

Cornish Mutual Guide to Letting Property

To Let

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Please note that the following let property guide is meant only as a guide to some of the pertinent issues related to renting property in the United Kingdom. It is based on Cornish Mutual's current understanding of the law however any one acting on the advice contained in this guide is deemed to have satisfied themselves of the correct legal position by having contacted and involved the relevant knowledgeable person or organisation. To clarify or expand on any of the points included within this guide, please refer to the relevant organisation or local authority.



Main types of residential property letting

There are several different methods of letting domestic property in the United Kingdom, depending on whether you wish to continue to reside in the dwelling, let to a tenant or let the property as a holiday residence for tourists.

Assured Tenancies

This is the most common form of let property agreement. A tenant pays rent to occupy a property without the landlord occupying the same residence.

There are two forms of assured tenancy:

- Assured tenancy: the tenant occupies the property until the landlord is able to illustrate grounds for regaining possession.
- Assured shorthold tenancy: the tenant occupies the property for a fixed term set out in the tenancy agreement.

Please view our assured tenancy section for more information on page 4.

Resident Landlord

The landlord shares accommodation with the tenant - the tenant is a lodger within the property.

An assured or assured shorthold tenancy cannot be created for a resident landlord letting.

Rent a room

This is when a room is rented to a tenant within a landlord's property. Any rent received, inclusive of any service charges, is tax free up to £4,250 per annum.

Holiday Lets

Holiday lets cannot be placed on an assured or assured shorthold tenancy. As they must be available to the public on a commercial basis for 140 days or more in a year, or let commercially for more than 70 days in a year, and not occupied for more than 31 days in a seven month period by the same person.



Tenancy agreements

A tenancy agreement is a written or verbal contract between a landlord and tenant setting out the rights and responsibilities of both parties.

- If a written tenancy agreement is in place the type of agreement should be indicated.
- The tenancy agreement should be signed by the landlord and tenant(s).
- The landlord is obliged to give their name and address, whether there is a written agreement in place or not.
- The landlord must give basic written terms of agreement within 28 days of the request being made in writing.
- The rights laid down by law or statute for both parties always override those included within a tenancy agreement – if a tenancy agreement suggests that the landlord or tenant has less than their statutory rights it is deemed to be a “sham” tenancy.

A tenancy agreement is made up of ‘Express’ and ‘Implied’ terms.

Express Terms

Express terms include all agreements between the landlord and tenants within a written or verbal tenancy agreement, rent book etc.

Implied Terms

Implied terms include the rights and responsibilities of the landlord and tenant given by law or arrangements established by Customs and Practice – these may not necessarily be included in the tenancy agreement e.g. the landlord has the responsibility to keep in repair the structure and exterior of a dwelling, inclusive of the drains, gutters and external pipes.

Oral agreements

Oral tenancy agreements can be hard to enforce as there is no evidence of what has been agreed between the landlord and tenant. There may also be an issue if a problem arises that has not been addressed within the written agreement.

Making changes to a tenancy agreement

Changes to a tenancy agreement can only be made if the landlord and tenant are in agreement. Any alterations should be made in writing by either amending the current tenancy agreement or by creating a new agreement.

Discrimination

A landlord must not discriminate against an individual because of race, sex, disability, age, sexual orientation or religion.

Assured Tenancies

Assured Tenancies were introduced by the Housing Act 1998. They cover the majority of residential property lettings barring certain exceptions including holiday lettings, agricultural lettings (where more than 2 acres are included with the property) and letting of property in which the landlord is resident.

The Housing Act 1998 – Key points for Assured Tenancies

- Unless the tenancy is for a duration in excess of seven years, the landlord is responsible for keeping the property in a habitable condition in agreement with relevant local health and safety regulations.
- The tenant is required by law to pay for water, fees arising from sewerage and council tax.
- The landlord is entitled to ask the tenant for a security deposit at the outset of a rental agreement. This can be for any amount as long as the tenant is in agreement. If this figure exceeds two months' rent then the tenant has the right to sublet to a subtenant unless stated otherwise within the rental agreement.

Types of Assured Tenancies

There are two forms of Assured Tenancy:

Assured Tenancy

- The tenant has the right to remain in the property unless the landlord can give grounds for possession e.g. a need to return to the property, or the tenant does not pay their rent.
- The landlord does not have an automatic right to return to the property when the tenancy comes to an end, as is the case with Assured Shorthold Tenancies

Assured Shorthold Tenancy

- Shorthold Tenancy agreements are the most common of tenancies and are for a fixed period of time.
- The landlord has the right to regain possession at the end of the term of agreement subject to giving two months notice that possession is required.
- Possession of the property will only be awarded to the landlord following a six month period.

Protecting a deposit

The Government's Tenancy Protection Scheme came into force on 6 April 2007 stipulating that any money taken at the beginning of an assured shorthold tenancy agreement for a deposit, or on the understanding of it being a deposit must be 'protected'.

Failure to protect a deposit will lead to the landlord being ordered to repay to the tenant three times the amount of the original deposit.

Within 14 days of a deposit being received from a tenant the following information must be made available on the way in which the deposit is being protected:

- Contact details of the deposit scheme in which the deposit is protected.
- Contact details of the landlord responsible for the deposit.
- How to apply for the release of the deposit.
- Information pertaining to the purpose of the deposit.

Tenancy Deposit Schemes

There are two forms of schemes in place to protect a deposit:

Custodial

- The landlord places the money into the scheme where it is held until the end of the tenancy agreement and subsequently returned to the tenant.
- Placing money in this scheme is free of charge.

Insurance-based

- The landlord keeps the deposit and pays the insurance scheme to insure against the landlord being unable to pay any deposit money owed to the tenant at the completion of the tenancy agreement.

Repayment of deposits

Upon completion of the period of tenancy agreement the landlord should check the condition of the property and any owned contents and agree the amount of the deposit to be repaid to the tenant.

N.B. It is the responsibility of the tenant to return the property in the same condition in which they took it on.

The agreed amount of deposit should then be returned to the tenant within 10 days.

The Resolution of Disputes

If the sum of deposit to be repaid cannot be agreed there will be a free service provided by the scheme chosen to protect the deposit.

Energy Performance Certificates

Since 1 October 2008, whenever a self contained home is let to a new tenant an Energy Performance Certificate is required. These certificates provide information on the current energy efficiency of a home and make recommendations on how improvements could be made.

Your Energy Performance Certificate and recommendation report must be made available free of charge to a prospective tenant no later than:

- When a viewing of the property is conducted.
- When information is provided by a landlord as a response to a request for building information from a prospective tenant.
- If none of the above occur, before entering into a contract to let the property.

The certificate is valid for 10 years, if a new certificate for a property is obtained during this time then the most recent only will apply.

The only person that can produce an Energy Performance Certificate is an accredited energy assessor.



Part “P” Building Regulations (Electrical Safety in Dwellings)

From 1 January 2005 works on electrical installations in certain areas of a property must be carried out by someone currently registered with an approved Part P self-certification scheme.

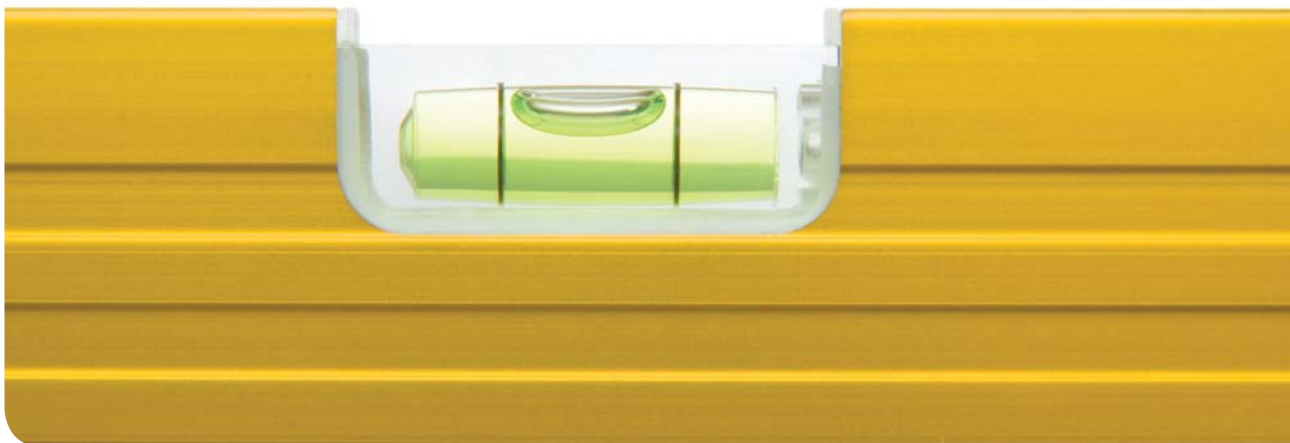
Failure to comply with regulations can result in a maximum fine of £5,000 and or imprisonment.

- Part P Building regulations refers to fixed electrical installations.
- All electrical work involving a new circuit being installed must be carried out by a “competent person” or notified to building control, who will then inspect the circuit for safety.
- Small jobs such as replacing plug sockets do not need to be reported to building control. It is however recommended that these are checked by a “competent person” in order to ensure safety.
- All electrical installations within a dwelling including small jobs must follow the principals of BS 7671, the British Standard for electrical installations.

A “competent person” is deemed as someone registered with a Part P self-certification scheme.

Electrical Regulations

- The landlord must ensure that the electrical supply to the property, electrical equipment and appliances are safe.
- All new appliances to be used within the property must carry the ‘CE’ mark certifying them as safe.
- An instruction manual or clear instructions for all electrical items should be provided to the tenant to ensure safe usage.
- Newly installed plugs and sockets must comply with the appropriate British Standard.



Safety regulations for your let property

Landlords are responsible for ensuring that their property meets the latest relevant safety standards.

The landlord should make sure onsite inspection and testing is performed where applicable to appliances within a rented property. An up to date formal record of these should be kept.

Gas Safety

- All appliances in a rental property must be checked on an annual basis by an engineer registered with the Gas Safe Register.
- The tenant must be provided with the inspection certificate and records should be made accessible by the landlord at all times.
- If an appliance becomes defective within the rented property it must be replaced immediately.
- Instruction manuals for all gas appliances should be made available to the tenant at all times.

Furniture Fire Safety

The Furniture and Furnishing (fire) (safety) Regulations 1998 set out regulations for fire resistance levels for domestic upholstered furniture and furnishings manufactured after 1950 (carpets and curtains are not included).

These regulations do not include furniture manufactured prior to 1950 or reupholstered furniture manufactured prior to this date.

All new furniture (barring mattresses and bed bases) must carry a permanent label stating accordance with these regulations.

Product Safety Regulations

Landlords are responsible for showing due care and attention to the general safety of their tenants whilst in their property.

Instruction manuals for items used in the property e.g. televisions should be made available to the tenant.

The obligations for repair

Under the Landlord and Tenant Act 1985 landlords have the following obligations:

- To keep in repair the structure and exterior of a dwelling, inclusive of the drains, gutters and external pipes.
- To keep in repair the installations within a dwelling for the supply of water, gas, electricity - not including other fixtures, fittings or appliances for making use of gas, electricity or water e.g. kettles.
- To keep in repair the installation in the dwelling for heating of the property and heating water.
'Keep in repair' means that the premises must be kept to the standard of repair as at the outset of the tenancy agreement.
- If the property was not in good repair at the beginning of the tenancy agreement then the landlord is required to put the dwelling into a good state of repair.
- If the tenant is in breach of his or her duty to act in a tenant-like manner, the landlord will not be responsible for any repair required as a result of this breach.
- If alterations are made to a property e.g. the installation of a central heating system, without the direct permission of the landlord, the landlord will not be responsible for any repair or problems arising from this installation.
- The landlord is not liable to repair or rebuild damage caused to a let property as a result of fire, flood etc.
- The landlord is not responsible for the state of repair of anything belonging to the tenant.

Notice

- Written or verbal notice must be provided to the landlord of a defect relating to the property so that they are able to action repairs.
- The tenant must allow the landlord a reasonable amount of time to carry out the required repairs (a reasonable amount of time is dependent on the type and extent of the disrepair).

Accessing the property to carry out repairs

- When under an implied covenant to repair the property, by giving 24 hours written notice, the landlord or any person authorised in writing by him may enter the property to view the condition of the property and the current state of repair during reasonable hours.
- The tenant must afford the landlord reasonable facilities for access for the execution of any repairs which the landlord is entitled to carry out.

Noise and nuisance

It is a criminal offence to create noise and nuisance that result in others being unable to enjoy their home environment.

Statutory nuisance

Examples of statutory nuisance include:

- Excessive noise e.g. parties, social gatherings
- Noisy pets
- Dumping of waste that results in vermin being attracted to the area
- Toxic fumes being emitted from a property such as smoke e.g. bonfires

Requirements of the landlord

To avoid nuisance caused by the property being in a poor condition, it is the landlords duty to keep the structure, exterior and other parts of the property in a state of repair and give tenants the benefit of quiet enjoyment of the property.

Allowing the property to fall into poor condition detrimental to health can constitute statutory nuisance.

Requirements of the tenant

It is a tenant's responsibility to take care of the property and ensure that activities carried out by themselves and visitors to the property should not cause damage to the dwelling or disturbance to those living nearby.

If this responsibility is not upheld the landlord may apply to court for possession of the property.

Noise

Noise is the most common form of nuisance incurred by residents. If the noise is created by the tenant or visitors of the tenant these issues are usually dealt with directly by the landlord under the terms agreed in the tenancy. Landlords are able to apply for possession of the property if noise becomes a problem.

If noise is being created by nearby neighbours then these issues are best taken up with the individuals involved to ensure that they realise there is a problem as they may be unaware that they are causing a disturbance.

If these problems continue a complaint should be made to the local authorities' environmental health department, who are obliged to investigate any complaints. If the problem is deemed to be a statutory nuisance then the local authority has seven days to try to resolve the problem prior to issuing an abatement notice. If further problems occur then court and police proceedings may be sought.

Eviction due to Noise and Nuisance

If a tenant is causing a disturbance by noise and nuisance to nearby residents and the local community then the landlord is entitled to seek a court order to evict the tenants. It is illegal to evict a tenant without a court order. The Housing Act 1996 has made it easier to evict tenants who cause noise and nuisance through ground 14:

'The tenant or someone living with or visiting the tenant is causing or is likely to cause a nuisance to neighbours or visitors to the area, or has been convicted of using the property for immoral or illegal purposes, or has been convicted of an offence in the local area.'

Raising rent

There is a formal procedure in place if a landlord wishes to increase the rent of a property. This procedure is designed to protect the interests of the landlord and the tenant. This procedure does not stop individuals negotiating a rent increase at the beginning of a new term of tenancy agreement and also does not prohibit the inclusion of a future increase in rent clause within the tenancy agreement provided the future increase is set out.

If a landlord applies for an increase in rent the tenant can either:

- Accept the increase and make arrangements for the increase in rent to be paid, or
- Request a rent assessment committee (a panel of 2/3 people independent to the parties involved) to review the increase.



Possession proceedings for Let Property

To avoid tenants being evicted or harassed by landlords, it is a legal requirement that a court order is obtained prior to enforcing any right to possession of the property. This process does not apply to Section 21 of the Housing Act 1988.

Housing Act 1988 - Section 21

In an Assured Shorthold Tenancy the landlord has the right to possession at the end of the period of tenancy agreement.

The landlord must serve 2 months notice of the intention to claim possession to all tenants living in the property.

Housing Act 1988 - Section 8

Section 8 of the Housing Act 1988 is applicable when the landlord wishes to claim possession of the property prior to the end of the fixed term agreed in the tenancy and outlines 17 reasons under which possession of a dwelling can be claimed.

The landlord must serve notice of the intention to seek possession via the prescribed form before proceedings can begin. This notice should include the grounds for requiring possession.

The landlord will be required by the courts to provide evidence of the breach of the tenancy agreement.

Squatters

A squatter is deemed a person occupying a property without the permission of the person entitled to possession of a property. Court proceedings may be taken against a squatter and they must vacate the premises within 24 hours of receiving an Interim Possession Order (a fast track process for regaining possession of your property). It is important to note that this fast track process is only able to be used if the landlord makes a claim for possession within 28 days of the date that they first gained knowledge that the property was being occupied without consent.



Insuring your let property

Buildings insurance

Cornish Mutual's buildings insurance can cover you against the usual dangers to a domestic building like loss or damage due to flood or fire damage, together with other things you may not have thought of such as accidental damage. We will also help you to make sure you are insured for the cost of rebuilding your property should the worst happen.

Contents insurance

Our contents insurance covers loss of or damage to contents in your property by a range of causes - from theft, fire and accidental damage to malicious persons. This includes cover for contents in the garden and replacement locks following the theft of external door keys.

Loss of Rent insurance

Having a property unavailable to rent can have serious financial consequences. We can provide cover for loss of rent should your property be uninhabitable due to loss or damage. You are able to decide the maximum period you believe your property would be uninhabitable and the loss of rent this would cause.

Employers Liability insurance

Employers' liability insurance is compulsory by law for most employers. Employees include working directors and casual or sub-contracted labour e.g. cleaners working in your let property.

Your legal liability arising in connection with your let property business for injury to your employees can be covered for up to £10,000,000. Employers' liability insurance means that in the event of injury to an employee, for which you are held responsible, you will be protected.

Public Liability insurance

Automatically included in the policy, you will be covered for legal liability arising in connection with your let property for injury to any person who is not an employee or damage to their property up to a sum of £2,000,000 plus costs and expenses.

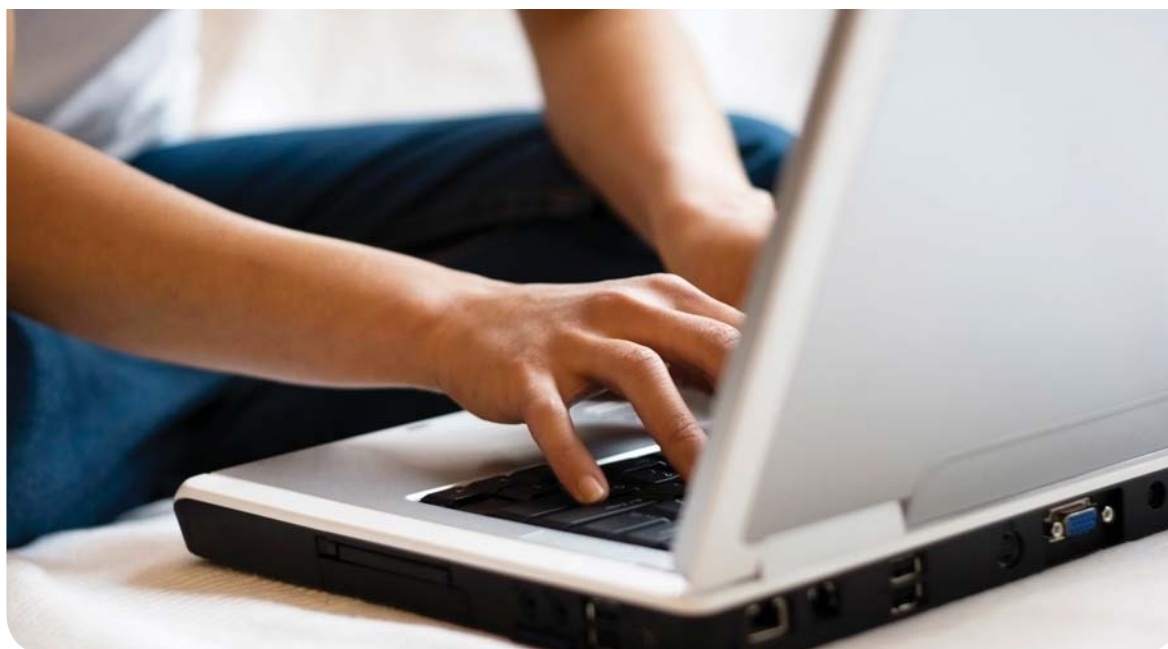


Sources of Information

www.direct.gov.uk	Official government website for citizens
www.communities.gov.uk	Communities and local government website
www.mydeposits.co.uk	Insurance-based tenancy deposit protection scheme
www.depositprotection.com	The deposit protection service
www.britishgas.co.uk	British Gas
www.planningportal.gov.uk	Source of up to date building regulation documents
www.cornwall.gov.uk	Cornwall County Council
www.devon.gov.uk	Devon County Council
www.somerset.gov.uk	Somerset County Council
www.dorsetforyou.com	Dorset County Council

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