal statement

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