

Renting a room from a resident landlord

Union Advice Centre

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HOUSING ADVICE

Guide to the difference between being a tenant and lodging with a resident landlord:

- A Tenant is someone who has a legally binding interest in a property, which involves both a right to occupy that property and a right to exclude others from it.
- A Licensee is someone who merely has the permission of the owner to be in the property.

If you share part of your accommodation with your landlord, it is essential to establish your housing status as this affects your rights during your stay. In order to begin to establish your housing status you must ask yourself the following question:

- Do you have exclusive possession of your living space?

What this means is 'do you have control over your living space, and the right to keep others out of it?' If the answer is yes, then you are almost certainly a tenant.

How do you know whether you have exclusive possession? The answer is often not easy if you live in the same building as your landlord. However, the following points should help you decide.

- If you have a separate door to your accommodation, with a lock on it, and if your landlord does not control who you let in and out of your accommodation, chances are that you do have exclusive possession of that accommodation;
- It does not matter that you might have to share the entrance to the property, the corridors, or even the bathroom/kitchen/sitting room. The important test is whether you have exclusive possession of the part that your landlord lets you live in. You could, for example, be a tenant of just the bedroom;
- If the landlord provides you with services which require him or her (or people who work for him or her) to have unrestricted access to your part of the property – e.g. if he or she comes in and cleans your room regularly and launders your bedding – that would suggest that you do not have exclusive possession.

Note that you could be a tenant even though you have entered

an agreement with your landlord that refers to you as a mere licensee. How your landlord describes your housing status is not decisive.

If you consider yourself to be a tenant in light of the above, then you have a more powerful interest in the property. You may also have certain statutory protections under the Housing Acts, usually as an Assured Shorthold Tenant. However, those statutory protections might not apply if you are a tenant with a resident landlord. Please see the leaflets in the Union Advice Centre on protection for tenants for further information.

Being a Licensee – your rights

If you have established from the above that you are not a tenant but you are a licensee in your landlord's home, then you need to be aware of your rights. If you share living accommodation with your landlord or his or her family as a licensee, then you are legally an Excluded Licensee. The law states that, if this is the case, you do not have the full protection of the Protection from Eviction Act 1977. In particular, your landlord does not have to go to court to get you evicted. What's more, without a contract you only have limited rights and can be asked to leave by your landlord at any time (subject to him or her giving you a reasonable period of grace in which to move your belongings out of the property and find new accommodation). However, if you have a written agreement detailing the duration of your stay, and if you are paying rent of some kind, then this agreement can, in most circumstances, be enforced to give you more security (though it still will not bring you within the Protection from Eviction Act 1977).

Written Agreements

When moving into any accommodation it is strongly recommended that you and the landlord draw up a written agreement before you move in. It is particularly important to do this when you are a Licensee, as a written agreement, provided that you pay some kind of rent under it, must be adhered to. It can therefore avoid unwanted confusion later and give you greater rights.

The written agreement is not a tenancy, but a licence document and should be signed by both parties. The essential things that this should contain are:

Duration of the agreement

Although people often choose not to have a written agreement to give them added flexibility to choose when to leave, if you are planning to stay for any length of time it is always wise to have a written record of how long you intend to stay. This will usually bind your landlord, and so avoid you having to look for alternative accommodation at short notice should the landlord ask you to leave. It also avoids any anticipation on the landlord's part that you plan to stay longer than you actually intend to.

How much the rent is and how often it should be paid

It is useful to have a written record of how much rent is expected and how often it should be paid. This can serve to avoid unwanted rent increases and extra charges. Always be sure to have a written explanation of what the rent includes - eg; bills or cleaning expenses.

How much notice to end the agreement is required

If a written agreement exists and sets out how much notice is required then this should be adhered to by both parties. If the licensee chooses to leave the property before the date the notice expires, he or she should continue to pay rent until the period of notice has expired. Conversely, if the licensee is forced by the landlord to leave the property before the expiry of the agreed notice period, he or she may have a claim against that landlord for damages, and may be able to get an injunction to stop the landlord ejecting them.

If no agreement as to notice exists and the licensee wishes to leave, he or she should usually give the landlord 'reasonable notice'. What is 'reasonable notice' depends on all the circumstances, and may be (though will not always be) the same as the period until the next rent payment is due. The same applies if the landlord wishes the licensee to leave. However, it is important to note that a landlord does not need a valid reason in order to make the licensee leave the property, thus leaving

the licensee in an insecure position.

What services are included in the rent

It is important for both parties to be clear on what exactly the rent covers to avoid you as licensee being charged unexpected extras. It is sometimes the case that cleaning will be charged on top of your rent. Other unexpected costs include household bills and telephone calls. Be sure what you are expected to pay is reasonable for the services provided and that you get a receipt for each payment of rent.

How much deposit is payable

You should have written details of how much deposit you are expected to pay and what it covers. Keep a written receipt as proof that the deposit has been paid. Your written agreement should also contain details of when the deposit will be returned to you at the end of your stay. Written agreements detailing how much rent is payable and how long you intend to stay in the property prevent the landlord deducting money from your deposit as a result of a disagreement or misunderstanding. The deposit should be returned to you when you move out or within a reasonable period thereafter, and if you have adhered to the terms of the written agreement and not caused any damage, then you should expect the deposit to be returned in full.

Your right to repairs

As a licensee you do not share the protection of Section 11 of the Landlord and Tenant Act 1985, which states that landlords must carry out repairs to the property. Obviously, as you are sharing the accommodation with the landlord, the chances are that any repair that needs doing will affect him/her directly, thus it is likely that it will be done. If a landlord refuses to carry out repairs however, there is little you can do to force work to be done.

Fear of eviction

As already mentioned, as an excluded licensee (whether or not you have an agreement) your landlord can evict you without going to court first. The landlord should, however, give you

reasonable notice, although this does not have to be in written form to be valid. It is a criminal offence for a landlord to use force to remove you from the property if you originally occupied it with the owner's agreement. If you are threatened with eviction, it is essential that you seek advice immediately.

The Union Advice Centre staff are experienced in giving housing advice. Please either drop in or phone for an appointment on 01603 593463.