

The Letting Centre

Assured Shorthold Tenancy Agreement (Form RA02)

Guidance & Drafting Notes

IMPORTANT NOTE

These drafting notes include the statutory changes to assured shorthold tenancies introduced by the Housing Act 1996. These changes will apply to tenancies entered into on or after 28th February 1997.

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1. Introductory Notes

These notes accompany the Letting Centre's Assured Shorthold Tenancy Agreement RA02 (pre-printed version). They explain, in detail, the function of the individual clauses and, in the final section, guidance is included on how to complete the forms in order to grant a tenancy.

Scope

The agreements, as provided, are designed to be primarily for use by landlords for assured shorthold tenancies under the Housing Act 1988. Users should note that there are various types of tenancy that cannot be assured shorthold; the key ones commonly encountered are:

- a tenancy granted by a **resident landlord** (i.e. the landlord lives in the same building as the tenant).
- A **holiday letting**
- A tenancy at **high rent** - where the rent is greater than £25,000 per year (this type of tenancy should be granted as an ordinary or 'common law' tenancy)
- A tenancy of business premises
- A residential tenancy granted to a company for its directors or employees

(For a full list of the excluded categories of tenancies you should refer to Schedule 1 of the Housing Act 1988).

If your letting falls within any of the above categories, then it is unlikely that this agreement will be suitable for your letting and you should take further legal advice in order to obtain the appropriate form.

England and Wales

The Assured Shorthold Tenancy Agreement is suitable for use in England and Wales only.

2. Agreement Guidance Notes

This section provides explanatory notes on the structure and key clauses of the Letting Centre Assured Shorthold Tenancy Agreement (RA02).

Agreement Front Cover

This section identifies the agreement and contains important information that both parties should read before signing the agreement

Declaration, Definitions and Main Clauses

The preliminary paragraph is a *declaration* and its purpose is to identify the agreement as an assured shorthold agreement between the parties specified.

Definitions

The definitions section defines the key parameters of the tenancy agreement (e.g. the date and term of the agreement, the address and extent of the property, the amount and frequency of the rent etc.) and defines these terms so that they may be used later in the agreement with a standard meaning.

Date. Enter here the date when the agreement was made - this is called the execution date.

For short leases (i.e. less than three years), the tenancy should be granted 'in possession' (i.e. on the same date as the tenancy starts), and therefore the execution date will normally coincide with the commencement date (see below).

Landlord. Enter the full name and address of the landlord.

Tenant. Enter the full names of all tenants who are to occupy the property. Where there is more than one tenant, a joint tenancy will be created.

Property. The property being let should be accurately defined within the lease. Ensure that the address or description fully identifies the property and is free from ambiguity. On a longer lease (more than one or two years) a plan may be included.

Term. The term relates to the length or duration of the tenancy. There are, in theory, no limitations to the length of term that can be granted for an assured shorthold. In practice, most landlords grant a term of between six months and one year.

Longer periods may be agreed where it suits both parties although this agreement will not be suitable if the term exceeds **three years**. Also, it should be remembered that the agreed term is contractually binding, unless you include a break clause (see 'Extra clauses' - below) in your agreement.

Commencing On. Insert here the **commencement date** of the tenancy – the day you let your tenant into occupation of the property.

Rent: The agreement clearly states the amount of rent payable. Normally this would be quoted as '**per week**' or '**per calendar month**' and will be binding for the duration of the term. The rent and payment clauses define the 'period' of the tenancy and the common trend is to define the rent payment period to be monthly.

N.B.

1. Best practice suggests that a monthly rent is quoted for most tenancies. If the rent is expressed as a weekly rent, then there is a legal obligation for the landlord to provide the tenant with a rent book containing prescribed information (Landlord and Tenant Act 1985, s.4).
2. Where the annual rent is greater than £25,000, the tenancy cannot be an assured or assured shorthold tenancy under the Housing Act 1988 (see information above).
3. A quarterly period or longer should be avoided as this considerably lengthens and complicates the procedure for possession under s21.

Payment. It is important to specify the timing and frequency of the rent payments.

Many landlords and agents prefer to collect all rents on a specified day each month (e.g. first day of every month). In this case, the appropriate wording should be added (e.g. 'on the first day of every month').

Deposit. A dilapidations deposit or rent deposit is often held by the landlord as security against damage or rent arrears arising during or at the end of the tenancy.

There is no restriction on the size of deposit that can be demanded (although because of legal rights that may be implied into the tenancy, a deposit of more than 2 months' rent should be avoided).

The amount of the deposit held must be entered. If no deposit is taken, enter NIL.

With effect from 6th April 2007, all tenancy deposits accepted in connection with an assured shorthold tenancy become subject to statutory protection under the Housing Act 2004.

It should also be remembered that the Housing Act 2004 requires that prescribed information is given to the tenant within **fourteen days** of accepting a tenancy deposit. This should be given in the form of a signed certificate either at the same time as signing the tenancy agreement, or as soon as the scheme information has been received from the scheme provider.

For more information about tenancy deposit protection, see government website: www.direct.gov.uk/en/tenancydeposit

The Main Clauses:

This section explains the purpose and operation of the various standard clauses in the agreement:

Clause 1: This clause confirms the intention of the agreement to set up an assured shorthold tenancy for the specified term, and for an agreed rent etc.

Clause 2: This clause confirms the terms under which the deposit is held. It also outlines how and when the deposit should be repaid at the end of the tenancy.

The Obligations of the Tenant

Generally called 'User Covenants', these clauses have two main functions. Firstly, they allow the landlord to control the use, which the tenant makes of the premises. Secondly, they protect the interests of the landlord by preventing the tenant acquiring specific legal rights which might be gained without these clauses (e.g. use of premises by a tenant for business purposes will give the tenant additional rights under the Landlord and Tenant Act 1954.)

Rent & charges clauses:

3.1. Rent Payments. The rent must be paid as specified in the agreement.

3.2. Charges. The tenant would normally become liable for any costs incurred in connection with services used or consumed in connection with his occupation of the property.

Usage Clauses:

4.1. Assignment. In the absence of any restriction in the lease, a tenant may be entitled to assign his or her tenancy to another person. This is not a desirable situation since there might be financial or other reasons why this third party would not prove to be a suitable tenant. A landlord should retain the right to vet any tenants before granting a tenancy and therefore a clause prohibiting assignment is necessary.

4.2. Use as a Private Dwelling. The main purpose of this clause is to confirm that the nature of the letting is for use as a single private dwelling, and to prohibit the tenant or any other person from carrying on a business from the property.

This is an important clause. The Housing Act 1988 states that assured and assured shorthold tenancies may only be used where:

"the tenant or, as the case may be, at least one of the joint tenants occupies the dwelling-house as his principal home"

4.3. Prohibition on Carrying on Business. This subclause operates in conjunction with the previous clause (4.2) to acknowledge that the dwelling is not to be used for business purposes and thus gaining greater rights of tenure under the Landlord and Tenant Act 1954.

This clause does not seek to prevent a working person from bringing documents to the property in the evening for example in order to carry on extra work at home. Such use, when conducted in an informal way, and where the associated work activity does not represent a significant proportion of the occupation of the property, is not generally considered to constitute "business use".

You may be asked by a tenant to delete this clause if the person is self-employed or otherwise operates some or all of his business from home. You are strongly advised against this course as this might acknowledge business use for the premises and provide extra protection for the tenant under the Landlord and Tenant Act 1954.

4.4. Nuisance Covenant. This is a standard clause that prevents the actions of the tenant causing a nuisance or annoyance to other occupiers in the same or adjacent buildings. This is, in practice, a difficult clause to enforce – the landlord would need to maintain a log of nuisance events or complaints as they arise and prove the facts in court. Tenants will need to be informed of any special terms in the landlord's buildings insurance which might affect the insurance cover or cause the premium to increase.

4.5. Pets. Landlords are often agreeable that tenants may keep their pets in the property, although many have had negative experiences in this respect. Without wanting to encroach on the tenant's freedom, it is important for the landlord to retain control since pets cannot always obey instructions and are immune from legal proceedings! Therefore, this clause prohibits the tenant from keeping pets at the property without written permission. Also, there are situations where it may not be suitable to keep a pet (e.g. in a block of flats) and it would be necessary, in this situation, to check the terms of any headlease (see below).

4.6. Illegal or Immoral Purposes - this clause is self-explanatory.

4.7. Restrictions in Headlease. Where the property is leasehold (e.g. a flat within a block of flats) there will be a further agreement (the Headlease) which may make restrictions on the usage of the Property by the tenant and any subtenants. Where the headlease makes such restrictions, it is important that a copy of the Headlease, (or a schedule detailing the restrictions under the Headlease) is attached to the tenancy agreement otherwise these terms may not be enforceable against the new tenant.

Clauses relating to repairs:

5.1. Alterations and Improvements. For obvious reasons, it is not in the landlord's interest to permit the tenants to alter the property without prior consent. For short tenancies (i.e. landlord letting home whilst abroad) it would not be appropriate to allow the tenant to carry out internal redecoration or other improvements and under the standard agreement, the landlord has reserved himself the right to veto any such changes.

5.2. Care of Property. The tenant is asked to take care of the interior of the property. This care is extended to a specific obligation to adequately heat and air the property as damp and mildew can cause considerable cosmetic damage and staining which will be costly to put right. This clause is also used to introduce the idea of 'reasonableness' in assessing wear and tear at the end of the tenancy.

5.3. Damage. It is important that the landlord is compensated and made aware of any damage at the earliest opportunity.

5.4. Power of Entry. This clause sets out the Landlord's statutory rights of access to the Property. It is also an implied term of every assured tenancy under the Housing Act 1988 that the tenant shall allow the landlord access to the property to carry out those repairs which he is entitled to execute (section 16).

Comment [PD11]: s11(6), L&T Act 1985

5.5. Care of Gardens. This is a standard clause to ensure that the garden(s) is kept in good order. The clause provides a general cover which, within reasonable bounds, requires the tenant to upkeep the gardens on a regular basis (rather than by one massive tidy-up at the end of the tenancy).

5.6. Broken Glass. This is a standard clause that requires the tenant to replace any panes of glass broken during the tenancy. However, where the breakage is on an external window and not caused by the tenant (e.g. by an unknown third party) then the landlord would be responsible for the repair and should claim under his buildings insurance.

5.7. Locks and Keys. Another common standard clause. It would, in most situations, be unreasonable to deny the tenant a spare key to the property – especially where there are joint tenants and there are insufficient keys.

5.8. Damage Notification. It is important that the landlord is notified of any significant damage or disrepair as soon as possible for obvious reasons. If the damage affects the security of the premises, or the safety of the tenant, then repairs should be carried out without delay.

5.9. Damage to Decoration. Many occupiers wish to put up posters or hang their own pictures on the walls of the property. Many landlords provide tenants with guidelines so that pictures may be hung if properly fixed with picture hooks. In flats, the headlease will typically contain similar terms regarding signs and other notices attached to the exterior of the building.

5.10. Damage by Frost. Tenants are required to look after the property in a 'tenant-like' manner. This includes taking precautions to prevent damage by frost in winter – especially if the property is left unattended. In order to do this, it is important to give the tenant adequate directions regarding the operation of the boiler and the location of any stopcocks.

5.11. Gas Safety. Most modern heating boilers (including oil and solid fuel appliances) require a supply of air for safe combustion of the fuel within the boiler, and many properties contain air bricks and similar types of ventilation for this purpose. It is important that these ventilators are not blocked and problems affecting the safe operation of the appliances are immediately reported back to the landlord.

5.12. Drains. A tenant is obliged to carry out minor jobs that a reasonable tenant would do during his or her occupation (under his obligations to use the premises in a 'tenant-like' manner. Where a sink or drain has, during the tenancy, become blocked by the tenant's waste, then the tenant is responsible for clearing the blockage.

However, there are some sensible exceptions (although, in practice, it may be difficult to identify or differentiate them) where a sink or drain has become blocked at the start of the tenancy where the previous tenant had clearly failed to clear his waste. Furthermore, the landlord has a statutory duty (see clause 10) to keep in repair and proper working order the drains and the installations in the dwelling for the supply of water, gas, electricity and for sanitation; but only where these works do not overlap with the obligations of the tenant to use the premises in a tenant-like manner (see para above).

Other tenant responsibilities:

6.1. Correspondence. It is important that any statutory notices and other correspondence relating to the Property reaches the Landlord. This clause imposes that requirement on the tenant.

6.2. Recovery of Costs. It is important that the landlord or agent is able to recover any reasonable administrative or legal costs incurred as a result of any breach of the tenancy agreement by the tenant.

6.3. Access for Viewings. It is important that the landlord or agent is able to gain access to the property in the final portion of the tenancy in order to conduct viewings for new tenants. Without this clause, the landlord has no automatic right to carry out such viewings.

In exercising his right of access for inspections and viewings (see also clause 5.4), the landlord should carry out such access at reasonable hours (i.e. in daytime) and with reasonable prior notice (generally 24 hours).

6.4. Security. It is in the interests of the landlord (especially where the property contains several living units) to ensure that adequate security measures are taken so as not to attract break-ins.

Clauses relating to termination of the tenancy:

7.1. Condition and Reinstatement. This is a useful and important clause. It confirms to the parties that the property, at the commencement of the tenancy, is in a clean condition, and requires the tenant to return the property in a similarly clean condition at the end of the tenancy. This clause does, however, impose the obligation on the landlord that the property is let in a good and clean condition as warranted and the clause will be rendered ineffective if this is not the case.

7.2. Reinstatement of Contents. This is a common standard clause which imposes an obligation on the tenant to restore the furniture and other effects supplied with the property to approximately their original locations.

Other clauses:

8. Landlord's Covenants and Obligations. This term is implied into every tenancy agreement as is commonly referred to as the '**covenant of quiet enjoyment**'. The landlord undertakes to respect the right to quiet enjoyment of the tenancy and recognise the rights of the tenant (e.g. 24 hours notice before carrying out visits to the property).

9. Forfeiture. The Housing Act 1988 requires a forfeiture clause if the landlord is to be able to rely on the various grounds for possession listed in Schedule 2 of the Act. The forfeiture clause is an express provision in the agreement that allows the landlord to re-enter the property let (i.e. to forfeit the lease) on the breach of any of the obligations. Contrary to common interpretation by many lay landlords, this clause does not allow the landlord to get back his property (even on default) without first carrying out the correct possession procedures through the courts. Any landlord or person related to the landlord who attempts to evict or harass a tenant in this way may be liable to conviction and extensive fines and /or imprisonment under the Protection from Eviction Act 1977.

10. Obligation to Repair. The landlord is bound by various statutory obligations to keep the property in good repair and this clause clarifies some of these repairing obligations. In law, the landlord's main repairing obligations are:

- Keep the structure and exterior, drains and gutters in good order and repair
- Keep installations for the provision of heating and supply of electricity, gas and water in good order
- Ensure ongoing supply for utilities (gas, electric, water etc.)
- Repair any defects in common parts
- Ensure that the property is fit for human habitation

11. Inclusive Definitions. This clause defines specific terms used in the agreement and, where necessary, expands the scope of such definitions.

joint tenants - where there are joint tenants, it is important to protect the landlord's interest by making the tenants' liabilities 'joint and several'.

12. Notices.

12.1. Ground 1 Notice. This clause protects the landlord where an assured tenancy is granted and allows the landlord to recover possession at the end of the term under Ground 1.

12.2 Ground 2 Notice This clause protects any mortgagee of a property which is let on an assured tenancy and allows them to recover possession under Ground 2.

12.3. Service of Notices. Recent case law relating to the service of notices (*Wandsworth London Borough Council v Atwell*, 1995) suggests that the tenancy agreement should ideally contain express terms prescribing a method of service of legal notices under the tenancy.

Section 196 of the Law of Property Act 1925 provides that a notice shall be sufficiently served if sent by registered or recorded delivery post (if the letter is not returned undelivered) to the Tenant at the Property or the last known address of the Tenant or left addressed to the Tenant at the Property.

Additional Clauses.

Additional clauses required by the user may be added to the agreement, either under a 'Special Conditions' section or by listing the clauses on a separate sheet attached to the agreement (see 'Schedule(s)' section on the following page).

Listed below are some examples of commonly used additional clauses that the landlord may wish to incorporate into the agreement:

- Break clause (allowing either party to terminate the tenancy early)

Example: *'It is agreed that either party may give two months' written notice to terminate this Agreement.'*

- Rent review clause (stating the timing and proportion of any rent increase)

Example: *'It is agreed that the Rent shall be reviewed on January 1st 2007 and that the Rent shall be increased to £650 per month'*

Alternatively, you may simply want to link the rent increase to the most commonly available published index, RPI:

'It is agreed that the Rent shall be reviewed on January 1st 2007 [and annually thereafter] and that the Rent shall increase by a proportion equal to the most recently published RPI (Retail Price Index) at the rent review date

- Special usage clauses (where there are features of the property that require special treatment). For example, a landlord might require the tenant to empty a septic tank installed at the property on an annual basis throughout the tenancy.

Example: *'The Tenant agrees to empty the septic tank during and on termination of the tenancy.'*

Schedule(s)

Use the section entitled 'THE FIRST SCHEDULE' to add any additional clauses that you wish to append to the standard tenancy agreement. Some example additional clauses are described in the previous paragraph to these notes.

Alternatively, you can attach an additional sheet of paper entitled 'First Schedule – Special Condition(s)' and attach this schedule to the tenancy agreement – useful if you need to add several extra clauses as special conditions of the tenancy.

Any additional schedule sheets should be stapled or otherwise firmly affixed to each copy of the tenancy agreement. It is good practice to add a signature and date line to the bottom of any separate schedule, and ask the tenants to add their signature and date to each copy.

Signatures

The agreement should be signed by all the parties. Signatures act as evidence that an agreement has been concluded, and the agreement should be signed before the tenant is given the keys and allowed to take possession of the property

If the tenancy is granted as a joint tenancy (i.e. the property is let as a single residence to a group of people) then all tenants should be asked to sign the agreement. Equally, if the property is jointly owned (e.g. by man and wife) then both landlords should sign the tenancy agreement.

For more information on signing the tenancy agreement, and the requirements for a witness, please see chapter 3.

Inventory

Finally, it is important to include an inventory, especially when letting furnished property. Ideally, the inventory should include not just how many of a particular item are present, but also what condition (sometimes referred to as a Schedule of Condition). Of course, it will be necessary to apply some simple logic and discretion to the process.

Many landlords make the mistake of leaving hundreds of household items behind for the tenants to use (when, in fact, most tenants nowadays like to bring and use their own household items). As a consequence, inventories (and the resulting inspections) for these properties tend to be long and unnecessarily detailed whilst important elements of the property condition do not receive the attention that they deserve. It is of far greater importance, for example, to accurately note the condition of a set of antique dining chairs on the inventory than a set of cheap old cutlery.

Standard inventory forms are available from the Letting Centre.

3. Granting the Tenancy and Other Issues

Completing and Signing the agreement

At least two duplicate copies of the agreement will normally be prepared for each letting; these are called the **Original** and **Counterpart**. You may mark them accordingly although there is no requirement to do so. Ensure that all blank sections or fields are completed as required – this may be done either on a word processor, or by hand in permanent ink.

Where the tenancy agreement is reproduced on separate sheets of paper, the sheets should be securely stapled, together with the inventory, guarantor agreement and any other terms and conditions that may apply to the tenancy. It is also good practice to annotate the agreement to indicate both the page number and full extent of the document. E.g. 'Page 2 of 4'.

Signing

The signatures on the bottom of the agreement are evidence of the fact that the written agreement has been concluded by the parties. The part of an agreement that the parties sign is known as the **attestation clause**.

You will need to ask **all** tenants listed on the tenancy agreement to sign the agreement(s). Where the landlord has instructed an agent to let the property and draw up the tenancy agreements, the agent may wish to sign the tenancy agreement on behalf of the landlord. In this situation, the agent is advised to check that such instructions or management agreement give the agent express authority to sign the agreement on behalf of the landlord.

The main copy (or Original) agreement is signed by both parties and should be given to the tenant(s). The counterpart is signed only by the tenant(s) and is held by the agent or landlord.

A situation where tenants have already moved in before signing the agreement is to be avoided and information provided to tenants needs to spell out that all tenants must sign the agreement prior to occupation. The only exception (where for example one of the tenants is out of the country when the agreement is to be signed) is for the absent tenant to provide one of the other tenants a power of attorney to sign on his/her behalf. Otherwise, the original agreement should be made with the tenants available at the time and a new agreement entered into when the rest of the group is present.

Any last minute additions, deletions or amendments to the agreement (other than the standard completed fields) should also be avoided. Where changes are required, they should be initialled by both the tenants and the landlord (or his representative).

Witness

A witness is a person who observes the signing of a legal document in case it is subsequently necessary to verify the authenticity of the signature. Under English conveyancing law, it is not compulsory to use a witness when signing a tenancy agreement, unless the agreement is executed as a deed (i.e. term is over three years).

However, letting agreements often make provision for a witness to sign the agreement since this is a reasonable safeguard against the situation where a person denies ever signing or being shown the agreement in the first place. A witness could be a colleague or some other third party who is present during the signing of the tenancy agreement.

Renewing or Extending the Tenancy

Where the initial term of the assured shorthold tenancy has come to an end, and the landlord wishes the tenancy to continue, there will generally be two main options at the end of the initial fixed term:

- Agreeing a replacement tenancy for a new or further fixed term
- Allowing the agreement to 'roll-over' on a periodic basis

Renewal by further fixed term

The initial fixed term tenancy may be renewed or extended simply by the preparation of a new agreement, signed by both landlord (or his agent) and tenant(s) and dated to take effect from the day immediately following the expiry of the previous tenancy.

Roll-over

Alternatively, if the landlord does nothing, the tenancy will continue automatically after the end of the fixed term as a periodic tenancy. This means that where the tenancy runs on from one rent period to the next on the same terms as the preceding fixed term tenancy – this is called a statutory periodic tenancy.

Ending the Tenancy

The landlord or tenant may bring the tenancy to an end in a number of different ways but commonly the tenancy will end by mutual agreement and the tenant will leave the property at the agreed vacation date.

Unless the tenant has broken one of the terms of the tenancy agreement, then the landlord may only seek possession at the end of the fixed term. In order to do this, he must give the tenant at least two months' notice. Forms are available from legal stationers for this purpose.

Alternatively, the landlord can seek possession during the fixed term if the tenant has broken one or more of the terms of the tenancy agreement.

Further guidance on how landlords may regain possession of his property in the above situations is given in the Letting Centre's Possession and Rent Arrears Pack.

Sources of Further Information

Assured and Assured Shorthold Tenancies – A guide for landlords

- available on the Government housing website at: www.communities.gov.uk
- or from your local Citizen's Advice Bureau or Housing Advice Centre

Which Guide to Renting and Letting

- published by the Consumers Association (Tel: 01992 822800)
- or order at: www.which.co.uk

The Letting Handbook

- published by the Letting Centre (Tel: 01395 271122) or www.letlink.co.uk