# Everything a Landlord should know before they buy...

#### 1. Introduction

Becoming a landlord is now more popular than ever before - there are currently about two and a half million private landlords in the UK. High demand for rental housing, low interest rates, and changing investment habits have created the ideal conditions for property owners to get involved in this lucrative market. But despite rising awareness of the benefits of becoming a landlord, taking the first step into the sector can be pretty intimidating to the uninitiated. Becoming responsible for more than one property, dealing with tenants, and horror stories about damage and costs often cause potential landlords to hesitate before taking the leap.

Taking pause for thought before you buy is certainly not a bad thing – landlords have responsibilities and obligations, and these require planning, legal awareness, and some business skills. But the payoffs can be well worth the time and effort invested, because renting out property allows you to earn an income whilst also investing in the property sector. It's therefore an investment option which will pay you now, and in the future. Whether you're considering buy to let, or want to rent out a second home or inherited property that you would rather not sell, becoming a landlord is also a great way to supplement traditional pension provisions, which are looking ever more uncertain in the current climate. If you already own a second property, renting it out will also reduce your outgoings – tenants help cover council tax, utilities and other costs. It's therefore also a great solution if you're waiting for the right moment to put a property on the market. However, as with all important decisions, you don't need to go it alone – get plenty of advice before you take the plunge. Solicitors, accountants, letting agents and estate agents will all be happy to help, and a good one should tell you some of the possible pitfalls as well as the benefits of a buy to let.



The property market is at the heart of the British economy, making it an attractive investment opportunity — and supply of rental homes never seems to meet demand. So it's no surprise that while many buy to let landlords start out tentatively, hoping their rental property will be a quiet long term investment, they can end up developing portfolios worth millions. But whether you're looking for working tenants, planning simple holiday lets, or hoping to develop a growing business, many of the same principles and concerns apply to all landlords.

This guide has been written for anyone considering entering the rental market as a landlord. You'll be guided through the many ways in which landlords choose to structure their rental business, as well as the legal and financial knowledge you'll need to have if you decide to manage your own property. We'll take a look at the pros and cons of using an estate agent to support you, and the ways in which they can lighten the load. You'll also find plenty of hints and tips from industry insiders. So, whether you already own the perfect rental property, or are considering a buy-to-let investment, read on to start your journey with confidence, and make the right decisions for your priorities and plans.

## 2. Should you use an agent to manage your Property?

Becoming a landlord is far more complicated than it sounds – it's not quite passive income! Many people dream of the potential rewards which can flow from owning an extra home. But once you get the chance to take that first step, the reality might start to look less straightforward. There are so many questions to consider, from how to manage your property to what kind of tenants you should try and attract. Some of the answers might be easier than others, as budget and other priorities may determine your approach. Some decisions might require you to do a little research so you can weigh up the ins and outs of what you're about to take on. One thing is for sure – every landlord is a little different, and the approach you take to your rental business should be carefully planned to make sure it works for you. That's why we've created this guide, to help you think through all the stages of becoming a landlord.

One of the major decisions to be made is whether or not you will use an agent. There are many types of work which a professional agent can help a private landlord with, at every stage of the process. From buying your first rental property, to marketing it to prospective tenants, dealing with property management and tenant matters, even evictions and insurance – an agent can take on any or all of these tasks to help make sure things run smoothly.

Some private landlords choose to do all this work themselves, and cut out the costs of the 'middle man.' However, for many reasons, this is now becoming increasingly rare. Tenants have higher expectations of their homes than ever before, and an estate agent can help make sure there is always a professional and timely service they can access. Buy-to-let mortgages also require a steady income, and agents can help ensure that your home is always earning. All the legal matters involved in landlord and tenant relationships are also something which you should be very aware of – and if you don't have the time or expertise needed to get it right every time, allowing an agent to take that responsibility could save you a lot of time and stress... and potentially, time in court. Eviction and rent recovery are also, unfortunately, sometimes part of the reality of becoming a landlord – these are much easier matters to deal with when there's a professional service to take on the load.

Nevertheless, some people do still find self-managing their own properties to be a lucrative and fulfilling business. Those with a background in the property sector, or some legal expertise, may be well-placed to take it on if they have time and skills to do so. This guide will mention the pros and

cons of using an estate agent more specifically in each section, to help you decide what agent services might be right for you.



There are any other factors to consider as you decide what sort of landlord you should be. Some of these might be outside your control, such as mortgage conditions which require you to manage your business in a certain way, or home and work commitments limiting the amount of time you have available. Perhaps you have a property which you plan to sell in the future, and are only looking to rent it out for a certain period of time. Maybe you need to be able to guarantee a minimum level of income, and want to plan your tenancies accordingly. All of these will impact the sort of landlord you might be, and whether an estate can help.

Perhaps you are confident in DIY and enjoy the maintenance tasks which landlords are responsible for. In that case, you might decide you don't need an agent on call – but what if you find yourself stuck with a problematic tenant who wants you to come running day and night? Maybe you like the idea of a personalised service, and want to get to know and support your tenants personally. Some tenants really appreciate this – but if you decide you need your property back, it can be really hard dealing with tenants you've become friends with. These are all situations in which the professional support of an estate agent can really help.

It might even be that you already are a private landlord, with tenants in place, but are starting to find this part of your life is taking up more time and headspace than you can spare. Whatever you decide about how you will manage your property, just remember - it's never too late to reach out to an estate agent and ask how they could lighten the load. As we go through the different aspects of what is involved in becoming a landlord, we'll be looking at the type of work and commitment required, to help you make the most of the opportunity and find the right path for you.

#### 3. What type of Tenant is right for you?

When new landlords think about the rental market, they often picture working couples and families looking for long-term lets. But in there are in fact many types of tenant looking for different types of home, and different types of tenancy available which might suit each situation. As you consider what sort of tenants you'd like to attract, there are two main things to consider. Firstly, what are the implications for how you run your business? This includes matters such as how long are you willing for your property to be tied up in a tenancy, how much income you hope to earn, and the type of property you have available. Secondly, you must be sure to understand the legalities of each type of tenancy, as these make a big difference when it comes to major issues such as giving notice, rights of re-entry, and your own obligations. Whilst this guide will offer some insights into all of these matters, be sure to take advice and do any extra research you need before signing anything.

## First things First

Do you know what a tenancy is according to the law? It is much more – but sometimes less – than an agreement to rent a home which has been written on a piece of paper. The meaning of the term 'tenancy' has a specific legal meaning based on enough case law and legislation to fill a lawyer's library – but what's important to understand, is that it carries important legal weight. A tenancy is essentially an agreement between a landlord and tenant, that the tenant will be the only person with the right to use the property for some definite period of time, in exchange for rent. It doesn't even have to be written down at all – although it is certainly sensible to use a proper written agreement, you should be aware that a tenancy might arise even if you don't. Getting the paperwork right from the outset is really important for everyone involved.

There are many different types of tenancy, and not all of them will be relevant to the average private landlord. In this section, we'll take a look at the most commonly used forms of tenancy for residential purposes. You'll find some basic information about the legalities, the pros and cons, and how each type of tenancy can be managed.

# **Periodic Tenancy**

A periodic tenancy is what many – although certainly not all – tenants are looking for. Families and working tenants in particular will be looking for a secure home, in which they can settle down and live their lives. Knowing that a landlord wants them to continue renting from month to month offers tenants some peace of mind that you won't be moving them on too soon. This way of renting is generally achieved with an assured shorthold tenancy, or AST. The advantage of this is that it allows a landlord to regain possession of their property without having to give any reason although this is about to change (written Jan 20). This means that you can find stable, permanent tenants, safe in the knowledge that you can get back the house should you need to sell it in the future. However, you will have to follow the correct notice procedures, and these can be quite technical and complicated. If you get it wrong, not only will your tenants not be obliged to leave, but you may even find yourself liable for some legal costs. There are also other regulatory requirements in place which are designed to protect tenants under an AST, most of which are covered within this guide.

Using an agent or solicitor can help make sure that everything goes smoothly with an AST, and it is certainly the preferred way of doing business for many people. But these days, it is very common for landlords to initially offer tenants a fixed-term tenancy of 6 or 12 months, which then becomes a periodic tenancy once that term has expired. This means you can be sure you will receive the rent for that initial period, even if the tenants decide not to live there anymore. This should put off any potentially unreliable tenants, and effectively insures you against losing money and time within that first rental period. There is more information on fixed-term tenancies in the next section, but

remember that once that period expires, the tenancy will become periodic, based on how often rent is paid. We will continue to look at the detailed implications of periodic tenancies and AST's throughout this guide, as it is the most common type of landlord and tenant relationship.

## **Fixed-term Tenancy**

A fixed-term tenancy allows you to rent a property to tenants for a defined period of time. This can be very useful if you know you will need your property back within, say, a year. You should be able to get the home back at the end of the period without any arguments or needing to go to court, as long as you follow the correct notice procedures. A fixed-term tenancy can therefore be a great solution if you have a property you'd like to sell, but the market conditions aren't too great right now. In the meantime, fixed-term tenants will bring you some income, and help cover the bills and council tax. Maybe you there is work or redevelopment you'd like to carry out on the property before selling it, but don't yet have the cash to do the job. Renting it out for a period will allow you to save in order to improve the home at a later date, increasing its value.

The other advantage of a fixed-term tenancy is that your rental income is pretty much guaranteed for the whole period. Most fixed-term tenancies do not allow for a tenant to give notice before the period is up — even if they leave early, they will be liable for rent for the whole period. You can choose to negotiate an early end to the tenancy, offer a break clause, or ask tenants who want to leave early to find alternative tenants who will take on the agreement before you release them. But the financial security offered by a fixed-term tenancy is one of its biggest appeals for a private landlord.

Whilst offering a fixed-term tenancy might seem likely to reduce the number of tenants who will show an interest in your property, there are plenty of people who are happy to take up a rental for a defined period. Students, travelling workers, people at an early stage in their careers, and families who have sold their home but not yet found one to buy are all potential markets to aim for.

In fact, some tenants prefer fixed-term tenancies because they feel it offers more security than a periodic arrangement. The benefit for you, is that you can rest assured that your home will be generating rental income for the whole rental period. If you would like some more flexibility in a fixed-term tenancy, or would like to offer that flexibility to your prospective tenants, break clauses can be written into the agreement. For example, in a year-long fixed-term tenancy, you might decide to include a break clause at six months, giving one or both parties the option at that point to give notice, or continue the agreement. However, you are under no obligation to provide a break clause.

Providing for what will happen at the end of the fixed-term within the agreement is very important. This is because, if a fixed-term elapses and the tenant remains in possession of the property and paying rent, the law will probably consider that the original fixed-term has become a periodic tenancy – this is called a statutory periodic tenancy. You'll need to make sure you follow the proper notice procedures if you need your property back at the end of the fixed-term, as set out in the agreement.

## **Long Leases**

Some freehold owners choose to lease out a property, rather than renting it. The word 'lease' actually has the same meaning in law as the word tenancy, but is usually used to indicate a tenancy with a much longer period intended for possession. Leases are most commonly used for residential flats, and commercial properties such as shops. We won't cover too much about long leases in this guide, as it is not the most common way landlords structure their business. However, some defining

features are that a long lease tends to give much stronger rights to the tenants or lessees, so that a freeholder cannot regain possession of their property as easily. Lessees tend to be given more responsibility for maintaining the property, and rights to make changes to it, under the terms of most leases. Some leases must even be registered at Land Registry, as the property interests they create are so strong.

Many leases are also paid for by an up-front premium or purchase price, with a much smaller ground rent instead of regular rent. They are therefore less helpful for anyone with a buy-to-let mortgage or looking for a regular income and are generally used just as a vehicle to sell flats more effectively. Residential leases can sometimes also be automatically extended by the lessee, making it very difficult for you to ever regain possession of the property.

#### Licences

Licences are another way of renting out property, and yet many landlords and tenants have never heard of them. There are many agreements out there which people assume are a tenancy, but in fact only amount to a licence. The distinction is very important to understand for a landlord, as it will affect your rights and obligations.

In law, licences are not as strong as a tenancy. They are personal rather than property rights, and therefore less secure. A licence can be something as simple as permission to friends to use your home – a bare licence - or as complicated as a formal written agreement to use a space for rent – also known as a contractual licence. The most common situation where a private landlord might use a licence, even without realising it, is where renting out space in a property which he or she also lives in. Licences are also used for tenants of accommodation which is tied to their work. Holiday lets, such as those created through AirBnB, also amount to contractual licences. Many hostels also use licences. Any agreement called a tenancy, which doesn't meet the legal definition of a tenancy, is likely to be treated as a licence.

A licence agreement often looks very much like a tenancy agreement, and tends to contain the same sorts of information including rent due, notice periods, and so on. However, notice periods are often shorter, and a landlord may have more rights to enter spaces used by tenants. This will vary depending on the situation, so seek specialist advice if you think you might need to use a licence rather than full tenancies. Estate agents will be familiar with licence agreements, and understand where and when they should be used. If you want to save on solicitor's costs, you should find that an estate agent can provide suitable standard form licence agreements which can be adapted to your needs.

#### Student lets

Student lets are increasingly common, as more young people are going to university than ever before. This can be a very lucrative and reliable way to rent out a property, as students will expect to use a fixed-term tenancy which will guarantee your rental income. Even if the property you plan to let out is not in a well-known university city, you might still want to investigate whether other types of student population could find your home attractive. Teacher training schools, agricultural colleges and other technical or vocational schools all attract students who will be living away from home, and looking for reliable accommodation for the duration of their studies. Postgraduate students are another good market to consider, as they often prefer to live in small towns within commuting distance of a city. We find many wealthy parents contact us as term-time approaches trying to buy a student house that can be occupied by their offspring with other rooms rented for income.

There are some special considerations to keep in mind regarding student lets. Firstly, local authorities treat a property let out to students as a house in multiple occupancy, or HMO. This means you need to become familiar with any local requirements, and other technicalities discussed in the next section. Secondly, most student landlords use a fixed-term tenancy which requires a guarantor. This is because most students will still be relying on financial support from their family to some extent, so it makes sense to have the extra security this provides formalised. Students will sometimes drop out of university early, or might cause damage which they would struggle to pay for. Having a guarantor in place will offer you security in case unforeseen circumstances arise.

But although students are young and changeable, they do tend to make great tenants. Most students are more interested in studying than partying, and tend to make for well-behaved residents. The rental income potential of your property will also probably be much higher with multiple students in one house, than a single family. Students usually only expect one shared living space, so if you have a dining room or other extra reception room, this could easily be converted into an extra bedroom, further increasing your income. Each room will need some basic furnishings provided – a single bed, wardrobe, and basic desk are the minimum expectation. However, students won't generally expect a house to be decorated to a high standard, as long as it is clean and decent.



Many estate agents specialise in student lettings. It is well worth using an agent if you plan to go down this route, both for marketing purposes, and day to day management. Students are unlikely to know the local area, so will often start their property search with their own university or college, who will have good relationships with the most reliable estate agents. Using the right agent will therefore make it much easier to find the right tenants. Students lets can also be quite time consuming to manage, especially at first. Many students will be living away from home for the first time, and may require a lot of information and support when deciding where they want to live. Dealing with all these enquiries can take time, and an experienced agent will know how to offer reassurance. Students are also more likely to have enquiries and problems once they move in, such as not knowing where the stopcock is, or forgetting when to put out their bins. An agent will answer any settling in questions they might have, and also support you to have everything in place that they need.

#### **HMO Lettings**

An HMO, or house in multiple occupancy, is a statutory term used to define certain types of property which the government has decided need licences and special regulation. It is generally understood to mean a property which a landlord uses to accommodate many smaller households, rather than just one family, but the definition under the Housing Act 2004 is a little more complicated, and includes:

- A property containing more than one household who share kitchen facilities, a bathroom, or toilet
- Some converted flats which do not meet the requirements of building standards
- A converted building which doesn't just consist of self-contained flats
- Anything else which a local authority might decide is an HMO

It is incredibly important for a potential landlord to be aware of HMO regulations, because breaking the law in this area carries heavy penalties. Even if your tenants aren't bothered, a local authority can bring enforcement action themselves if they find a landlord hasn't followed the rules. Letting out a building which meets the HMO requirements without getting the right licence can result in a fine of up to £20,000... not to be taken lightly!

Despite the complications, an HMO can be a great way to maximise income potential. As with student lets, you are likely to be able to achieve a higher total rental income from multiple single occupants or smaller households, than from one family renting a home exclusively. You are also far less likely to have any periods with no rental income. If a tenant leaves, you will still be generating rent from the other tenants whilst you look for a replacement.

But there is a lot to be aware of when going down the HMO route, and plenty of potential pitfalls for the novice investor. There are often great deals on buildings with conversion potential at auction, but these can be a case of buy quickly, repent at leisure once the buyer finds out what's involved. Some local authorities even cap the number of HMO landlords they will permit in one area, which could really scupper any hastily made plans. Tom Cranenburgh of GetAnOffer Estate Agency advises, 'We usually see HMO properties being bought up by experienced landlords with an established portfolio. But we would never deter a new landlord from getting stuck into a potential conversion, as long as they plan to use a good managing agent who can help them navigate the regulatory requirements.'

The best thing to do if you're considering a multiple occupancy approach, is to contact your local authority, and a good estate agent. The council will tell you what the requirements are in your area, and the estate agent will help you figure out what this means for your business. An agent can even do most of the necessary paperwork for you, including applying for an HMO licence on your behalf. This is likely to make the task go much more smoothly, with less expensive hold-ups during which you won't be able to legally rent to tenants.

The local authority will probably ask for detailed information about the property, how many people it can accommodate, and exactly what facilities it contains. It may also ask for various certificates such as fire safety checks, gas safe certificates, details of any building work done, and EPCs. An agent can help you get hold of anything you need as quickly as possible, using the tradespeople and connections they will have. The authority will also want to know that the property will be well managed, and ask how you plan to achieve this. Having a reputable estate agent involved will be a big plus during the application stage, as the decision-maker will then know you've set up a system for using the right tenancy agreements and managing the property well.

## **Holiday Lets**

Becoming a landlord doesn't necessarily have to mean tying up your property with long-term tenants. The rise of online platforms such as AirBnb means it's now easier than ever before to achieve significant rental income through holiday lets. The advantage of this is that you always have control over what is going on within your property, and can quickly regain possession at any time. Holiday lets are therefore a popular option for those who are waiting for the right moment to put their house on the market, or building up savings for redevelopment. And you don't need to be in a seaside resort or popular city to attract AirBnB users. Many people now use the platform when seeking accommodation during work trips, or when visiting family. There are AirBnBs all over the country, although the fees you can charge will depend on the popularity of your location.



Another serious factor to weigh in when considering the holiday lets route, is the amount of time and work which goes into managing the property. The marketing itself is a lot more work, as rather than looking for just one set of tenants, you must be constantly promoting your accommodation. Listings and property details must be kept up to date, and there will probably be a lot more enquiries than bookings. Potential renters will expect a fast response and good customer service, which you will need to have the time and patience to deal with.

Once your home is being let out, the work does not stop – in fact, it just gets more complicated. As one holiday letting agent told us: 'our clients do not want to feel that they are borrowing an empty rental property – they expect accommodation which is at least as comfortable as their own home, which has been cleaned to a professional standard, and is fully equipped for their stay.'

Getting a property ready for holiday lettings can therefore be a much bigger investment than for longer-term tenants. Each room will need to have decent furniture, and beds especially should have clean, good quality mattresses. White goods should be of good quality, and living areas with sofa

beds will attract extra income. Adding some homely touches such as rugs and attractive lighting also help make your listing more attractive.

Once you have all that in place, you will need to check it over and clean after each and every rental. Any damaged equipment will need to be replaced, fresh bed linen and towels must be provided, and the whole property given up freshened up. Holiday makers will also want to know there's someone they can get in touch with immediately if something goes wrong so their trip isn't interrupted. If a light bulb goes and they can't find a replacement, or the kitchen sink starts leaking, they won't want to wait for days or weeks until the problem can be sorted. All this can be very labour intensive, especially during busy periods, so many landlords will choose to hire professional cleaners or managing agents to do the hard work for them. Don't forget that as with all rental property safety is paramount and a legal requirement – get an expert to give advice.

Nevertheless, if you live in an area likely to attract tourists, the benefits might outweigh the costs. If you're not sure whether you'd be better off pursuing holiday rentals, or taking on longer term tenants, you might want to consult a local estate agent. They will have a good sense of the types of property which do well in each market in your area, and how much your own home is likely to generate. They can also advise on the best ways to manage a property in each case.

# 4. Legal Issues for Landlords

The thought of all the legislation and regulations which landlords must contend with is pretty intimidating to any considering renting out a property for the first time. And whilst it is true that there is a lot to get your head around, try not to get put off by the volume of information. There are plenty of great sources of advice available from the government, local authorities, and landlord associations. There are also popular landlord blogs and forums where you can get a sense of what's involved, and keep up to date with current issues or new legislation. There are also solicitors and estate agents who specialise in landlord and tenant matters, and can make the whole process much easier by taking on the work – and much of the liability too.

And of course, this guide is a great place to start! Whilst the hints and tips here should not be taken as legal advice, they are based on current law and the experience of many agents and landlords in the industry. You should seek your own advice from a lawyer or experienced estate agent as you develop your own way of doing business, to ensure that you have the right legal solutions for you.

In this section, we'll be setting out the key legal issues which arise at each stage of letting out a property. By taking you through the whole process, from when you first decide to become a landlord, to the moment you hand a new tenant the keys and beyond, you will have a sense of everything which you need to understand to make the rental go smoothly, and avoid the main legal pitfalls.

## a. Deciding to Rent out a Property

As soon as you start considering whether you want to become a landlord, there are legal issues you need to address immediately. Before you even start looking for tenants, you should address legal matters relating to the property itself. This means you must think about every person or organisation who has a legal interest in the property you are considering letting out, and check whether you need their permission in order to do so. If you're reading this guide, you presumably either own, or about to own, the property which you hope to rent out. But there are likely to be all sorts of third parties who also have a legal interest in what happens to it:

#### Lenders

If you have a mortgage over the property, you must check whether the terms of your mortgage allow you to rent it out. Standard residential mortgages often do not permit this, and your lender may require you to transfer to a buy-to-let mortgage with specific rules and conditions. If you do already have a buy-to-let mortgage, you still need to check the rules about how and to whom you may rent. Many lenders restrict the types of tenant you can rent to, and commonly exclude anyone in receipt of housing benefit, as such tenants may be perceived as a higher risk. They may also require you to use particular forms of tenancy, or make special arrangements for insurance.

## **Freeholders or Managing Organisations**

If your property is a flat, or other type of leasehold property, you will have to check the terms of your lease, and probably seek permission from the freeholder or head lessor. If it is the case that you must seek permission, don't let this put you off immediately. Many leases require that the lessor should give permission unless there is a very good reason not to. Nevertheless, you must follow the rules, or any lease or tenancy you offer yourself could be invalid, in which case you could be liable for some serious costs to both your own landlord, and some upset tenants. If you're not sure who the freeholder is, or don't have a copy of the original lease, all this information can be downloaded from the Land Registry for a small fee.

# **Other Legal Owners**

Consider whether anyone else has a legal interest in the property. Do you own it jointly with anybody else? Does anyone have an equitable or beneficial interest which needs considering? Have any members of your family or other residents acquired occupancy rights, which could mean they must be consulted before the property is put out to rent? Is the property part of a shared ownership scheme or rent to buy scheme? If you are unsure about any of these matters, you should seek legal advice.

#### **Insurance Providers**

Your insurer should also be contacted before you plan to rent out your home. It is likely that you will be required to take out a specialist policy designed for landlords, which could protect your home and any legal costs which might arise. If you do still have a mortgage against your home, your lender will almost certainly require that you take out appropriate insurance under their terms and conditions. You might also want to consider taking out contents insurance, especially if you are offering furnished properties to tenants.

#### **Other preparatory Legal Issues**

You should also check whether your local authority is part of the Landlord Licensing Scheme, which requires all landlords to apply for a licence before they can let out property. Failing to do so could result in a fine of up to £20,000, so don't forget to check! If you are planning on offering an HMO to market, you will certainly need to apply for a licence, but HMO provisions will be dealt with in more detail later on.

Finally, consider the implications of becoming a landlord for your own financial record keeping. Rental income will form part of your own personal income, which must be declared as earnings, if you set yourself up as a private landlord. Some landlords choose to set up a company to manage their property, especially if they start to develop a portfolio of multiple rental properties. It would be wise to consult a financial adviser early on, so you can decide which route to take and avoid any unexpected tax bills or penalties.

#### b. Presenting a Property to Market

Once you've established that there will be no legal obstacles to you becoming a landlord in the first place, you can turn your attention to making sure that the property is ready to be considered by tenants as their potential home. There are many obligations and duties which the law imposes on landlords to make sure that a property is fit and safe to live in, and it is important to make sure you have everything in place before you hit the market.

This is an area which is set out in many pieces of legislation, regulations, case law and other rules. Key legislation includes the Housing Act 1988 and the Landlord and Tenant Act 1985, although there are plenty of other sources of relevant law too. Entire textbooks have been produced on the topic, so it will not be possible to cover everything here. There are also different rules for different types of tenancy, but the most important rules are those which govern assured shorthold tenancies, which include most fixed-term and periodic residential lets. The requirements of ASTs will therefore be our focus in this section.

A landlord is required by law to make sure that a property is 'fit for human habitation.' This means you must maintain the property so that it is in a good state of repair and structurally sound. You must make sure it does not suffer from damp, that it has appropriate room arrangements, natural light, good air flow, proper water supply and drainage as well as sanitation. You must also make that provisions for cooking and food preparation are appropriate and decent. If tenants report any problems with these areas, you will be responsible for putting them right and should not charge your tenants for doing so.

If the tenancy is a for a term of less than seven years, which it almost certainly will be, then you will also be responsible for maintaining the bath, sinks and toilets, as well as the heating and hot water system.

You will also need to ensure the fire safety of the property, including furnishings as well as the building itself. Check that the property itself, and any work done to it, complies with building regulations. Install at least one smoke alarm on every floor, and a carbon monoxide alarm in any room which has a gas appliance or other solid fuel appliance. Any furnishings you provide must also meet fire safety regulations, although this should be the case for anything manufactured since 1989. It's therefore advisable not to put second hand or antique items in a rental property – there's plenty of reliable and compliant furniture and furnishings available from places like Ikea. The regulations for soft furnishings don't apply to carpet, however, so are likely to be most relevant for furnished rental properties.

Gas Safety should be a key concern for your rental property, as the 1998 Regulations make it a statutory requirement that they are checked annually. It is crucial that this check is carried out by a registered Gas Safe Engineer — your usual handyman mate won't do, unless he can show a current registration. It's important to get this in place before you go to market, as the Gas Safety Certificate must be provided to new tenants before they get the keys and move in. If you already have tenants in place, you must give them their copy of the certificate within 28 days of the annual check being carried out. Remember, this is not just a stand-alone issue in case of gas-related problems — failure to comply with the statutory requirements of a landlord could invalidate the tenancy, make it more difficult to evict tenants should you need to, and bring you a whole world of legal pain. The easiest way to make sure that never happens, is to entrust the management of your property to an estate agent. They will have good relationships with reliable Gas Safe Engineers, can schedule checks, and make sure the right paperwork goes to tenants as needed.

The safety of electrical systems and equipment provided in the home is also your responsibility, although this does not yet carry the same statutory requirements as for gas (although this is about to change). For this reason, many landlords prefer to offer homes which do not use gas at all, and install electric rather than gas cookers. However, you should still take steps to reassure yourself that the property's wiring, and any appliances, are all in good working order. It might be a good idea to pay an electrician to come and check over the home, looking for loose wires and faults. An estate agent will also be able to advise on how to meet your legal duties in this respect, and get in any workpeople or checks which might be needed.



An Energy Performance Certificate, or EPC, is another crucial document you'll need to have in place. They are valid for 10 years, so if you've recently bought a property, you probably have one to hand. If you don't have a current EPC available though, you must arrange to have one carried out. If you have an estate agent managing your property, they will be able to arrange this for you, and the cost is generally between £50 and £100. A copy *must* be provided to prospective tenants before they sign that tenancy agreement. As with the Gas Safety Certificate, failure to do so can create real problems later on. The government has also recently decided that it is unlawful to offer a property for rent if its energy performance rating is below an E. If that is the case for your property, you will need to make efficiency improvements, and have a new certificate in place, before you can put your rental home on the market.

## c. Making an Offer to Tenants

Once your property is ready to be offered on the rental market, you will need to think about the legal issues which come with finding tenants. At this stage, landlords are often focussed on marketing, taking the perfect pictures, choosing where to advertise their home, and probably finding an estate agent to help them reach their perfect tenant. But even here, there are potential legal problems to avoid.

If you are making a property listing yourself, make sure that all photographs and descriptions are accurate. Don't make any promises about the property which you can't guarantee, such as the availability of a parking space or the quality of appliances, unless you are sure you can provide them.

Any false promises might invalidate a future tenancy, or at least create a cause of action upon which a tenant could potentially sue. Photographs and other images matter too – it's common practice to take flattering photos on a bright and sunny day, but don't overuse that wide-angled lens to create a misleading impression. Ensure any dimensions and floor plans you might include are accurate too. If you want to avoid any potential problems in this area, your best bet is to let an estate agent manage the process of marketing your property for you. They will be experienced in presenting a property in its best light, without creating false representations or getting you in trouble.

It's also important to consider the legal implications of discrimination law when dealing with potential tenants. Just like when applying for a job, it's important that enquiring tenants are dealt with fairly, and decisions are not made based on characteristics such as gender, race or religion. This might sound pretty obvious, and most landlords certainly don't have an interest in being discriminatory – they just want to do business and find great tenants. However, there have been some tricky cases in this area recently, with one single parent even arguing that the decision not to rent to her because she was a recipient of benefits was discriminatory, as it was a decision more likely to affect women. It's therefore very important to think carefully about what you ask potential tenants, how you phrase anything you say to them, and how you make the ultimate decision about who to offer the property to. An expert name told us: 'Many people think the law is only interested in hate crime and obvious prejudice, but the Equality Act also protects people from indirect discrimination, which can include more subtle ways of making it harder for protected groups to have the same chances as everyone else. It's important for landlords to be aware of this, especially now they're expected to carry out immigration checks. Only asking for documents from tenants who look like they could be immigrants, for example because of their skin colour, is a typical example of unlawful discrimination.'

This brings us to another issue landlords in England must now deal with — it is now a legal requirement that you check any potential tenant has the right to remain in the UK. This is also known as the 'right to rent.' You must carry out this check with all potential tenants aged 18 or over, even if they appear to be British citizens, or if they won't be named on a tenancy agreement. There are some exceptions, notably for students, which you can find on the Government's website. You will also find a downloadable guide which explains what types of documents you should ask for, and the right sort of questions to ask.

If a potential tenant does not have the right documents, you will have to use the Landlord's checking service, which will use Home Office information to let you know whether the person has the right to remain within 2 days. Whilst this new requirement might seem onerous, it is really not an area to cut corners. Landlords who provide housing for people without the right to remain can be punished with an unlimited fine, or imprisoned. You might prefer to let an estate agent deal with marketing the property and running checks on prospective tenants. They will know the pitfalls to avoid, and probably have software and systems in place to run specialist checks.

#### d. The Tenancy Agreement

When new landlords think about the legal issues involved in renting out property, it is often the tenancy agreement which first comes to mind. So you might be surprised to know that this is actually an area many landlords don't spend enough time thinking about. This is because most tenancies are very similar legally, and so standardised documents are often used again and again without too much consideration. You could probably find a free standard tenancy agreement online for free or a very small cost, and offer it to potential tenants today. However, there are two potential problems with this approach.

Firstly, the law changes often. Regulatory requirements affecting tenancies, including notice requirements, landlord obligations, and the information which must be provided to a tenant by statute, are updated more frequently than most websites. When you use a free standard document which you've found online, there is really no way to know whether it meets current legal requirements.

The other problem arises when landlords share information with each other. It might seem very sensible to trust the advice of an experienced landlord, if they share the standard version they've been reliably using for years with you. But is that experienced landlord a lawyer? Do they really keep up to date with every little change? It's far more likely that they've used that same document for far too long, and relied on good luck and their business experience to avoid any problems which might be lurking within it. Is that a risk you're willing to take?



Many landlords don't worry too much about the tenancy agreement, because they know that most tenants are not likely to sue them for any mistakes or minor technical issues it contains. And it's true most tenants just want to live their lives, and don't have a lot of spare cash for petty legal action. But as one estate agent warns: 'Problems with a tenancy agreement usually only come to light once the tenancy is almost over, and a landlord needs to rely on it for an eviction. If you end up needing to go to the courts to get a tenant out, you could find yourself facing a counter-claim which will not only delay the eviction, but could see you liable for fines, compensation or legal costs.' Great for tenants with legal advisors, but not so convenient for landlords!

Using an agreement you've found online, or something a friend has shared with you, is a risky approach to take to the document which is the basis of an important legal relationship. There are various other ways in which a tenancy can be created:

Some tenancies are not written down at all, and yet are completely legal. Whilst it is not advisable to have a purely verbal tenancy, as it would be very hard to prove what exactly was agreed, it is very

important to be aware of this. Be careful you do not enter into a verbal tenancy by accident! Although you or your estate agent will no doubt discuss terms with a prospective tenant, and maybe even negotiate some aspects before signing anything, make sure that the commitment itself happens on a written tenancy agreement. Be particularly careful not to accept any rent payments before the agreement is ready, as that could indicate a tenancy has already begun.

A few landlords like to write their own tenancy agreements, so that they have full control over what it contains. There is no reason why you can't do this – you could even sit down with a potential tenant and write the agreement together. But it would be fairly unusual for a new landlord to take this approach, as tenancy agreements are legally binding agreements. There is a lot which can go wrong: particular types of information should be included to show that the document refers to a true tenancy, and that there has been an intention to create legal relations.

This information should include the address of the property, the names of all parties, and the start and end dates of the tenancy. It should also include how much rent will be payable and when and how it will be paid, as well details of how the deposit will be protected and the circumstances in which it can be withheld. It's also a good idea to specify whether the tenancy is to be periodic or for a fixed-term, any rules which apply to your tenants (for example, if pets aren't allowed), the bills and types of maintenance they will be responsible for, and any responsibilities you will keep, such as for internal decoration. It's also a good idea to include information on how the tenancy can be ended by each party, whether sub-letting will be allowed, and information about rent review.

However, despite the fact it is possible to draw up your own tenancy agreement, it is not generally advisable. There are so many things to include, and which should be worded in exactly the right way – and most of us don't have experience in drafting legal documents. Why take the risk of making an error, or leaving out something which you might later want to rely on, when there are much easier ways of getting hold a decent tenancy agreement?

A solicitor can provide a tenancy agreement. You might like to take this option if you already have a good relationship with your solicitor, and he or she is already involved in your property affairs. However, it would be unusual to engage a solicitor solely for this purpose — and probably unnecessarily expensive. Even if you do ask a solicitor to provide you with a suitable tenancy agreement, it's unlikely they will actually write it themselves. They will probably have just downloaded it from a database of legal documents, and made any tweaks you've requested.

The most sensible approach to obtaining a good standard form tenancy agreement, is to engage an estate agent in the rental sector. Not only will an estate agent be up to date on landlord and tenant law, and have a stockpile of different forms of tenancy agreement ready to go, but they can take on as much of the process as you want. They will spend time going through the agreement with prospective tenants, to make sure they understand its provisions and answer any questions. Tenants are often more comfortable having these discussions with an agent than with their landlord directly, and this stage is really important to ironing out any problems which might become more serious if they arose later on. An estate agent will also know how to ask the right questions, and deal with immigration checks, without breaking the law or accidentally saying something which might be considered discriminatory.

There is also a legal obligation to provide new tenants with the government issued 'How to Rent Checklist', a 13 page guide which can be downloaded online. Don't cut corners by emailing the link to your tenants – you or your estate agent need to hand them a physical copy, and find some way to prove they have received it. If you don't get these steps right now, it could make it more difficult to

end the tenancy later on. If you decide to let an estate agent deal with setting up new tenancy agreements, they will have the right documents available and keep records of the date everything was carried out, should you ever need to prove it in court.

Finding, choosing, and securing a tenancy agreement with your new tenants can be incredibly stress-inducing for the new landlord. Even the most experienced landlords find the process often takes more time and energy than they have to spare. Having an estate agent take on the load won't just make your life easier – it could also save you serious time, money and problems further down the road.

#### e. The Deposit

Dealing with the deposit in the right way should be fairly straightforward – but any mistakes can come at a very high cost. It is now a legal requirement that all deposits paid as part of an Assured Shorthold Tenancy be kept in a deposit protection scheme, with the aim of making sure that everything is dealt with fairly at the end of a tenancy. There are currently three deposit protection scheme providers within England and Wales; MyDeposits, Tenants Deposit Protection Scheme, and the Deposit Protection Service. You must use one of these three schemes – no other method of ring-fencing deposit monies will do.

There are two things which it is crucial for a landlord to do within 30 days of receiving the deposit. Firstly, you must choose one of the schemes, and deposit the money within it. Secondly, you must provide the tenant with what is called the 'Prescribed Information.' This must include particular information, such as your name and address, the details of where the deposit is being held, and other information which you scheme provider will be able to advise. They will probably provide with a document which contains the information you'll need, and which can be passed on to your tenants. Check that all the necessary information is included, to be sure that you have met the legal requirements. A full list of what must be provided is available on the government's website.

This probably all sounds quite simple, but there are a couple of ways in which landlords tend to get tripped up by the deposit holding rules. Sometimes tenants are asked to provide a holding deposit so the property can be held for them whilst terms are being worked out, and it is common practice for the holding deposit to become part of the actual deposit once the agreement is signed. In this case, it can be easy to forget that the deposit is an issue, as the money is already held. However, from the moment it becomes the actual deposit, this money must be treated as above.

Another situation which sometimes trips up even the most experienced landlords is when a third party provides the deposit. This is particularly common with younger tenants, student rentals, and other situations where there is a guarantor. However, even though it is not the tenant themselves providing the money, the requirement is exactly the same – the money must still be put with an appropriate scheme within 30 days of your receiving it, and the tenant provided with the Prescribed Information.

Deposit protection is a typical example of how an easy mistake can cost landlords severely. As one housing adviser explains: 'when a tenant approaches us asking for help in holding off an eviction, the very first thing we do is check that the deposit has been dealt with properly. It's particularly common with private landlords who don't use an estate agent, and don't understand the rules or get tempted to cut corners. If we notice any problems or delays with the protection of the deposit, we take that evidence straight to the court to hold off eviction, and seek a court order which can see the landlord liable to pay the tenant up to three times the original deposit amount.' So watch out!

#### f. General Data Protection Regulations

There has been a lot of talk about the General Data Protection Regulations, or GDPR, in many industries of late. These are the rules which replaced Data Protection legislation in the UK, but it's taking some landlords a little longer to realise what this means for their business. This is hardly surprising, as GDPR is a complicated and technical area of law. However, the general essence of the regulations is that no one should hold personal data with that person's consent, and they should only hold data which it is necessary to hold.

GDPR therefore applies to private landlords, who will hold data not just on their current tenants, but also take the names, numbers and other details of other prospective tenants too. Wherever this data is held electronically, whether on your phone or in a word document or accounting software, the provisions of the GDPR apply. Whilst there are no specific guidelines aimed at landlords, there are several good practice measures you can put in place to help meet GDPR requirements.

Firstly, you'll need to register with the Information Commissioner's Office, or ICO, because you are handling personal data. This is true whether you are operating as an individual or a company. There is a fee for registering with the ICO, although there are some exemptions which you can learn more about on their website.

Secondly, let anyone who gives you their data know that you will need to keep a record of it, and check they don't mind.

Thirdly, prepare a privacy or data handling policy, which you can provide to all your new and existing tenants. This can be a very simple document which explains what information you keep, why you need it, and when you will get rid of it.

Fourthly, try to simplify the way you hold data to make it easier to manage. For example, try using just one spreadsheet or document to hold all your tenant information, rather than lots of separate files. That will make it easier to delete any information which becomes out of date, and should therefore no longer be held.

Fifthly, think about the security and privacy of your data storage systems. If you use a shared computer, make any tenant-related files password protected. If you use cloud storage, make sure you have appropriate privacy settings in place.

Finally, if you use an estate agent to manage your tenancies, you will find that GDPR requirements are much easier to comply with. Your agent should already be registered with the ICO and have privacy policies in place, as well as appropriate data storage facilities which meet the legal requirements. Allowing an agent to handle your tenants is the easiest way to make sure you don't fall foul of GDPR.

## g. Ending a Tenancy

This is the other major area in which awareness of the law is critical to getting it right. Whether you find the dream family to rent your property, or end up with the tenants from hell, the tenancy will eventually come to an end. Many landlords fear that ending a tenancy will involve arguments, evictions, stress and general nastiness. But most of the time, this is far from being the case. There are, in fact, many ways in which a tenancy can be ended lawfully, and most of the time, it's a pretty straightforward matter.

Occasionally, it might be necessary to use eviction proceedings if things go wrong. It's just part of the business of being a landlord, and certainly isn't much fun for anyone involved. However, understanding the different ways in which a tenancy can be ended might just help you avoid the sticky end of the spectrum when it's time to move on.

Rather than listing the different legal routes to ending a tenancy, technically known as 'termination,' this section sets out the most common real-life scenarios which end tenancies. This is because you won't find much information about the day-to-day reality of being a landlord in any legal textbook. One of the most useful things to remember is that you're dealing with people, so reasonable conversation and negotiation are often just as important as the bureaucratic processes. However, it is important to be aware that there are a lot of technical legal concepts behind ending a tenancy, and you should seek advice from your estate agent or solicitor to suit your specific situation when the need arises.

#### When your Tenants decide to move on

There are many reasons why a tenant might want to end their tenancy. Perhaps they need to move location for a new job, or a growing family has led them to look for more space. Maybe they're struggling financially and can no longer afford the rent. It's also possible that they aren't satisfied with the property for some reason which you may or may not be able to address. Whatever the case, when tenants decide they want to leave, they might approach it in one of two ways.

Some tenants will reach out to you informally, and want to have a chat or email conversation about what's going on for them. If you value them as tenants and would prefer them to stay, this is your opportunity to ask if there's anything you could do to make them want to stay. If they're just keen to have a gas oven, then the solution to keeping them might be very straightforward. A quick investment might save you money in lost rent whilst you seek new tenants – and good tenants are worth hanging on to, if you can.

But of course, sometimes the reason tenants want to move on is beyond your control, and they will simply want to end the tenancy. In this case, you're more likely to get a sudden text, email or letter, announcing your tenants plan to give notice. There are then two ways in which the tenancy might end.

Firstly, you can choose to end the tenancy by mutual agreement. If you and your tenants are both happy to, you can agree to end the tenancy at any time. You can choose a date which suits you both, even if it doesn't reflect the tenancy agreement. There are some circumstances where this can be pretty useful. For example, if you already know of potential tenants who are interested in the property and want to move in next week, while your current tenants are keen to leave immediately, it might make sense to agree to end the tenancy by mutual agreement rather than insisting on the full notice period. Otherwise you could lose the new potential tenant *and* end up with an empty property to advertise.

If you do decide to end the tenancy by mutual agreement, be sure to get the details down in writing. Even if you have the friendliest of tenants, and everyone seems to be on the same page, it's not worth taking the risk that they will change their minds at the last minute and want to stay in the property. That could leave you in a sticky situation if you've already made plans for your next tenants, as eviction proceedings can take a long time.

Formalising a surrender by mutual agreement needn't be too complicated. Just be sure to get the important bits down on paper – the fact that both parties intend to end the tenancy on a definite

date, and any other arrangements which the surrender will involve, such as any final rent payments due. Have your tenants sign it as well as yourself, and make sure everyone has a copy to keep. You may even like to post the tenant's copy by recorded delivery, so they cannot deny receiving it.

The other way in which a tenant can bring a tenancy to an end, is of course by giving notice of their intention to go. Whilst it is best practice for a tenant to give notice in a formal letter, in reality it is often done in person, by text message, or in an email. The law on how to give notice does have certain requirements, and these can be rather complicated. In general, unless the tenancy agreement states that notice must be given in writing, it's probably a good idea not to get too caught up on the technicalities and accept that your tenant wants to bring things to an end. To be on the safe side, you could ask a tenant to follow up a text or email with formal written notice — but if you string things out for an unreasonable period of time, you're just more likely to end up having to chase rent. Which is time-consuming, costly, and doesn't always work out anyway. So, be aware of the law in this area, but it also pays to be reasonable and fair when dealing with tenants.

It is very important, however, to check that your tenant is eligible to give notice, and this depends on the type of tenancy they have. If your tenant is on a periodic tenancy, which is most likely to be a month-to-month rolling assured shorthold tenancy, then they will need to give you one month's notice of their intention to leave. They should specify the date on which they want to go, and that date should be either the first or last date of the rental month. So, if the tenancy agreement began on the 3<sup>rd</sup> of the month, and they hand you a notice on the 22<sup>nd</sup> of July, the notice won't be effective until the 2<sup>nd</sup> or 3<sup>rd</sup> of September. If there is any confusion about the date on which they can quit the tenancy, be sure to have a conversation to clarify the notice with them. Try to get this in writing, by email or by requesting a revised notice. Things go much more smoothly when everyone is on the same page.



Different notice rules apply to different types of tenancy. If your tenant has a weekly tenancy agreement, they should give 4 weeks' notice. If the tenancy is for a period of more than one month,

such as a quarterly tenancy, then they should give notice of the same length as the tenancy period. If you have a tenant living in the same property as you, there may be no formal notice requirements, because they will be there by licence rather than as part of a tenancy. If you have a contractual licence agreement, they should try to stick to any requirements it contains.

Fixed-term tenancies require more careful handling when checking whether your tenant has given notice in the proper way. Generally, a tenant cannot give notice before the end of a fixed-term period. If they try to, you do still have the option of ending the tenancy by mutual agreement, but this is not usually in a landlord's favour as you will then lose the rent which you had expected for that period. The only situation in which it might be wise, is if you suspect you will never be able to recover rent for the remaining period anyway. In that case, you might as well agree to let the tenant go, and find someone else. But if you do not want to agree to end a fixed-term tenancy early, and the tenant tries to leave the agreement anyway, you would be within your rights to pursue them for missed rent through the courts.

Another option you can consider, is asking a tenant who wants to leave to find a replacement tenant before you will agree to mutually surrender. That way, they will be free to move on, and you will still be getting rent. This is particularly common in student lets – students will sometimes drop out of university, but there is often another student willing to take their place. If you decide to go down this route, it would be advisable to have an estate agent to make sure the assignment, or new tenancy, is effected formally.

Some fixed-term tenancy agreements contain a break clause. If you decided to include one in your tenancy, then you will have to accept the notice if it has been served properly. Break clauses are commonly used in year long fixed-term agreements, and generally worded to give the tenant the option of ending the tenancy at the six month mark. However, they will generally still be required to give a full month's notice if they wish to make use of the break clause. For example, if a fixed-term one year tenancy began on 1<sup>st</sup> January, with a break clause at six months, which your tenant tried to use by serving you notice on the 15<sup>th</sup> of June, you would probably be well within your rights to refuse it as an invalid notice. The tenant would continue to be liable for rent, bills, and any other obligations they committed to under the agreement for the rest of the year.

At the end of a fixed-term tenancy, your tenants will be free to leave, should they want to. Some tenancy agreements ask that notice is given if a tenant wants to leave at the end of a fixed-term, but this may well not be enforceable in court. So that you don't get any nasty surprises, it's a good idea to have a chat with your tenant towards the end of the fixed term, and see what their plans are. If they'd like to stay on, you have the option of offering them a new tenancy, or just allowing them to stay on under the original agreement. Offering a new fixed-term tenancy is called a renewal, and can be a good idea if you and your tenant would like to continue having longer term security. What more commonly happens, however, is that tenants just stay where they are, nobody does anything, and the original fixed-term tenancy becomes a rolling tenancy. The rental period will generally reflect how often the rent is paid, which is usually monthly. This is called a statutory periodic tenancy, because it is automatically created by law.

You cannot prevent this sort of tenancy arising if your tenants stay in occupation, paying rent, and you do not give notice to them or otherwise end the original tenancy. This is very important to be aware of, because landlords and tenants often get confused at this juncture. Sometimes a tenant will look at their tenancy agreement, see the original end date has passed, and assume they therefore do not need to give notice in order to leave. This is not the case, and they will remain liable for rent and

other tenancy obligations until the expiry of a valid notice against their statutory periodic tenancy. The requirements are the same as for a contractually created periodic tenancy, as set out above.

Whatever method your tenant uses to end a tenancy, be sure to take your time and communicate clearly at every stage. Always re-read the original tenancy agreement to be check its provisions and status, the exact rights you have, and the expectations of your tenant, in each case. If they try to escape their obligations, or serve an invalid notice, try to find a pragmatic solution before reaching for the court proceedings. It's likely to save you time and money in the long run if you can sort things out reasonably. This doesn't mean you should be a soft touch in any way – the law supports your rights under a tenancy agreement, and provides remedies for securing them if tenants are not playing ball. We'll be taking a look at these options below.

## When you need your property back

There are many reasons for which a landlord might want to get his or her property back. Sometimes it will be because something has gone wrong – tenants who are in breach of the conditions of their agreement, or refusing to pay rent. Sometimes you might have your own reasons for needing to end a tenancy, such as needing to put it on the market, carry out renovations, or even to move into it yourself. Whether the reason for termination is the fault of the tenant, or some other reason of your own, you will need to serve a proper notice on them. However, the type of notice required will depend on the circumstances, and sometimes time and cost can weigh in too. In this section, we will cover the process of getting a property back when the tenant is not necessarily in breach of their tenancy agreement, but you still need to regain possession.

In this case, you will need to serve a s21 notice, also called a notice seeking possession, or NSP. A landlord does not yet have to provide any reason for serving an NSP, although you can explain your reasons should you choose to do so. You should provide the notice using form 6A, which can be downloaded online. Because this is a standard form, it isn't too hard to get this part of the process right. Just be sure that the date you specify you will need to regain possession of the property allows your tenants two months' notice, or the same length of time as the rental period, whichever is longer. Also be careful not to make any careless mistakes in filling out the form. Wrongly spelt names and addresses, or mistakes in writing any of the dates required, could result in the notice being found invalid if you end up having to rely on it in court.



There are some circumstances in which a s21 notice will not be valid, so do be careful to avoid these. A notice seeking possession will not be valid if it is served within the first four months of any tenancy, or if the deposit was not placed in a deposit protection scheme at the property time. It will also be invalid if you did not provide any of the other legally required items at the start of the tenancy, such as the EPC, Gas Safety Certificate, or How to Rent Guide. It is therefore really crucial to have everything set up properly at the start of a tenancy, and have your tenants confirm receipt of these items when they are provided. But as long as everything is in order, a tenant will not have the right to argue that they should be allowed to remain in court. The whole point of a s21 notice is that a landlord may seek repossession for any reason, and does not even need to provide a reason.

Most tenants will leave by the end of the notice period after receiving a notice seeking possession. Occasionally, however, tenants do refuse to leave on the requested date. This is a very frustrating situation for landlords, who understandably feel that they should be able to take back their property at that time. However, even if the notice was completely valid and properly served, it would be illegal to try and take things into your own hands at this stage. If a tenant refuses to leave at the end of their notice period, you will need to go to court to seek a possession order. This will be discussed below, in the section dealing with tenants who refuse to leave.

## When you need difficult Tenants to move on

Whilst most tenants just want a quiet life in a stable home, there are also some tenants who cause problems. At some point in their careers, most landlords will come across people who do not respect the property they are renting, refuse to pay rent on time, insist on owning a huge dog when pets are explicitly prohibited, or any number of other problems which might amount to a breach of the terms of their tenancy agreement. In this case, a landlord has two options. You might still choose to use a s21 notice to seek possession of the property as set out above, as this is a straightforward procedure which does not require any reason to be given. Or, you might decide to serve a s8 notice, also known as a notice to quit.

A notice to quit can only be used when a tenant has breached their agreement in some way, such a failing to pay rent or causing problems during their possession of the property. It can even make sense to serve both notices at once, if appropriate. This is perfectly allowed if both notices are valid, and it can be advantageous if one process ends up working more quickly than the other.

Probably the most common reason for which a landlord might serve a notice to quit, is non-payment of rent. The notice cannot be served until the tenant has fallen two months behind – or is an arrears for missing or part payments which total at least two months' worth of rent. However, before serving the notice, it would be wise to write to your tenant and chase them for payment. Make it clear that unless the outstanding amount is paid within, say, 21 days, you will serve them notice to quit. Send a reminder letters regularly, and try to sort out a payment plan if possible – it's usually far preferable and more cost effective than going to court.



If your tenants ignore your request, and you decide to serve a s8 notice to quit, you must make sure it is in the correct form. You can do this fairly easily by downloading form 3 online, or writing a letter which includes the same information. Be careful not to make any errors in the notice, or it may be found invalid if you have to rely on it in court later on to achieve an eviction.

Unlike a s21 notice, which generally requires that you give at least 2 months' notice to a tenant, a s8 notice permits, in some circumstances, a minimum notice period of just 14 days. Consider, however, whether it would be more reasonable to allow a little extra time. A judge may look more favourably upon a landlord who has given a tenant every possible opportunity to do things the right way, should you end up arguing over the notice in court. Another advantage of the s8 notice is that it can be served at any time during a periodic or fixed-term tenancy, including the first four months of the original tenancy - when a s21 notice seeking possession would be invalid.

And a s8 notice isn't just for tenants in arrears — it can be used to get your property back from a tenant breaching any part of the tenancy agreement or causing serious problems. However, it's important to be aware that some reasons are considered stronger than others, and also carry different notice periods. This makes a s8 notice a little bit trickier to get right.

There are 17 different 'grounds' upon which a s8 notice can be served. The first 8 are mandatory, which means that if proved, a court must grant you a possession order, should you need them to. The rest are discretionary, which means that it would be up to a judge to decide whether or not the problem is serious enough to justify granting a possession order.

The mandatory grounds for repossession are if you the property back to live in for your family, if a lender seeks repossession, death of the tenant, some situations where the property has been a holiday let, or used for some educational or religious purposes, when a landlord wants to carry out major work to a property, and rent arrears. Some crimes can also be mandatory grounds for repossession.

The discretionary grounds are much broader, and include problems such as a breach of the tenancy agreement, causing a nuisance to neighbours, a tenant lying to secure the tenancy, domestic violence, problems with paying rent which don't amount to two months' rent arrears, and other similar problems.

Whichever ground you use as the basis for eviction, be sure to get the notice period right when serving the notice. Most tenants will vacate a property upon receipt of a notice, but some s8 tenants can be tricky. Keeping the channels of communication open, and being reasonable at every stage, might help you find a solution which does not involve resorting to time consuming and costly court proceedings. Try to keep evidence of documents served by using recorded delivery services, or having tenants sign a receipt if notices are served in person. Keep copies of letters sent before and after the notice was served, and evidence of any other efforts you've made to resolve the situation. All this will not only help your tenants realise you mean business, but also be very useful in court, should a tenant try to defend themselves against eviction.

### When Tenants refuse to leave

Unfortunately, whatever type of notice you use, and however carefully you handle the situation, some tenants will stick around in your property for as long as they can get away with it. Even if they remain in possession after the expiry of a valid notice, their occupation is in some respects protected by law. You can't just change the locks and throw their possessions out on the street – doing so could result in serious legal problems for you.

Instead, you must go to the court and seek a possession order. This is a judge-issued order which demands that the tenants vacate your property within a certain period of time. The minimum period is 14 days, but it is not uncommon for a judge to allow up to 6 weeks for tenants to move out, if they are thought to be facing particular hardship.

It is at this stage that the process of evicting difficult tenants can become very frustrating. By this point, you've probably already sent several warning letters, served a notice, and waited out that notice period. Then you'll have had to wait for the court to decide a date for the possession hearing, which in some areas can be longer than you'd think. Now it can feel like the process is no longer in your control, and has been handed over to the whim of a judge. But whilst it is true that you will have to rely on the court to make decisions and set the pace, try not to get disheartened. As long as you have ticked every box, and are sure of your reasons for seeking possession, the legal process will uphold your rights as the owner of the property.



Your tenant will, however, have the opportunity to defend themselves in court against your reasons for seeking possession. If there are any defects in the notice you served, or you have made any of the errors discussed above, the court may well find your notice invalid. You will be liable for court costs, and have to remedy the problem before starting the process all over again.

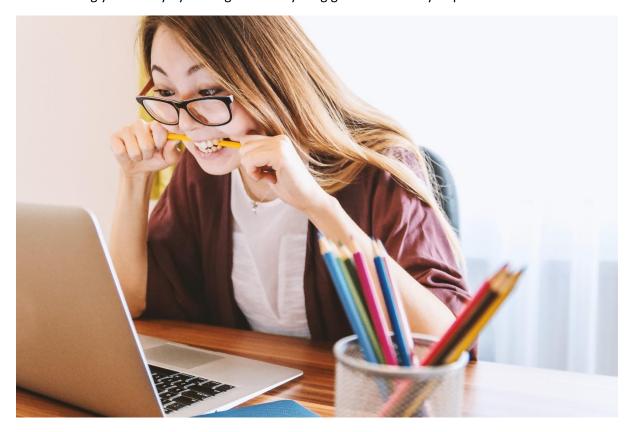
In some circumstances, such as where a discretionary ground has been relied upon for a s8 notice and the judge feels the tenant should be given another chance, the judge may find some sort of halfway solution. This might be a suspended possession order, which allows the tenant to stay but requires them to take some action such as paying outstanding rent or making repairs. If this order is breached, you can go back to court to seek eviction. A judge can also make an order to demand the tenant makes certain payments, such as to cover the cost of work you've had to do to make good any misuse of the property. Hopefully, you'll have a good strong case, and will be granted that possession order.

Most tenants who get to this point will leave by the date set out on the order. But in the rare case where a tenant just refuses to go even at that point, you will need the court to deal with the eviction itself. This should be far more straightforward than the possession order, and requires you to apply to the court for a warrant of possession. The court will then make arrangements for their own bailiffs to actually evict the tenants and hand back possession of the property to you.

Nobody likes a court-ordered eviction. It's time-consuming, stressful, and usually ends up costing a landlord money in missed rent and bureaucracy. If you decide to engage a solicitor for your possession hearing, the costs can really mount up. And of course, there's a human side to eviction proceedings too. Even if you have the hardest of business brains, and the most obstructive of tenants, it never feels good to force someone out of their home. This is an important aspect to factor in to the reality of being a landlord, and when deciding how to manage your property. It's the reason many landlords prefer to use an estate agent, as it reduces the personal stress, and even guilt in some circumstances, which can arise in tricky situations. As one letting agent told us:

'We get a lot of enquiries from landlords who started out managing their own BTL property with the idea they'd be able to maximise their income through self-management, but have come unstuck a year or so down the line. I always wish they had just come to us right from the start, as we would have run thorough good referencing checks, and can nip most tenant problems in the bud. We could have saved them so much money and grief. Property management agents are experienced in when to send the right letter, and have the professional distance from the landlord-tenant relationship which some difficult tenants will try to exploit.'

Besides reducing the likelihood of ending up in court in the first place, estate agents can be very helpful if possession proceedings do become inevitable. They will be experienced in supporting landlords through the process, and able to advise on matters such as proper notice periods. They will also have a lot of useful knowledge about how things work in your area – how long the court system takes, whether there is a good local eviction specialist worth referring you to, and when it might be useful to get the help of a solicitor. Knowing there's a professional on your side can be reassuring, as well as saving you money by making sure everything goes as smoothly as possible.



## 5. Common Pitfalls and how to avoid them

Some of the more serious problems a landlord can encounter were dealt with above, as they tend to crop up at the same stages of the legal processes involved in the landlord-tenant relationship. However, there are also lots of other little issues which can arise, which are easily avoided if you are well prepared or have an agent managing your property. In this section, we'll cover some of the most common pitfalls for new landlords, and how not to get tripped up.

# Non-payment of Rent

This is probably the number 1 issue which keeps private landlords awake at night! It is also the most common ground for eviction proceedings. But whilst non-payment of rent is a tricky problem to deal with when it happens, try not to let the fear put you off becoming a landlord. This can be a very

lucrative and straightforward investment – non-payment of rent is one of the risks, but it is a risk which can be managed in various ways, including:

- Carrying out good referencing checks before committing to a tenancy agreement to make sure your tenants are reliable
- Choosing tenants with a regular income this does not necessarily exclude those receiving benefits. Sometimes tenants relying on self-employment or a zero-hours contract will struggle to make rent more than those in receipt of full housing benefit
- Maintaining a good relationship with your tenant, so that they will come to you early on if problems arise
- Being prepared to offer a payment plan for good tenants in temporary strife
- Preparing standard letters to send out when non-payment is not being addressed, so you aren't scrabbling around in a panic if the need arises
- Keeping careful track of relevant dates such as the start of the tenancy, a schedule of all rent
  payments made, renewal dates, and so on. If you do need to send reminder letters and
  notices, this will be incredibly valuable when you need to calculate how long to give tenants
  to sort out the problem or giving notice. Mistakes on your part in this area can really bite
  back if you end up having to go to court
- Knowing when to call it a day, and give up on non-paying tenants. Although it's important to be reasonable and offer a fair chance to struggling tenants, it's also important to look after your own interests and know when it's time for difficult tenants to move on. If you have to take the decision to seek possession or evict tenants, feel confident that you've done everything you could, and that the legal system is there for this purpose.
- Consider using an estate agent to manage your property, as this will include collecting rent. Estate agents will have more time for rent chasing, know exactly how to approach different types of tenant, and when it's time to call it a day. They might even have contacts with eviction experts, who can help run the process for you, sometimes for a fixed price.
- Recovering lost rent through the courts is an option, but time-consuming and not always
  successful. Even where a judge makes an award in your favour, they won't be able to extract
  the money from a tenant who doesn't have any. In these cases, they will often order a
  tenant to pay back the money owed in very small instalments over the course of months or
  even years. For this reason, it can be best to cut your losses and move on rather than putting
  too much time and effort into a lost cause.

## **Tenancy-related Fees**

This is an area which landlords must be particularly careful with these days. In the past, it was common for landlords and agents to charge different fees for aspects of the work which are involved in creating a tenancy. This could include administration fees, discretionary holding deposits, security check fees, large deposits, and more. However, there are now very strict rules about the fees and deposits which can be charged at the start of different types of tenancy. Ignore these at your peril, because breaking the rules can carry a fine or invalidate a s21 notice, should you need to get your property back at any point. Whilst these rules also apply to estate agents, any mistakes on their part may not invalidate a s21 notice, so it can be a definite advantage to use agents to manage your deposits and fees.

Your own responsibilities under a Tenancy Agreement

There has been a lot of emphasis so far on how to manage tenants and rely on your rights as a landlord. However, it's important to remember your own legal obligations. If you seek possession of the property, especially using a s8 notice, your tenant make try to mount a defence in order to remain in the property. Any neglect of your own responsibilities will strengthen their defence, and could prevent an otherwise justified eviction. For this reason, you should be sure to keep up with maintenance, and all legal requirements such as the annual gas safety check. If a tenant complains of problems, try to address their concerns as soon as possible. If they complain to the council, and the council asks you to carry out work, you will find it is much more difficult to evict your tenants for the next 6 months – this rule is intended to prevent revenge evictions. The courts do not take well to landlords who try to get out of repairs by putting pressure on their tenants.

#### S21 and S8 notices

If you do need to give notice to a difficult tenant, be sure that you understand the differences between the types of notice you might give. In many cases, it is actually a good idea to serve both notices at the same time. This is particularly true if you have a tenant who is breaching their agreement for a reason other than non-payment of rent. Many of the other grounds for a s8 notice are discretionary, and could end up with an outcome short of a possession order. That will mean more time and money wasted for you. Even where you have strong grounds for asking a tenant to quit, a s21 notice might be quicker to enforce. On the other hand, there are various circumstances in which a s21 might not be valid, and technical aspects to get right. If in doubt, an estate agent will be able to advise.

#### **Financial Planning for BTL Landlords**

The reason private landlords worry about non-payment of rent isn't just their own pocket – there are often mortgage payments to be met, and any cash flow problems soon start to add up. There are almost certain to be periods of time when your property isn't bringing in an income – whilst you're looking for tenants, when tenants leave, if you have to carry out major work to a property, or deal with possession proceedings. Planning your finances so that disruptions to cashflow don't create a black hole in your budget is crucial. Some agents will guarantee a certain level of rental income, whilst others just rely on their experience and knowledge of the local rental market to maximise your bottom line. Either way, using an agent is highly recommended if you are committed to a BTL mortgage.

#### The future of s21 notices

There has been recent talk in political circles suggesting that current s21 procedures may be reformed or even withdrawn. The likelihood of this happening is impossible to predict, but it is certainly a cause of concern for many private landlords. A s21 notice is an important factor making the business of property rentals flexible, accessible, and lucrative. That's because it allows a landlord to regain possession of the property at pretty much any point, and for any reason, or none at all. If s21 notices change or become unavailable, landlords will probably need to rely on the notice provisions set out in their own tenancy agreements, or a s8 notice when appropriate. This is the sort of issue which it is important for landlords to keep an eye on – follow the news, and read popular landlords' blogs to keep up to date with policy changes. Alternatively, engage an estate agent who will have their finger on the pulse of the rental sector, and ensure your tenancy agreements stay up to date.

#### 6. Insider Tips for Landlord Success

Being a landlord isn't all doom, gloom and financial planning. It can be a really enjoyable way to invest in your future, whilst contributing to the local housing market. In this section, we'll share some of the top insider tips we've come across whilst working with private landlords. We think they will help you make the best of your property, and enjoy being a landlord!



## **Welcoming New Tenants**

Whenever you get new tenants, find a simple way to welcome them to the property and let them know you care. It might not be necessary, but this small act can really start the relationship off on a good footing. Many landlords or agents will send a 'welcome to your new home' card on moving in day, and some take it even further by sending cards at Christmas and other occasions too. One experienced landlord told us: 'I used to send all my tenants flowers when they first moved in, and would always get a thank you email. It was a great way to open a line of communication, which helped if occasional problems came up. Once I moved into student rentals, I started sending them vouchers for the local pizza delivery place instead! A small price to pay for happy tenants.'

## **Property Inspections**

Don't be frightened of property inspections and inventories. Many landlords avoid the inconvenience and feeling of intrusion which comes with carrying out a property inspection but, if done well, they can help maintain good relations for all parties concerned – and protect your investment. Some tenancy agreements will set out what a tenant should expect, such as quarterly or annual inspections. A landlord also has a legal right to enter the property to carry out work or inspect its condition as long as you've given 24 hours' notice, and don't do it at an unreasonable hour. But if you have no reason to think your tenants are holding parties and trashing your property, consider being a little more flexible. After all, this is their home, and many tenants are working full time. They are likely to be appreciative if you offer them a little more notice than one day, and arrange a time which is convenient for them as well as you. You might even be offered a cup of tea,

and find the inspection is a good opportunity to catch up and maintain good relations. If the property is not local to you or you would rather not visit, an Inventory Clerk will do so for you with a cost from about £35 per visit <a href="https://www.exactsussex.co.uk/importance-of-mid-term-inspections">https://www.exactsussex.co.uk/importance-of-mid-term-inspections</a>.

Sometimes shorter notice is permitted, for example, when there are serious structural problems or other property emergencies which require your immediate attention. Some of these rules are set out within the Landlord and Tenant Act 1985, and Housing Act 1988. Others are implied by law, which means you won't find them set out in the legislation, but they should be upheld if a tenant tried to challenge you on the matter. If you're not sure what you can and can't do when it comes to entering your tenant's property, consult a solicitor or estate agent for advice.

## **Holidays and other commitments**

If you decide to manage your property business yourself, you will need to consider what you'll do when you go away. Whether it's for work or pleasure, time away from your tenants is time when you will not be available to deal with any problems. You can get around this by letting your tenants know when you will be away, and leaving them with emergency contact details. It's also a good idea to give them the number of a plumber or other contractors you trust, and ask them to deal with any emergency problems should they arise. That way, you can avoid unexpectedly extortionate repair costs for anything which might go wrong whilst you're away. The other option, of course, is to use an estate agent in the first place.

#### 7. Conclusion

Hopefully, this GetAnOffer guide has helped you think through some of the issues which any private landlord is likely to face, and how you might deal with them. At every stage of the process, from choosing a property, preparing it for rental, finding tenants and signing the tenancy, and for the length of their occupation, there are choices to be made about the sort of landlord *you* would like to be. Even if you already have tenants in place, and have some experience of what's involved, there's always room for changes and improvements in your business model. The law is always changing, and the rental market continues to grow. There has never been a better time to enter the market, and benefit from the income and investment opportunity of becoming a landlord. Whether you decide to take on advertising and managing your property yourself, or want to relieve the burden and worry by using an estate agent, becoming a landlord can be hugely rewarding. We wish you the best of luck with your journey in the rental sector.

Tom Cranenburgh and his experienced team will be on hand to help you find or sell any rental property across the UK. Whether are hoping for reliable rental income, capital growth, an HMO or even all three, allow us to help you find a suitable property to buy.

This guide was prepared autumn 2019 and whilst believed to be correct, information contained within is for general guidance only and does not constitute legal advice. As previously stated, always seek professional assistance when making a financial or other commitment.