Communities and Local Government

Letting rooms in your home

A guide for resident landlords

housing

Who should read this booklet?

You should read this booklet if you are letting (or thinking of letting) part of your only or main home. In law, a *resident landlord* letting is one where the landlord and the person he or she lets to live in the same building. This includes conversions where they live in different parts of the same property (however long ago it was converted).

However, if

- the property is split into purpose built flats, with landlord and occupier in different flats, *or*
- you do not live in the same property as the person you let to

you should instead read the booklet *Assured and Assured Shorthold tenancies – a guide for landlords* if the letting began on or after 15 January 1989; or *Regulated Tenancies* if it began before this date. Details of where to get these and other housing booklets published by Communities and Local Government are given at the end of this booklet. This booklet is addressed mainly at lettings started on or after 15 January 1989, when the Housing Act 1988 introduced changes affecting new lets by resident landlords. A summary of the special rules applying to lettings made before this date is at the end of the booklet.

This booklet does not provide an authoritative interpretation of the law; only the courts can do that. Nor does it cover every case. If you are in doubt about your legal rights or obligations you would be well advised to seek information from a Citizens Advice Bureau, local authority's housing

advice service or a law centre, or to consult a solicitor. Help with all or part of the cost of legal advice may be available under the Legal Aid Scheme.

The terms ‘landlord’ and ‘occupier’ are used throughout; ‘occupier’ is used in this context interchangeably with ‘tenant’ or ‘licensee’ to mean the person the landlord is letting to.

Contents

1. Introduction to letting rooms – some important principles

1.1 What types of letting does this booklet cover?

This booklet deals with many different arrangements, ranging from simply letting a room to a lodger to letting a converted flat in a house.

1.2 Why is it important whether the landlord is considered to be resident?

Tenancies which do not have a resident landlord are generally *regulated* or *assured* (including *assured shorthold*), depending whether they were granted before or from 15 January 1989 respectively.

Resident tenants have more limited rights to security of tenure than regulated tenants (pre-15 January 1989) and assured tenants from 15 January onwards. Resident landlords have this greater freedom to end an arrangement because it is acknowledged that, should the relationship break down between the landlord and the person he or she lets to, the landlord is more vulnerable in his or her own home. Non-resident tenants also have rights to challenge rent levels that resident tenants do not enjoy.

1.3 How exactly is a landlord considered to be 'resident' in law? Does it make a difference if I don't live in the property all the time?

For lettings started from 15 January 1989, the important point is whether you are using the property as *an only or principal home*, both at the start of the letting and throughout it.

It is accepted that, for short periods, a landlord may not live in the property yet still be considered to be resident: so long as he or she intends to return and this is apparent, for example if he or she has left belongings. However, only a court can say for certain whether a landlord has maintained enough residence in the property to count as a resident landlord: if not, then it is possible that the letting arrangement may be deemed to have become a regulated or assured tenancy, depending whether it first began before or from 15 January 1989. The definition of 'residence' for determining how the landlord must give notice or can evict an occupier is slightly different (see section 1.4).

1.4 Are all kinds of resident landlord arrangements treated the same in law?

No. There are two main considerations:

a. whether the landlord (or a member of his or her family) shares any accommodation with the person he or she is letting to

b. whether the occupant has exclusive possession of at least one room

a. This is important in distinguishing whether the occupant is protected by legislation in terms of notice to leave and eviction: a non-sharing arrangement will generally give the occupant greater legal protection than where accommodation is shared. (For this reason, lettings which are outside this protection are known as *'excluded' tenancies* and *'excluded' licences*). 'Shared accommodation' means any part other than stairs, halls, passageways or storage space; so that while a tenant in a self-contained flat would not be considered to be sharing accommodation with the landlord, even someone who has most of their own facilities but shares a toilet would. However, even if the occupier only shares accommodation with a member of the landlord's family, the arrangement will still be counted as a sharing one if the landlord himself also lives in the house.

To count as an excluded tenancy or licence, the landlord does not have to live in the house continuously, although it must have been his only or main home both before and at the end of the let.

b. This is about the distinction between *tenancies* and *licences*. Whereas the usual assumption for any letting arrangement is that it will be a tenancy, there may be some factors present that will make it merely a licence to occupy. The most usual one is a lack of exclusive possession; but if:

- the occupier does not have a right to occupy a particular room or rooms and/or

- there is no rent payable for occupying the room and/or

- the occupation is not running for identifiable amounts of time, for example by the week or month

then the arrangement is also likely to be a licence. Common general examples of licences are staying in a hotel, or having a friend to stay for a few days. Tenants have some rights that licensees do not have.

1.5 So what is the difference between a tenancy and a licence to occupy?

The most important qualification for a letting to be a tenancy is that the occupier is granted exclusive use of at least one room. So if, for example, he or she has her own room and you do not have the right under the agreement to enter it without permission, the letting would probably be a tenancy. If you agree to provide some form of attendance or service which requires you (or someone working for you) unrestricted access to the occupier's room, the letting would be a licence to occupy. If the occupier has to share his or her room (or all of his or her rooms, if more than one) with someone he or she did not choose, the letting would be a licence.

To be a tenancy, the letting must also be for a particular room (or rooms) – that is, without you being able to move him or her around.

1.6 What kind of attendance or services would require me to have unrestricted access to the occupier's accommodation?

These might include regular cleaning of the occupier's room, removal of rubbish, changing the bed linen, providing meals. But none of these on its own necessarily means there is a licence. It is only if you genuinely need to come and go without restriction and cannot be limited to agreed times of the day in order to provide the services, that the occupier will not have exclusive use of the accommodation. In this type of arrangement, the occupier would usually be described as a *lodger*.

1.7 What if I let to more than one person in the house?

If each person has his or her own room (or rooms), then whether each arrangement is a tenancy or licence will depend on the factors above.

If a room is let on a shared basis, where each occupier has come to the arrangement separately, or you have made it clear to the occupier that it is likely that he or she will have to share the room, the letting will probably be a licence to occupy.

However, even if more than one person shares a room, the letting can still be a tenancy if the sharers entered the arrangement together (*joint tenancy*): for example, a couple or friends, or a family sharing a flat.

1.8 How do the distinctions between different arrangements work in practice?

Examples of the most common arrangements are as follows:

Non-excluded tenancy: house divided into self-contained flats, occupier lives in one and landlord in another

Non-excluded licence *(unusual)*: landlord has right to choose new sharer for occupier's self-contained flat; or has unrestricted access to it for cleaning

Excluded tenancy: 'houseshare' arrangement, where landlord lets room(s) in his or her home and shares lounge etc with the occupier; bedsit arrangements where landlord is not servicing rooms

Excluded licence: 'lodgers', where the arrangement includes cleaning the room; stay by a friend on a casual basis; room is let as a 'roomshare' with existing occupant

This list only gives an indication of how different arrangements might be viewed: it is not definitive, and the important factor for any particular case is how the arrangement works in practice. Only a court can say with any certainty whether a letting is a tenancy or a licence to occupy; and the fact that a landlord may say that what is being offered or has been granted is a licence rather than a tenancy (or the written agreement is headed "licence"), does not necessarily mean that this is what it will

be considered to be. If there is a dispute or other issue where the nature of the let could be important, it is advisable to get legal advice.

1.9 Does it make a difference whether the accommodation is furnished or not?

In nearly all cases, no: it may only be relevant for some tenancies dating from before 14 August 1974 (see Appendix B).

1.10 What if I move out?

As described in section 1.3, you would only be considered 'resident' for as long as the house is your only or main home. If you cease to live there, then a *tenancy* may be deemed to have become an assured shorthold tenancy (if the original tenancy started after 28 February 1997) or an assured tenancy (if the tenancy started before this date but after 15 January 1989), of whichever rooms the tenant was letting. The rules for tenancies started before January 1989 are slightly different – see Appendix B. If the letting was a *licence to occupy*, it would not become one of these tenancies since the nature of occupation would still not fulfil all the requirements for a tenancy such as exclusive use.

1.11 What if I sell the property or die?

There are special rules which can ensure that tenants do not automatically become tenants as soon as a resident landlord sells his or her house, or dies, if the new owner will also be living in the property.

If the house is *sold*, the new owner must:

- give notice within 28 days that he or she intends to take up residence, and
- he or she must actually move in within six months of the sale

Until the new landlord moves in, the tenant enjoys the same security of tenure as if the tenancy was assured shorthold (or assured or regulated). This protection will then be lost so long as the landlord meets the six-month time limit.

Periods of non-occupation following the death of a landlord can be disregarded in certain circumstances. Where these periods are to be disregarded, tenants do not have the greater level of protection of an assured, assured shorthold or regulated tenancy – that is, they will be treated as if the landlord was still resident.

1.12 Does an existing agreement still apply if the property changes hands?

If there is an existing *tenant* in the property when the new owner buys or inherits it, the tenancy will continue with the new owner, and the terms of that tenancy will be binding on him even if he did not know of its existence.

This does not apply to *licences*, which will generally continue only if an appropriate agreement is

entered by the new owner. But this may be affected by what is known and agreed to at the time when ownership changes, for example if the licensee was part-way through a fixed-term arrangement.

2. Before arranging a let – some points to consider

2.1 Does the let have to be for a set period or can it run indefinitely?

This is something for both parties to agree at the outset. There is no minimum length of time that you must allow the let to run for. Usually it will run indefinitely from one rent period to the next – a **periodic** letting; or may be agreed to last for a number of weeks, months or years – a **fixed term** letting. The nature and length of the let can be important for giving notice when either you or the occupier wants to end it.

A *tenancy* must be for an agreed *term*, eg weekly periodic or a fixed term of three months. If no term is expressly agreed, the letting will be a periodic tenancy, and the term will be whatever period the rent is payable on (usually weekly or monthly).

Licences can be more flexible. Although it is normal to agree a licence to run from term to term, or a fixed length of time, as above, it is also possible for it to be entirely open-ended. This would be common in informal arrangements, for example allowing a friend to stay on an 'as-and-when' basis. But you could not charge rent on an open-ended or irregular basis, in order to call the let a licence, if

the reality of all the facts of the situation (especially if the occupier had exclusive possession) pointed to it being a tenancy.

2.2 I'm an owner-occupier. Do I need permission to let out part of my home?

If you own the property outright, you do not need permission from anyone to let.

If you have a mortgage on the property, it is in practice essential to get the mortgage lender's agreement to let part of the property first: otherwise, you are likely to be in breach of the mortgage terms. If you are a long leaseholder, you should check the terms of the lease to ensure that you can let part of the property and, if necessary, get the freeholder's agreement first. In either of these situations, if your rights in the property end (eg because the mortgage lender forecloses due to mortgage arrears, or the freeholder terminates the lease because of a breach by the leaseholder), so will the sub-tenant's.

2.3 I'm a tenant. Can I sublet part of the property or take in lodgers?

If you are a secure council tenant, you have the right to take in a lodger, but cannot sublet part without the council's written permission (see housing booklet *Your Rights as a Council Tenant – the Council Tenant's Charter*), you cannot sublet the whole of a secure tenancy. If you are a private tenant, you should check the terms of your tenancy. If there has been nothing agreed to the contrary,

the tenant would be free to sublet. However, in practice most private tenancies prohibit subletting: because there is something in the written tenancy agreement to this effect (either absolutely or without the owner's permission) and/or because assured (including assured shorthold) periodic tenancies have this prohibition implied. But a tenant can of course ask his or her landlord for permission anyway.

A tenant who has sublet in defiance of these prohibitions cannot use this as justification for denying his own tenant or licensee her rights, for example by evicting her illegally. Also, these restrictions only apply where the intended arrangement is for the tenant to "part with possession" of some of the property: if, for example, you were informally having a friend to stay, or taking in a lodger who you would be providing services to, you would probably not be giving exclusive use of any of the accommodation.

Again, if any of these types of tenancies comes to an end, so generally will the sub-tenancy.

2.4 Will my home insurance cover be affected if I let part of my home?

It is very likely that insurance premiums will be increased by allowing someone to share the home, because of factors such as accidental damage. It is extremely advisable to check for both contents cover and building cover; and if existing arrangements will not provide cover if part of the property is let, to arrange to extend the cover. (see also section 2.10).

2.5 Do I need planning permission or other consent from the local council?

If you are intending to make physical alterations to the property, it is advisable to check what is proposed with the local council's Planning Department. New adaptations must also comply with Building Regulations (for safety of buildings), and again it would be sensible to seek prior approval of plans from the local council's Building Control Department. Making these checks is especially likely to be important if you are thinking of doing substantial conversion work, such as turning part of the house into a self-contained flat.

You would not need planning permission simply for letting rooms, so long as the property remains primarily your home: but there could be a planning consideration if you were to use it mainly to earn money from letting accommodation.

If rooms in the house are let to several people, it may be classed as a house in multiple occupation (HMO). Local councils have the power to licence certain types of HMOs in order to protect occupants from problems that can arise in shared accommodation.

If there are a maximum of two other persons residing in the buliding, it will not be an HMO at all. If there are four or more other persons and the HMO is three storeys or more it will be subject to mandatory licensing. In any other case the HMO may be subject to licensing, but only if the council has

made an additional licensing scheme. (For further information please see *Licensing of Houses in Multiple Occupation in England, A Guide for Landlords and Managers* booklet available at: www.communities.gov.uk).

For the purpose of calculating the number of persons living in the HMO the resident landlord and his household (if any) count as one person.

A landlord who is intending to let rooms to several people who do not form a single family should check with their local council's Housing or Environmental Health Department to enquire about HMO licensing.

2.6 What facilities should be provided?

You are free to decide most of these things with the person you let to, subject to the basic requirements of general housing law: you should provide access to kitchen, washing and toilet facilities (but these can be either the ones that you use or separate).

If the property is an HMO and is subject to licensing the local council will require minimum amenity standards for the number of occupants (such as toilets and washing facilities).

2.7 If my property is a HMO will I be subject to management regulations?

If your property is a HMO you will be subject to management regulations. This requires all landlords

or managers of HMOs, whether or not they are licensable, to ensure the good day-to-day management of HMOs and that necessary equipment is maintained in good condition. For example, you would be responsible for ensuring matters such as cleanliness of shared areas, safety of means of access, and adequate provision for disposal of rubbish. The other occupants of the house must not do anything that hinders you in these duties. The local council has powers to take action where the condition of an HMO does not comply with requirements.

2.8 What steps might I take to help prevent problems in the future? (for example, asking for a deposit)

It is common to ask the intending occupier for references (personal, or from his or her employer or bank) before agreeing the let. You are also entitled to take a deposit before the person you let to moves in, to act as security in case he or she leaves the property owing you money, or to pay for any damage at the end of the letting. The amount of deposit is negotiable, but a month's rent is usual.

In a written agreement, it should be stated clearly the circumstances under which part or all of the deposit may be withheld at the end of the let. It is advisable for both parties to agree a list of furniture, kitchen equipment and other items in the property at the outset of the letting and to have this rechecked when it ends in order to avoid disagreements. In any case, taking photographs of

the interior of the accommodation when the let starts can also be a useful way of recording its condition, in case of any later dispute about what damage has been caused. Especially where there is no written agreement, it is a good idea generally to discuss beforehand any issues such as whether guests can stay, when music can be played, to help prevent future friction or misunderstandings.

If you take a deposit, it may be advisable to keep the deposit in a separate bank account so that it can be returned easily at the end of the letting unless the conditions for withholding it are met. Separate rules about taking tenancy deposits apply if you are the landlord of an assured shorthold tenancy.

If the person you are thinking of letting to can't afford a deposit, there are schemes operating in some areas which guarantee rent or the cost of damage for a specified period. Check with the local council's Housing Department or Housing Advice Centre.

2.9 Does there have to be an agreement in writing?

Not unless the let is a tenancy for a fixed term of more than 3 years. But it is advisable to have one anyway, as this will make it easier to sort out any disagreements which may arise later. Even if there is nothing in writing, both parties must still do whatever they agreed to, except where this conflicts with their overriding legal rights and responsibilities (see below).

Prior to 1 December 2003 a tenancy agreement was a stampable document and should have been sent or taken to the Stamp Office for stamping in order for it to have validity if it was subsequently used in court.

Stamp Duty Land Tax (SDLT) was introduced on 1 December 2003 to replace Stamp Duty. Details are in the HM Revenue and Customs leaflet SD3 *A guide to leases*. This is available at: www.hmrc.gov.uk, or by Orderline 0845 302 1472.

You can also ask for more advice about Stamp Duty Land Tax (SDLT) by ringing the Helpline on 0845 603 0135.

2.10 Is there a standard form of agreement?

You can draw up your own agreement, but it is recommended to seek legal advice to ensure that it does not conflict with the duties imposed on landlords and occupiers by legislation, which will automatically override any contradictory terms agreed. Suitable items to cover might include:

- how long the letting will last (eg whether it is for a certain number of months, or runs from week to week)
- how much rent the occupier has to pay, and any arrangements for review if necessary
- how much notice each party will give the other to end the letting (but note that the law generally covers this)

- what meals or services will be provided, if any

Legal stationery companies produce tenancy/licence agreements which have been drawn up using standard clauses. These can be adapted to suit the arrangements desired, but again, it may be advisable to take legal advice on what adaptations may be necessary for your own situation.

The Unfair Terms in Consumer Contracts Regulations apply to tenancy and licence agreements, and if a term is found to be unfair it is not enforceable. The Office of Fair Trading publishes guidance as to what is and is not considered "unfair"; this includes issues such as use of plain English in an agreement; and in standard agreements, one party being given more right than the other to cancel a contract, or unreasonable restrictions.

2.11 Where can I get further advice?

Advice on general legal issues can be obtained from Citizens Advice Bureaux, the local authority's Housing Advice Centre or Housing Department, or a solicitor. The Community Legal Service Directory in libraries (see also Appendix C) gives listings of what advice sources are available for the local area.

You may also be able to find out from the local authority how you can join a landlords' association, which will be able to give advice on a wide range of issues. Some associations can help landlords to obtain lower insurance premiums through block arrangements they have negotiated with insurance companies.

3. Charging for rent and other bills

3.1 Are there any rules about the amount of rent I can charge?

You are free to agree this with the occupier – for resident landlord lettings agreed since 15 January 1989 there is no means for the occupier to object to the amount of rent he or she is being charged. (see Appendix B for rules that apply to most lets started before this date)

It is usual to ask for rent in advance, eg at the start of the month if it is paid monthly.

3.2 How often (and by how much) can I put the rent up?

Again, there are no rules specifically about rent increases, but if you have agreed a rise with the occupier, you cannot put the rent up by more than this. If the arrangement is for a fixed term, it cannot go up within that time unless this has been agreed, for example in a tenancy agreement. You are free to raise the rent at the end of the fixed term, if you agree a new let with the occupier.

If the let is periodic or completely open-ended, then unless the parties have made arrangements for rent review as above you can increase the rent from term to term as you wish.

In either case it may be helpful to agree when and by how much the rent will go up at the outset, and have this included in an agreement. However, if a standard agreement is being used, any rent review clauses should be reasonably specific about date

and amount of increase, in order to comply with the unfair contract terms legislation (see section 2.10).

3.3 Must I provide a rent book?

You are legally obliged to provide a rent book if the rent is payable on a weekly basis. This must by law contain certain information about overcrowding, so it may be advisable to check a standard one available from law stationers'. However, many standard rent books are for tenancies not relevant to lets by resident landlords; so if you do decide to use a standard one, you may need to adapt it so that inapplicable information is removed.

Even where there is no requirement to provide a rent book, you should give a receipt if asked. You should also keep your own record of rent payments to help avoid disagreements later.

3.4 Who is responsible for Council Tax?

If the occupier lives in a self-contained flat (even if part of your house), it is likely that the local council will bill him or her directly for Council Tax. If he or she only rents a room or rooms at your address, you will normally be responsible for paying the Council Tax. But you can ask the occupier for a contribution or include an amount to cover the cost of Council Tax in the rent charged (see also section 6.1). However, who is responsible for paying Council Tax can also depend on the terms of the agreement entered into. If there is any doubt as to who is liable to pay Council Tax, contact the local council.

3.5 What about other domestic bills?

Whether the tenant or licensee is billed directly or not is a matter for agreement, although it is unusual for utility companies to send separate bills unless the property has been converted into flats. The more usual arrangement is for the landlord to include an amount in the rent to cover the cost of water, gas and electricity that the occupier uses. Alternatively, for electricity charges you might consider installing a pre-paid meter or record the occupier's consumption and then recharge him or her separately for it. The resale of electricity (and gas) is subject to maximum resale prices, which depend on the gas or electricity supplier that you use. More information on these prices is in the Energywatch leaflet, *Maximum Resale Price* – see Appendix C. However, the maximum resale charges do not apply if a flat rate is charged to cover the occupier's usage, or if rent is charged on an all-inclusive basis.

3.6 Can the person I let to get help with the rent?

From 1 April 2008, anyone who rents their home from a private landlord and makes a new claim for, and is entitled to, Housing Benefit, will have their benefit worked out using the Local Housing Allowance (LHA) rates. Entitlement to benefit depends on both the tenant's income and savings and whether anyone living with the tenant is expected to contribute to the rent.

The Local Housing Allowance rules will only affect tenants who make a new claim, move address to new private rented accommodation or have a break in their claim on or after 1 April 2008. Any tenant who is getting Housing Benefit on 1 April 2008 will continue to be paid the old way until there is a change in their circumstances which would affect their entitlement to benefits.

More information on the Local Housing Allowances is available from the Department for Work and Pensions.

3.7 Can housing benefit be paid direct to me?

Housing benefit, under the new Local Housing Allowance rules will automatically be paid to tenants rather than to landlords. If a tenant feels that they may have difficulty in managing their financial affairs and may be entitled to direct payment to their landlord, the local authority will consider any request they make.

Other circumstances in which housing benefit can be paid to the landlord include where a tenant is in rent arrears of eight weeks or more or where the tenant is unlikely to pay the rent based on evidence of past, or likely, failure to pay rent. You should contact your local authority before there are eight weeks' rent arrears or where you have concerns about the tenant's ability to manage their financial affairs. In cases where the situation is likely to be

temporary, or where rent arrears of more than eight weeks have been repaid, the situation will be reviewed.

If you are receiving Housing Benefit payments direct on behalf of your tenant(s), these will continue to be paid to you until such time as the tenant(s) circumstances change.

3.8 Is it possible to find out how much rent will be covered by housing benefit before agreeing the let?

The new local housing allowance rates will apply equally across specified areas and will be revised in April each year. The local authority in the area in which you let property will be able to provide you with information about the LHA rates for that area.

The rates are based on the median value of rents in that rental area for each property type (ie number of bedrooms the property has). The maximum amount of rent that a tenant can claim assistance for will depend upon the designated rates for the type of property that meets their needs (eg a couple will not be entitled to the same amount of benefit as a family of five). Before you sign the tenancy agreement, therefore, you will be able to assess whether or not the maximum amount of housing benefit that the tenant is eligible for is likely to meet the cost of their rent. The actual amount of benefit payable will still depend on the claimant's financial circumstances.

In some instances, a claimant may be entitled to receive, by up to a maximum value of £15 per week, more housing benefit than is needed to cover the cost of the rent. Where housing benefit payments are being made directly to the landlord, tenants will still receive any benefits they are entitled to over and above the cost of their rent.

4. Repairs, maintenance and safety

4.1 Who is responsible for repairs and maintenance?

Responsibility for major repairs generally rests with the landlord. For general information, see Communities and Local Government booklet *Repairs*, listed in Appendix C – however, the Landlord and Tenant Act 1985 applies to tenancies but not licences. But a home must be fit for habitation whatever the arrangement of people living in it.

It is especially important to agree responsibility for other repairs where you and the occupier live in very separate parts of the house, for example if it is converted into flats. Unless there is express agreement to the contrary, you will retain responsibility for common parts, such as staircases.

A tenant is under a duty to use the property in a proper, "tenant-like manner", and you would not be responsible for repairing damage caused by his or her failure to do so. You may particularly wish to ensure when taking a deposit or drawing up an agreement, that it is clear that the occupier will be

held financially responsible for damage due to his or her acts or omissions.

4.2 Are there any rules about gas and electrical safety I need to know?

You are required by the "Gas Safety (Installation and use) Regulations 1998" to ensure that all gas appliances are maintained in good order and that an annual safety check is carried out by a recognised engineer – that is an engineer who is approved under Regulation 3 of the "Gas Safety (installations and use) Regulations 1998". You must keep a record of the safety checks, and must usually issue it to the occupier within 28 days of each annual check. The occupier is responsible for maintaining gas appliances which she owns or is entitled to take with her at the end of the letting. Further guidance is in the leaflets, *Gas appliances – Get them checked, keep them safe* and *Landlords – A guide to landlords' duties: Gas Safety (Installation and Use) Regulations 1998*, from the Health and Safety Executive – see Appendix C.

By law, you must ensure that the electrical system and any electrical appliances supplied with the let such as cookers, kettles, toasters, washing machines and immersion heaters are safe to use. If you are supplying new appliances, you should also provide any accompanying instruction booklets.

4.3 What are the rules on fire safety of furniture?

If you supply furniture or furnishings with the let, you should ensure that they meet the fire resistance

requirements – sometimes known as the 'match test' – in the Furniture and Furnishings (Fire) (Safety) Regulations 1988. The Regulations apply if it is considered that the landlord is acting in the course of a business in letting the property, ie where he or she views the property primarily as a source of income rather than as his or her home. This means that in some resident landlord arrangements it may be unclear whether the Regulations apply, in which case it could be advisable to get legal advice.

The Regulations set levels of fire resistance for domestic upholstered furniture such as sofas and mattresses. All new and second-hand furniture provided in accommodation under a new let, or replacement furniture in existing let accommodation, must meet the fire resistance requirements unless it was made before 1950. Most furniture will have a manufacturer's label on it saying that it meets the requirements. Your local authority's Trading Standards Department enforces the Regulations and can advise on their applicability. There is also further guidance in the booklet, *A Guide to the Furniture and Furnishings (Fire) (Safety) Regulations*, from BERR Consumer Safety Publications – see Appendix C.

4.4 Are there any other fire safety issues to be aware of?

Not specifically for rented accommodation (although if the property is a House in Multiple Occupation fire safety could be an important consideration – see sections 2.5-2.6). But as for any other home, it is generally a good idea to ensure that the occupier 'knows their way round' the house, to help prevention and escape from fire. Smoke alarms are strongly advised: ideally one should be fitted on

each floor of the property. It is also highly recommendable to keep at least a fire blanket in the kitchen; and depending whether, for example, several people are likely to be cooking and/or smoking, having a fire extinguisher could be a sensible precaution. For more information, Communities and Local Government publishes the leaflets, *Fire safety in the home*, *Fire safety for people in shared or rented accommodation* and *Fire equipment for the home*.

Alternatively, visit the website www.firekills.gov.uk for the full list of leaflets published and for further fire safety advice.

4.5 What access rights do I have?

You, or your agent, have the legal right to enter the occupier's accommodation at reasonable times of day to carry out the repairs for which you are responsible and to inspect the condition and state of repair of the property. For tenancies, the landlord must give 24 hours' notice in writing of an inspection. For licences where unrestricted access is agreed, or required for the landlord to carry out his or her responsibilities, it is not necessary to give notice. It may be helpful to include the arrangements for access and procedures for getting repairs done in a written agreement. In an emergency, you can enter without giving notice.

A tenant has the right to 'quiet enjoyment'. This means that he or she has the right to use the property he or she is renting without unnecessary or unreasonable interference.

4.6 What if I can't gain access?

You should seek legal advice if the occupier will not allow access for an inspection or to carry out repairs. But you can take whatever steps are reasonably necessary to protect your own and others' property, particularly in an emergency. You might even be under a duty to take prompt action where a problem could affect other people.

5. Ending a letting

5.1 How can a let be ended?

This depends very much on whether it is for a fixed term, or a periodic or open-ended arrangement (see also section 2.1), and also on the nature of the let (see section 1.4). The requirements in this chapter apply to lettings started since 15 January 1989 – see Appendix B for information on lettings started before this date.

If the arrangement is an open-ended or *periodic* one, either you or the occupier is free to bring it to an end at any time, but must notify the other party that the letting will be ended. This is known as giving *notice to quit*.

If it is for a fixed term, it will simply expire on the agreed date without either party having to give notice. However, it may be advisable to remind the occupier before the end of the fixed term that you want her to leave. The arrangement cannot normally be ended before the end of the fixed term unless both parties agree.

Whatever kind of arrangement, an offence will be committed if you evict the occupier before his or her tenancy or licence has been properly brought to an end (or expired, if a fixed term). You are prohibited from evicting a tenant or licensee without a court order unless the tenancy or licensee is excluded.

5.2 For a periodic or open-ended let, how much notice must be given to bring it to an end? How should I or the occupier give notice to quit?

For *non-excluded* tenancies and licences, notice must be of at least whichever is the longest of:

- four weeks or
- the term of the let, if any (for example, a month if rent is paid monthly) or
- whatever has been agreed between the parties and, for a periodic tenancy, end on the last day of a period (usually the day rent is due). It must be served in writing; if it is served by the landlord, it must include certain specified information (see appendix A – pre-printed forms are available from law stationers). Notice to quit should be clear and accurate about the property and the tenant or licensee it is addressed to. While some minor errors that could not mislead the recipient may be overlooked, defects in the content or timing of a notice will make it invalid.

For *excluded tenancies*, unless you and the tenant agree otherwise, notice must be at least the length

of the period and end on a rent day. However, there is no four-week minimum (so, for example, a weekly tenancy could be ended with a week's notice), and you and the tenant are free to agree in advance that notice should be shorter or longer. Notice does not need to be written (so there are no requirements for prescribed form), but it is a good idea to give it in writing anyway, in case of future dispute. However it is served, it must still be clear and be timed properly in order to be valid.

For *excluded licences*, the notice required is simply the longer of whatever has been agreed between the parties (if anything) and what is 'reasonable'. Reasonableness can ultimately only be decided by the courts, but is a matter of fairness and common sense: for example, taking into account the licensee's conduct, or how easy it would be for him or her to find alternative accommodation. Notice of the same length as would be required for a similar tenancy would normally be considered reasonable, but if there is likely to be a dispute it would be necessary to take legal advice. Again, there is no need in law for notice to be in writing, but it is recommended to do so.

5.3 Can I end a fixed-term arrangement early?

Yes, if there is something in the agreement or grounds for termination set out in legislation allowing you to terminate the arrangement if the occupier breaks it. But you would not be able to end the arrangement for this reason if, for example, the rule that had been broken came from an unfair term in a standard contract. You might still have to apply for a court order if the occupier refused to leave – see section

5.5. In that situation you would have to prove the breach of agreement to the court. Even for an excluded tenancy or licence (where no court order is required to remove the occupier at the end of a let), the occupier could bring the case before a court if he or she challenged the lawfulness of the early termination.

If there is no fault on the part of the occupier, then you could only end the let early if the occupier agrees, or if it is allowed for by a 'break clause' in the agreement.

5.4 Can the occupier leave during a fixed-term let?

If the occupier has a fixed term arrangement but wants to move out before the end of the term, he or she can only end it if you say so, or if this is allowed for by a 'break clause' in the agreement. If neither the terms of the let nor you allow the occupier to end the arrangement early, he or she will be contractually responsible for ensuring rent is paid for the entire length of the fixed term. However, this does not mean that you would necessarily be able to claim for the whole term's rent if the occupier leaves early: there is also a responsibility on the landlord in this situation to try to cover his or her losses in other ways, notably by trying to re-let the accommodation.

Sometimes a tenant may be able to find someone else to take his or her place. Unless the terms of the let prohibit this, he or she will be able to transfer, or *assign*, or sublet the tenancy.

5.5 Do I need to get a court order if the occupier refuses to leave?

For a *non-excluded licence* or *tenancy*, eviction must only be via a possession order from the court. For an *excluded licence or tenancy*, there is no legal requirement for you to get a possession order so long as notice has been correctly given and the tenancy/licence has ended. However, resident landlords should be aware that it is a criminal offence for a person to use or threaten violence for the purpose of securing entry to premises where someone who is present is opposed to entry (section 6, Criminal Law Act 1977).

5.6 How do I go about getting a court possession order?

You should contact the county court for the appropriate forms, which you fill in and submit to the court with any relevant documentation relating to the claim. The court then normally serves the summons and details of the claim by post on the tenant or licensee, notifying him or her and you of the date of the hearing. The tenant or licensee will also receive a defence form, which he or she should complete and return to the court, especially if he or she disagrees with anything you have said or believes he or she has a good reason for being given more time to leave: the time limit for this is 14 days. Both parties should attend the hearing.

5.7 Am I guaranteed to get possession?

Whether the letting was a tenancy or a licence, the court will award possession to you, where there is

no question that the let has properly come to an end and where you have followed the correct procedures for regaining possession . The court can, however, postpone the date when the possession order comes into effect: usually for two weeks, but this can be a maximum of six weeks.

If the occupier does not leave by the date specified, you must apply to the court for a warrant for eviction. The court will arrange for bailiffs to evict the occupier. It is an offence for an occupier to obstruct the bailiffs in carrying out the eviction.

5.8 What about rent and any arrears?

When making a claim for possession, you can include details about any unpaid rent you would like the court to include in the order it makes against the occupier. Alternatively, if the amount in question is less than £5000, you can claim separately against the occupier for it through the Small Claims Court. You could also do this if the occupier had already left the property (so making a possession order unnecessary) owing rent.

5.9 Rather than seek a possession order, can I change the locks to prevent the occupier from entering the premises?

It is an offence to change locks to exclude any occupier before his or her tenancy or licence has been properly brought (or come) to an end; and in the case of a *non-excluded tenancy or licence*, unless a court order has been obtained.

For an *excluded tenancy or licence*, you could in principle take steps to exclude the occupier once the letting arrangement is clearly and validly at an end. However, if you are considering doing so you should take legal advice. This is especially important if the occupier still has belongings left in the property, since he or she could have a claim against you if they got damaged.

5.10 What if the occupier is causing me trouble?

Problems between a landlord and tenant or licensee can be particularly awkward when both parties live in the same house. Sometimes the trouble is due to a clash of lifestyles (for example, loud music) rather than one person deliberately setting out to cause difficulties for another. If this is the case, it may be worth talking over the problem in the first instance. The local council may have a Tenancy Relations Officer who can mediate in cases of dispute (although he or she cannot force either party to do anything).

In the context of letting arrangements, 'harassment' against a tenant or licensee is a very broad term, used loosely to cover a range of activities that are likely to interfere with the peace or comfort of the occupier or members of his household. The Protection from Eviction Act 1977 as amended by the Housing Act 1988, makes it a criminal offence for a landlord (or someone acting on his or her behalf) to drive someone out of his or her home – or stop the occupier from using part of it if he or she has the legal right to live there – by bullying,

violence, withholding services such as gas or electricity, or any other sort of interference. Local authorities (usually through the Tenancy Relations Officer, or the Housing Department or Environmental Health Department) can take legal action in this situation, including prosecution if they think its appropriate.

If the occupier is behaving badly towards you (or a member of your family), you should seek advice from a solicitor or Citizens' Advice Bureau. You should always serve the correct procedure for serving notice (and seeking a court order if necessary) if you want the occupier to leave.

6. Money issues

6.1 Will letting rooms affect the Council Tax bill for the property?

Yes, if you are receiving the single person discount on your Council Tax. This will cease if you allow anyone else to live in the property (unless the additional occupiers are all exempt from Council Tax, such as students). See also sections 3.4 and 6.4.

6.2 Is rental income taxed?

Usually a landlord's rental income will be considered as part of his or her overall taxable income. The tax to be paid will then depend on how much profit he or she has earned over his or her personal tax allowances. This is calculated by setting against the rent expenses of letting, including things like replacing fixtures or furniture, or a 'wear and tear' allowance.

Alternatively, a resident landlord can take advantage of the Rent a Room allowance; but only if the let is of furnished rooms rather than, for example a whole converted flat which is part of the house. Under this allowance, the first £4250 per year gross received from letting is tax-free. This is an overall limit per landlord (although it may be halved if someone else in the property also receives income from letting – for example if the landlords are a couple who own the home jointly), not per room or per person let to. If you claim the Rent a Room allowance, you cannot claim any expenses or capital allowances (rent over the limit is taxed as for other

income, ie with no deductions allowable for expenses). However, you can calculate whether this or the normal method is better for you in any particular year and tell your tax office which one you want to apply (this will then continue until you inform them that you want to use the other method).

Normally, income from property isn't trading income, even where the landlord works full-time running a rental business. However, you may provide additional services to the occupier that go well beyond what a landlord would normally provide, for example offering breakfast as part of the let of the room, or extensive cleaning services. The income from the whole package of letting plus services may then be treated as a trade. This is likely to be the case only where you were running a guest-house or bed-and-breakfast business. Alternatively, the income from services alone may be counted as trading income. Any trading income is taxed separately from rental income. In many cases it does not make any practical difference which kind the income is treated as. However if you were to make a trading loss this could be offset against your other income for the same year, whereas a loss made in renting can only be offset against future years' rental profits.

Income tax applies whether you own the property, or are a tenant yourself. For more information, you can get the HM Revenue and Customs booklets *Letting and your home* IR87 and (for more detail) *Taxation of rents* IR283 from most Tax Enquiry Centres and Tax Offices.

6.3 If I sell the property, will relief from Capital Gains Tax be affected by some of it having been let?

When a property is sold, tax may be payable on the gain made. Where the whole of the property was occupied as the owner's home throughout his or her ownership, the sale is exempt from tax; an owner can take in *one* lodger and still be exempt, so long as no *part* of his or her home has been let.

If you have let part of the property, the proportion of the gain that is taxed depends on what proportion of your home was let and how long for. You may be able to claim *lettings relief* against Capital Gains Tax on the let part. But this will only apply if the let part is still such that overall the property can be considered as one dwelling – so, for example, while letting a bedsit would qualify, lettings relief is not available if the let part of the property was a self-contained flat.

For more information, see *Letting and your home* IR87 or the HM Revenue and Customs Helpsheet *Private Residence Relief* IR283 available from Orderline 0845 6055999.

6.4 If I am on benefit (such as Income Support, Housing Benefit or Council Tax Benefit), will letting accommodation affect eligibility?

Yes. Any income received is taken into account when working out entitlement to benefits. Also, in some cases, even if the occupier pays little or nothing to

the landlord and shares his or her accommodation, benefit may be calculated taking into account how much he or she *could* reasonably be expected to pay. This generally applies only for letting-to-relatives type arrangements. You should check with your local benefits office.

Appendix A: Form of words that must be used in a notice to quit

(a) If the tenant or licensee does not leave the dwelling, the landlord or licensor must get an order for possession from the court before the tenant or licensee can lawfully be evicted. The landlord or licensor cannot apply for such an order before the notice to quit or notice to determine has run out.

(b) A tenant or licensee who does not know if he has any right to remain in possession after a notice to quit or a notice to determine runs out or is otherwise unsure of his rights, can obtain advice from a solicitor. Help with all or part of the cost of legal advice and assistance may be available under the Legal Aid Scheme. He should also be able to obtain information from a Citizen's Advice Bureau, a Housing Aid Centre, a rent officer or a Rent Tribunal Office.

Appendix B: Special rules that apply to lettings made before 15 january 1989

What is different about lettings started before this date?

The legal requirements for giving notice and getting possession of property could in some circumstances be more stringent, although you or the occupier would still be free to bring the arrangement to an end and the court must still award possession so long as the correct procedures have been followed. It would also be easier, if you do not always live in the house, to still be considered as 'resident'.

A letting made by a resident landlord before 15 January 1989 will probably be a *restricted contract*, whether it is a tenancy or a licence. No new restricted contracts can be created after this date. Someone occupying under a restricted contract would generally have more rights with regard to rent and security of tenure than if his or her letting began after 15 January 1989. If the let started before August 14 1974, he or she may have a full *regulated tenancy*.

What are the provisions on rent?

In a restricted contract, you and the occupier are free to decide the rent as for post-January 1989 lettings, and indeed if you have agreed a new rent since this date the letting will have ceased to be a restricted contract and the rent can only be set as for lettings started since January 1989. If you are required to provide a rent book (see section 3.3),

this must contain the additional information prescribed for restricted contracts.

If you and the occupier cannot agree a change in rent, either party can apply to a Rent Tribunal for it to fix a *reasonable rent.* The rent it sets – which may be higher, the same as or lower than the existing rent – will be the maximum that you can charge. Normally the Rent Tribunal will not consider an application for a new rent within two years of the last registration; the exceptions are either if you and the occupier apply jointly, or that either party applies on the grounds that there has been a change of circumstances which means the registered rent is no longer reasonable.

Either you or the occupier can get an application form for a Rent Tribunal from Rent Assessment Panel offices (a list of these is at Appendix D). Tribunal members may visit the property, and before setting a rent will hold a hearing which both parties can attend.

How must I or the occupier give notice to quit?

The requirements are mostly the same as for equivalent tenancies and licences starting after 15 January 1989 (sections 5.1-5.2). The difference is for tenancies where accommodation is shared between you and the tenant (for definition, see *excluded tenancies*, section 1.4-1.5), where the requirements are the same as for *non-excluded tenancies* listed in section 5.2 (minimum 4 weeks, prescribed information etc).

What if the occupier refuses to leave at the end of notice I have given?

In almost all circumstances, you must get a court order, since it is a legal requirement for restricted contracts even in arrangements which are excluded licences (the only exception is for restricted contracts started before 28 November 1980, where it is not necessary to obtain a court order). But whether a court order is legally required or not, it is still strongly advisable to get one – see sections 5.5-5.10.

What additional rights do restricted contract holders have with regard to security?

If the restricted contract started after 28 November 1980, you have served notice to quit and have brought court proceedings for possession, the court when making an order can defer possession for up to three months. The Rent Tribunal does not have any powers to intervene in the notice to quit the landlord gives or the possession procedure.

If the restricted contract pre-dates 28 November 1980 and you have served notice to quit, the occupier can apply to the Rent Tribunal to defer the date when it comes into force – the Rent Tribunal can postpone it for up to 6 months. But the application must be for a rent registration and deferral: the Rent Tribunal cannot consider an application for postponement alone. You can apply to have the period of deferral reduced if the

occupier misbehaves. If the occupier does not leave at the end of the period and you bring court proceedings, the court cannot defer the date of possession.

How is a landlord considered to be resident, and what does this mean for a tenant if I don't live there all the time?

Under the Rent Act 1977, a landlord is resident if he or she has used the house as a residence (rather than necessarily his or her only or main home, as for arrangements starting after 15 January 1989) both at the start of and throughout the tenancy. Because someone can have more than one home, this means that even if you spend much of your time elsewhere you can still be considered to be resident. So it is difficult for a tenancy starting before 15 January 1989 to be 'upgraded' to a regulated tenancy in the way that a tenancy starting after this date can become assured or assured shorthold (see sections 1.3 and 1.10). Even if you do not spend enough time living in the house to count as resident, the tenancy still cannot become regulated if you and the tenant share living accommodation (eg kitchen or living-room, but a shared bathroom or toilet doesn't count).

What is the position if the let started before 14 August 1974?

It is likely to be a regulated tenancy, rather than a restricted contract. But only if:

- it is a tenancy, not a licence (see section 1.5)
- you and the tenant do not share any living accommodation (*except* a bathroom or toilet)
- the tenancy is unfurnished (or any furniture provided has relatively low financial value to the tenant)

In practice, any such arrangement that still exists is most likely to be where the landlord has let out a self-contained flat. The tenant has full security of tenure under the Rent Act 1977 (that is, you must be able to prove one of certain reasons for possession to a court if you want to get a possession order) and the right to have a fair rent registered. More information is in the *Regulated Tenancies* booklet.

Appendix C: Addresses for other leaflets and booklets

Assured and Assured Shorthold Tenancies – a guide for landlords
Regulated Tenancies
Repairs – a guide for landlords and tenants

These publications are also available on the Communities and Local Government website: www.communities.gov.uk/housing

For further copies please contact:
Communities and Local Government Publications
Tel: 0300 123 1124
Fax: 0300 123 1125
email: communities@capita.co.uk.

Alternative formats can be requested from:
alternativeformats@communities.gsi.gov.uk

or

Welsh Assembly Government
Merthyr Tydfil
Rhydydar
Merthyr
CF48 1UZ

Health and Safety Executive
Website www.hse.gov.uk

HSE Books
Telephone 01787 881165
PO Box 1999
Sudbury
Suffolk CO10 6FS

Department for Business & Regulatory Reform
Website www.berr.gov.uk/publications
BERR Publications Orderline
Response Centre
1 Victoria Street
London SW1H 0ET
Tel. 0845 015 0010
Fax: 0845 015 0020

Community Legal Service
Website www.justask.org.uk
Telephone 0845 608 1122
Textphone 0845 609 6677

Appendix D: Addresses of rent assessment panels and areas covered

London
10 Alfred Place
London WC1E 7LR
020 7446 7700

All London Boroughs

Eastern
Great Eastern House
Tension Road
Cambridge CB1 2TR
0845 100 2616

Bedfordshire
Berkshire
Buckinghamshire
Cambridgeshire
Hertfordshire
Oxfordshire
Suffolk
Norfolk
Northamptonshire
Luton
Milton Keynes
Peterborough
Southend-on-Sea
Thurrock and Essex

Midland
2nd Floor
Louisa House
92-93 Edward Street
Birmingham B1 2RA
0845 100 2615

Staffordshire
Shropshire
Herefordshire
Worcestershire
West Midlands
Warwickshire
Leicestershire
Derbyshire
Nottinghamshire
Rutland
Stoke-on-Trent
The Wrekin

Northern
First Floor
5 New York Street
Manchester M1 4JB
0845 100 2614

Blackburn
Blackpool
Cheshire
Cumbria
Darlington
Durham
East Riding of Yorkshire
Greater Manchester
Halton
Hartlepool
Kingston-upon-Hull
Lancashire
Lincolnshire
Merseyside
Middlesbrough
North East Lincolnshire
North Lincolnshire
North Yorkshire
Northumberland
Redcar & Cleveland
South Yorkshire
Stockton-on-Tees
Tyne & Wear
Warrington

West Yorkshire
York

Southern
1st Floor
1 Market Avenue
Chichester
West Sussex PO19 1JU
0845 100 2617

Hampshire
East and West Sussex
Surrey
Kent
Isle of Wight
The Medway Towns
Portsmouth
Southampton
Brighton and Hove
Wiltshire
Dorset
Devon
The County of Bath and
North East Somerset
North West Somerset
Somerset
Bournemouth
City of Bristol
Cornwall and Isles of Scilly
Gloucester
South Gloucester
Plymouth
Poole
Swindon and Torbay

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