

Housing Tips and Advice

Contracts

FACT: You do not need a signed piece of paper to be in a tenancy, the mere fact of accepting a key to a property and giving a sum of money in return for living there means that you are in a tenancy.

There may be pre-contractual arrangements to satisfy before you are actually under contract, like the fees, forms etc. however your acceptance of the tenancy (usually by signing it / but it could be simply by moving in) means that you are now formally under contract.

A contract is a legally binding agreement enforceable through the courts

If you make any arrangements with the landlord before moving in (like the windows would be cleaned or the furniture changed) then make sure that you have these arrangements in writing, communicate via email so everything is dated and can be kept.

A contract must include all relevant documents either by physical attachment or by reference to them. A landlord/agent cannot add additional information later. This is called post-contractual and it is not binding. For example, they cannot give you a cleaning schedule at the end of the tenancy which was not stipulated in the original contract.

The terms of a contract must meet the test of fairness and plain intelligible language. Unfair terms would be:

- Contrary to Good Faith
- Create a significant imbalance (between landlord and tenant)
- To the disadvantage of the tenant / detrimental to the consumer

If the property has been misrepresented to you and you find that when you arrive there is someone else living there or that there is no electricity for example then this could void the contract, it could be seen as a fundamental breach of contract and you should be able to walk away without being subject to rent. You would need to agree this in writing before walking away.

However once you accept the contract you have agreed to pay all the rent for the length of the fixed term. If you are in a joint tenancy, regardless of whether you all personally signed the contract or not, you are liable for the whole rent for the whole property - **RENT IS A DEBT!**

If one of you leaves, the company is under no obligation to find a replacement tenant. If there is no break clause in your contract you cannot just end your tenancy because you have fallen out with your housemates or you have found a better deal.

To end a tenancy early the landlord must have done something that is UNMISTAKABLY at odds with their obligations in the tenancy agreement.

If you wish to end your contract early, the term is to SURRENDER your tenancy. You could try to mutually agree this with the landlord; however they are under no obligation to accept.

WARNING: If you leave early and stop paying your rent, you are in debt for the entire rent due until the end of the contract. A landlord could take you to court for payment of rent arrears; you would end up with a County Court Judgement (CCJ) if the court judges that the landlord is entitled to the payment of the debt. This could be gained through an attachment of earnings order which means that the debt could be reclaimed through your salary and therefore your future employer could be aware of the CCJ. A Landlord can sue up to 6 years after the debt and then has a further 6 years to collect the debt. Therefore if you skip out on your rent at age 19 and go on to get a great job eventually you could be making repayments when you are 31 and your employer will know about it!

Tenancy

A Tenancy is a contract; a contract is a legally binding agreement enforceable through the courts. Essentially a tenancy gives you exclusive possession of a part of land/property, usually with clauses stipulated in the agreement. If you are in an **individual tenancy** you have exclusive possession of your bedroom but with shared communal areas. If you are in a **joint tenancy** you have:

- Unity of title – the same contract
- Unity of time – for same time period
- Unity of interest – at the same rent amount
- Unity of possession – meaning joint possession of the entire house

A joint tenancy means that everyone has total liability for the whole rent of the whole house. A joint tenancy cannot be brought to an end early by any one tenant. If you were to surrender your tenancy early it would need to be by agreement of all tenants and with the agreement of the landlord who is under no obligation to accept.

REMEMBER: If one tenant leaves early they are still liable for the rest of the rent. If they do not pay, the remaining tenants can become liable. The landlord could take action against all remaining tenants and their guarantors for the outstanding rent.

Make sure that it is clear on your contract what the total rent for the property is and how much your share is. You cannot be in a joint tenancy if you all have different amounts of rent, there must be one rental amount for the entire property which you all share.

FACT: it doesn't matter what it says on a written agreement it is the terms in that agreement which determine what it is, just because it says JOINT ASSURED SHORTHOLD TENANCY on the top of the piece of paper, if you are all being charged different rents and there is no one total cost of the property then you are effectively in individual tenancies.

WARNING: the law of Landlord and Tenant does not deal with joint tenants who have fallen out with each other or when one wants to leave!

Eviction

As a tenant (unless you are a lodger in the home of a landlord who lives with you) you are covered by the Protection from Eviction Act 1977, this means that if the landlord wants to evict you for a breach of contract or non-payment of rent (must be 8 weeks in arrears) they would need to take the following steps before eviction is legal:

- Give notice in the prescribed form – known as a section 8 (if in a fixed term tenancy) or section 21 (if in a periodic tenancy) notice or a Notice to Quit (if in a license agreement)
- Get a possession summons
- Wait for a possession hearing (unless an accelerated procedure is being used)
- Gain a possession order
- Then enforce this through a Bailiff's warrant
- Send the Bailiff to remove you or seize possessions to the value of the arrears, or both
- A court could delay possession in the case of real hardship

There are however exceptions, you could be evicted if your behaviour is unsafe towards others, extreme anti-social behaviour can lead to an exclusion order where a landlord could get an injunction over the phone, make notice and serve you with an order immediately.

There is nothing wrong with a landlord (or the university if you are in Halls) giving you a Notice to Quit but giving you options, i.e. to go now without any further action or you will be taken to court. You would ideally need to get something in writing from them that the contract had ended through mutual agreement and therefore there has been a surrender of the tenancy with no further payments due.

FACT: a neighbour cannot force a landlord to take action against tenants, unless there was negligence in giving the tenancy in the first place. Common law does not allow a disgruntled neighbour to influence the decision of a landlord in a lawful tenancy agreement.