

Registered Social Landlords Fact Sheet

Licence Agreements

Introduction

A licence agreement is essentially a permission to occupy a property that is personal to the person it is granted to. It evades the security of the Rent and Housing Acts, and consequently relatively straightforward for the Licensor to recover possession.

To recover possession of premises let under a licence, the Licensor must serve a Notice to Quit and apply for a Court Order. The Notice to Quit must be in the prescribed form and give 28 days notice unless the licence agreement provides for longer. If the Licence is excluded by virtue of Section 3A Protection from Eviction Act 1977 in which case this requirement is removed. Once a licence has been determined on 28 days notice, proceedings can be started against the occupant as a squatter.

Licences can be granted in the following circumstances:-

1. To Minors. Children under eighteen occupy under a licence. The tenancy is held on trust for them and they have no security of tenure. Once they reach the age of eighteen they will however automatically become a tenant - under an Assured Shorthold Tenancy if the agreement does not say otherwise.
2. Service Occupancy Agreement: where premises are genuinely required for performance of duties.
3. Residential Landlord shares premises with occupant.
4. Where substantial services are provided: then the tenant may not have exclusive possession
5. Hostel accommodation: Hostels are defined in S622 Housing Act 1985, as follows:

"A building in which is provided, for persons generally or for a class or classes of persons:-

- (a) residential accommodation, otherwise than in separate and self contained sets of premises, and
- (b) either board or facilities for the preparation of food adequate to the needs of those persons, or both.

Licences have been considered by the Courts in many cases. The leading case is Street -v- Mountford, and cases that have followed the House of Lords decision in that case have repeatedly stressed that Landlords cannot operate "sham" devices, to strip occupants of security of tenure. If the three elements of exclusive possession, a rent and a term (including periodic term) are satisfied, the normal result is a tenancy, even where a false label is applied.

Relevant Case Law

In *Antoniades -v- Villiers and Bridger*, an agreement specifically denied that the occupants had exclusive possession of a self contained flat, and recorded that the Licensor could permit others to use the rooms. On the facts of the case the House of Lords found that the flat was too small to accommodate strangers, and the wording of the agreement was found to be artificial, a pretence to evade the security of the Rent Acts.

In the case of *Family Housing Association -v- Jones* (1990) the Court of Appeal held that where a local authority licensed premises to a Housing Association to house homeless persons temporarily, a tenancy was created, as there was a clear intention that Mrs. Jones and her son were to be the only occupants, and she paid a weekly charge. This was despite the agreement stating that she did not have exclusive possession, and the Association held a key.

In *Westminster CC -v- Clarke* (1992) a resident in a hostel with specialist support facilities under an agreement permitting the owner unrestricted access to the room and containing power to compel the occupier to share/move to another room, was held to be licence, as the occupant did not have licence to occupy as a separate dwelling.

Excluded Licences

A licence is excluded from the Protection from Eviction Act 1977 if it confers rights of occupation in a Hostel as defined in Section 622 Housing Act 1985. This is when an occupant might be given less than 28 days Notice to Quit. Here the length of the Notice to Quit will be based on the Licence Agreement.

NB Section 32(2) Housing Act 1988 provides that all licenses must be determined by Notice to Quit in writing, giving at least 28 days notice. It is only excluded licenses that avoid this - i.e. the Hostel.

Section 32 Housing Act 1988 amended the Protection from Eviction Act to require that Notice to Quit must be given at least four weeks before it's effective date.

Simply describing a set of premises as a hostel will not be sufficient, if for example the occupants enjoy exclusive possession of a separate set of premises. Each case will be decided on its merits.

If you need help with this or any other Housing Law issue please email john.murray@emsleys.co.uk or elizabeth.berry@emsleys.co.uk. Both Elizabeth and John can be contacted by phone on **0113 2014900**.

