

CROSSMANS MTA

SOLICITORS LLP

Landlords and Tenants



Crossmans MTA Solicitors LLP
5 St. Andrews Street, Cambridge CB2 3AZ

Tel: 01223 362414

Fax: 01223 322475

Email: info@crossmansmta.co.uk

www.crossmansmta.co.uk

CONTENTS

Is there a Tenancy?	3
Terminating Occupation	4
Repairs	4

Is there a Tenancy?

The biggest simple question for all those involved in the letting of residential property is whether or not a tenancy is created. Lawyers have argued for years about this question and Judges have laid down rules in a series of cases. The precise circumstances of each individual case could potentially affect the outcome but at the same time, there are some general rules to be seen.

A residential occupier in property belonging to someone else is, unless they are a squatter, either a tenant or a licensee. The difference is crucial. Tenants have a legal right to stay in the property, which can only be interfered with by a court and licensees are dependant upon the good will and permission of the property owner for their continued occupation. Licence as a legal term whether a driving licence, a licence to sell alcohol or a licence to occupy a property means nothing more or less than permission. If permission has to be given then permission can also be withdrawn.

The key tests are :-

- Is there a letting as a separate dwelling? It may be as little as a room in a house in multiple occupation but there has to be some property that the tenant can point to as his or her own and say that no one is to enter that property without their permission. If a landlord is able to enter for the purposes of cleaning, supplying bedding or other types of services then it is unlikely to be a tenancy.
- There must be a rent in money or moneys worth. Circumstances where services are provided in lieu of rent are unlikely to amount to payment although again, it depends on each individual circumstance. For example, someone whose wages are demonstrably lower by a specific amount to reflect the fact that they occupy a property owned by the employer may find that regarded as a direct deduction of rent and so make the occupier a tenant. The fact that rent is paid by housing benefit is irrelevant.
- There must be no provision of substantial services. Clearly, the difference between a hotel and rented accommodation is that the landlord provides bedding, towels, cleaning and sometimes meals. In a typical rented property, the tenant will provide all these things for themselves.
- There must be no intention to create legal relations and establish a tenancy. This covers everything from allowing a friend or relative to stay briefly in your property to provision of accommodation of holidays and to employment lets where the employment is directly related to the accommodation. Again, individual circumstances can be very complex and the application of this form may differ from case to case.

In all these circumstances, the rules are subject to exception and fine distinctions so if in doubt, it is probably worth seeking advice.

For occupiers it is important to be tenants so as to establish rights of occupation. For Landlords it can be crucial to know precisely what the status of your occupier is so that you can make sure you take the right steps when you wish to bring matters to an end.

Terminating Occupation

This is a major concern for everyone involved in renting residential property. There are a great many urban myths and bad practices are commonplace.

Most lettings are a fixed term tenancy. Indeed, to be provided an assured short hold tenancy must be for a minimum period of 6 months.

Contrary to common belief, a tenant breaking a 6 month tenancy early does not necessarily have to pay the whole of the rent for the entire contractual period. Doctrine of mitigation of loss comes into play meaning that the landlord is under a duty to try and reduce the loss suffered as a result of the tenant's breach of contract. This means trying to re-let the property and giving the tenant credit for any rent received from a new letting. In cases of dispute, it is for the landlord to show that they have done what is reasonably required to re-let the property. You cannot just sit back and let the old tenant pick up the bill.

Conversely, a landlord can serve notice to terminate a tenancy within a fixed period if the tenant has misbehaved in some way for example, causing a nuisance or has established rent arrears.

However, whenever a tenancy is to be ended using the correct form of notice and the applicable notice period is crucial. A failure to do so can invalidate possession proceedings. You should seek advice on any notice that you have given or received before taking action which could prejudice your position.

Terminating Occupation

Repairs in rented properties are a major source of contention. The law is relatively straightforward.

Implied to every tenancy agreement is a clause that the landlord is responsible for the repair and maintenance of the structure and exterior of the building and the services for water, utilities and space and water heating. This means that the landlord must keep the property winter watertight and is responsible for any damage that is not the tenants' fault. So if hooligans put a brick through the window then the repair is the landlord's responsibility whereas if your son does it playing football then it is your responsibility.

Tenants are under a duty to keep the property in tenant like repair and are responsible for any damage that arises from tenant neglect or default.

A landlord's duty to repair only arises when the landlord has notice of the disrepair. If the repair is not reported then the landlord has no duty to deal with it. It is probably a good idea to make all repair notifications in writing so that there is evidence. A telephone call as it may be sufficient in the private sector but unless the business is logged on the computer system, a local authority or social

landlord may later deny all knowledge of the repair. Written notification is therefore a good precaution.

Failure to carryout a repair can entitle the tenant to bring a claim for breach of contract. This could include a claim of damages for loss of amenity that is the loss of the part of the property that is affected by the disrepair. A counterclaim for damages for disrepair can be a good defence for a claim for rent arrears. Many tenants just seem happy to get the works done but in fact their legal rights go much deeper than this. A claim for damages includes not only loss of amenity but could also include losses caused by the disrepair such as redecoration, damage to furniture, clothing and effects, high heating bills from damp in the property and the costs of perusing the claim. In long standing cases this can amount to a substantial sum and is not something the landlord should dismiss or tenants should likely give up.

If you are at all affected by a repair issue we strongly urge you to seek expert advice.

Other MTA Services

Crossmans MTA Solicitors LLP
5 St. Andrews Street, Cambridge CB2 3AZ

Tel: 01223 362414

Fax: 01223 322475

Email: info@crossmansmta.co.uk

www.crossmansmta.co.uk