

## Assured Shorthold Tenancies

### What is an AST?

Assured shorthold tenancies were created in 1989 to allow the letting of residential property without giving tenants an unlimited right of occupation which they could pass on to members of their family.

An assured shorthold tenancy can be for a fixed period or periodic (such as monthly) but there is now no minimum period. However, at the end of any fixed period the legislation allows the tenancy to continue on the same terms and at the same rent as before unless either the landlord or the tenant has served notice on the other to bring the tenancy to an end.

The tenancy can be brought to an end by the landlord serving on the tenant two months notice to quit in a specified form. The notice can be given at any time except that it cannot bring the tenancy to an end before the end of a fixed term, unless the tenancy provides for this. Further a court will not give an order for possession until six months after the start of the tenancy. There is no provision in the procedure for the tenant to give notice to quit early and so he is potentially due to pay the rent for the whole of any fixed period. However, provision for notice by the tenant can be incorporated in the agreement if this is desired.

### Tenancy Agreements

An assured shorthold tenancy does not have to be in writing so long as the terms are agreed between the landlord and the tenant. However, the tenant may by written notice to the landlord call for a written statement of some of the terms of the tenancy including the commencement date and the length of the fixed term and any provisions relating to the rent or the review of rent. Obviously, however, it is better for the shorthold tenancy agreement to be in writing so that there is no doubt as between the landlord and the tenant as to what their respective responsibilities are. Also it is a simple process to obtain an order for possession of a property let under an assured shorthold agreement if there is a written tenancy agreement.

The other terms of the tenancy are a matter of agreement between the landlord and the tenant. Often the tenant is asked to pay the legal costs incurred in the preparation and completion of the notice and agreement. Warners usually use standard forms which

incorporate most of the usual features of a residential tenancy. For example the tenant is to be responsible for all outgoing including the payment of council tax. However the provisions of the tenancy can be tailored to suit the particular requirements of the parties involved. If the tenancy is of one room only the tenant will need to have rights to use the communal facilities.

If the tenancy is of furnished premises it is usually a good idea to annex to the tenancy agreement an inventory of the items in the premises. Also a deposit may be held by the landlord as security for breakages or future non-payment of rent.

### Mortgages

If the property is mortgaged the bank, building society or other mortgagee will have to give its consent to the granting of the tenancy. This must be obtained before the tenancy is granted or the tenant allowed into occupation. In our experience this is usually given if the mortgagee is shown a copy of the proposed agreement first, but they may have other requirements and charge an administration fee and time must be allowed for them to give their consent. Also, the mortgagee may wish to change the mortgage type to a buy to let mortgage which might be more expensive

### Stamp Duty Land Tax

As the tenancy creates an interest in property, it is possible (although unlikely) that stamp duty land tax will be payable. However, this is the responsibility of the tenant.

### Rent Reviews

There is some control over the rent which has been agreed between the parties: the tenant may apply to a rent assessment committee for a reduction in the rent. However, if the tenant's application is successful he cannot apply again. In addition, once the initial fixed term has ended or more than six months has passed since the beginning of the tenancy, the tenant no longer has the right to apply to the committee even if he has not applied before. This will be the case even if the landlord and tenant enter into a new fixed-term assured shorthold tenancy. The committee can only reduce the rent to an open market rent if it considers that the agreed rent is significantly higher than the landlord might reasonably be able to obtain having regard to the rents payable in other tenancies in the area which

have already been assessed. In our experience this procedure is hardly ever used by tenants.

It is open to the landlord and tenant to agree and include rent review provisions in the original agreement. This is particularly relevant if a long term is envisaged.

During the fixed term which the parties initially agree upon the landlord has no right to seek an increase in rent. However, when the initial fixed term has expired the landlord may propose an increase in rent but if the amount of the new rent cannot be agreed between the landlord and tenant then the landlord has to refer the matter to a rent assessment committee. However in reality the landlord is in a strong position as if the tenant is not prepared to agree to the new rent the landlord may give notice and regain possession of the property. Any revised rent should be agreed before the grant of a further fixed term to the tenant.

### Repossession of the property

Possession of the property may be recovered by the landlord during the initial fixed period if the tenant is substantially in breach of his obligations under the tenancy agreement including being in arrears with rent. However, this will only be possible if there is a written tenancy agreement containing a statement allowing forfeiture of the tenancy in such circumstances. Also, it is illegal for a landlord to evict a tenant from residential accommodation without having first obtained a court order for possession and substantial fines are imposed.

After the end of the fixed term and once the landlord's two months' notice to the tenant has expired, the landlord can apply to the court for an order for possession. There is now an accelerated court procedure for such applications which may not involve a court appearance. Provided that the correct procedures have been followed the court has no discretion but to make an order for possession although not until six months have passed since the beginning of the tenancy (or the beginning of the original tenancy if this is a replacement tenancy).

If you have queries relating to any of the issues covered in this leaflet please contact one of our specialist lawyers at the offices below.