

Assured Shorthold Tenancy (AST) Agreements

Assured shorthold tenancies (AST) are the most common form of tenancy, most tenancies agreed after 15th January 1989 will be an AST. They are assured tenancies with the added feature that they can be brought to an end by giving at least 2 months notice, as long as the fixed term of the tenancy has expired by this date. The fixed term has to be for at least 6 months and there must be no general right to terminate the tenancy within 6 months of the beginning of the tenancy.

Almost all private residential tenancy agreements nowadays are assured shorthold tenancies. They provide no long-term security for tenants and are subject to minimal rent control, which is why landlords like them. Prior to 28 February 1997 to create an assured shorthold tenancy, landlords had to serve a notice on the intended tenants informing them it was to be an assured shorthold tenancy before the tenancy agreement was entered into. Since 28 February 1997 all new tenancies are assured shorthold tenancies, unless the landlord serves notice stating it will be an assured tenancy (but they rarely do), or the tenant originally moved in under a different type of tenancy.

A tenancy can be an AST if all of the following apply:

- The property you rent is private
- Your tenancy started on or after 15 January 1989
- The property is your main accommodation
- Your landlord doesn't live in the property

A tenancy **can't** be an AST if:

- It began or was agreed before 15 January 1989
- The rent is more than £100,000 a year
- The rent is less than £250 a year (less than £1,000 in London)
- It's a business tenancy or tenancy of licensed premises
- The property is a holiday let
- Your landlord is a local council

Notice periods

AST's usually have a fixed term of at least 6 months at the beginning, sometimes longer and at the end of this period, if no new tenancy agreement is agreed, it will roll over to a statutory periodic tenancy. A tenant may usually leave the property on the last day of the fixed term without giving any notice (unless the tenancy agreement says differently), but if they stay just one day into the periodic term, then the landlord and the tenant are liable to give notice as set out in the tenancy agreement, which is usually at least 4 weeks or a calendar month, depending on how often the rent is paid, for the tenant and a minimum of 2 months for the landlord.

Residential tenants and most residential licencees are covered by the Protection from Eviction Act 1977. This makes it an offence to unlawfully evict a tenant. The tenant would also be entitled to sue for unlawful eviction. Lodgers who share the property with the landlord are excluded from the Act. This means it's vital for a landlord to follow the law in order to recover possession of the property.

Recovering possession

To recover possession of a property let on an assured shorthold tenancy depends on whether the date the landlord wants possession is still within the fixed term or in the periodic term of the tenancy.

Possession in the periodic term of the AST

If the possession date is or will be in the periodic term, the landlord can serve the tenant using a Section 21 notice and as such does not have to give any reason for the possession. The Housing Act 1996 amended the section 21 of the 1988 Act by requiring this notice to be given in writing. The Section 21 form has different sections and landlords must be careful to fill it in correctly, particularly with regard to whether the notice is being given during the fixed or periodic term. If the tenants do not vacate the property by the date given, then the landlord must seek a possession order through the Court. As long as the Landlord has followed the procedures correctly, the Court will have no option than to evict the tenant. However, if the tenant's deposit has not been protected in accordance with the deposit protection legislation, the court will not have to give the possession order.

Seeking possession based on a section 21 notice entitles a landlord to use the accelerated possession procedure, instead of the normal possession procedure. As long as the case is prepared properly, and the deposit has been protected, it is usually decided on paper and is dealt with much more quickly. If the paperwork is not in order or the case is defended the Court will either dismiss the claim or list it in the normal possessions list and this will then take more time.

Possession within the fixed term of the AST

Possession can only be sought during the fixed term, if the tenant has breached the tenancy agreement and/or the landlord served notice on the tenant before the tenancy began. A Section 8 notice will need to be served on the tenant in order to gain possession. This relies on a ground or grounds for possession being given by the landlord. There are 17 grounds in total. Grounds 1-8 are mandatory grounds in other words the court must give possession to a landlord if they are met and grounds 9-17 are down to the discretion of the court. The most common ground used in Court is rent arrears (Ground 8), others include damage to the property, anti-social behaviour and using the property for illegal purposes.

The landlord must serve notice seeking possession of the property on the tenant before starting court proceedings.

- A landlord must give the tenant the following amount of notice:
Grounds 1,2,5,6,7,9 and 16 - 2 months notice
- Grounds 3,4,8,10,11,12,13,15 & 17 - 2 weeks notice
Ground 14 –On service

Mandatory Grounds

Ground 1 - the Landlord Residence Ground

If the property was the landlord's only or principal home before the tenancy began or it is needed to live in as their or their spouse's only or principal home. A new landlord who bought the property during the tenancy cannot rely on this ground.

Ground 2 - the Mortgage Ground

Where the rental property is subject to a mortgage, which was granted before the tenancy started and the mortgage lender wants to sell it in vacant possession, normally to pay off mortgage arrears.

Ground 3 - the Holiday Let Ground

The tenancy is for a fixed term of not more than 8 months and at some time during the 12 months before the tenancy started, the property was let for a holiday.

Ground 4 - the Student Letting Ground

Allows a landlord, which is an educational institution, such as a university or college, to recover possession where the tenancy is a fixed term tenancy of not more than twelve months and during the twelve months prior to the tenancy the property was let to a student.

Ground 5 - the Religious Use Ground

The property is held for use by a minister of religion and he/she now requires the property to live in as a residence from which to perform their duties.

Ground 6 - the Redevelopment/Renovation Ground

When a landlord intends to demolish or redevelop the whole or a substantial part of the property and cannot do so with the tenant living there. This ground cannot be used when the landlord (or someone before them) bought the property with an existing tenant, or where the work does not require the tenant to move out. If a possession Order is made the landlord must pay the tenant's reasonable moving expenses.

Ground 7 – the Inheritance Ground

The former tenant, who must have had a contractual periodic tenancy or statutory periodic tenancy, has died in the 12 months before possession proceedings started and there is no one living there who has a right to succeed to the tenancy.

Ground 8 – the Arrears Ground

The tenant must owe at least 2 months rent if the tenancy is on a monthly basis, 8 weeks rent if it's on a weekly basis, or 3 months rent more than 3 months in arrears if on a quarterly basis, both when the landlord gave notice seeking possession and at the date of the court hearing.

Discretionary grounds

Ground 9 – the Alternative Accommodation Ground

There is suitable alternative accommodation available for the tenant, or will be when the court order takes effect. When considering if the accommodation is suitable, the Court would need to be satisfied the new property is of a similar type and price, give the same type of tenancy and would be equally convenient to the tenant's place of work. Where possession is ordered the landlord also has to pay the tenant's moving costs.

Ground 10 – the Poor Payer Ground

The tenant is behind with their rent, both when the landlord serves notice seeking

possession and when court proceedings begin.

Ground 11 – the Late Payer Ground

The tenant is persistently late in paying the rent. This is usually relied on as a back up to grounds 8 and 10. There do not have to be arrears at the time of service of any notice, commencement of proceedings or the possession hearing as long as it can be established that the tenant has either failed to pay rent for an extended period or has been persistently late in paying rent.

Ground 12 – the General Breach Ground

The tenant has breached any of the terms of the tenancy agreement except the obligation to pay rent. As long as the agreement has been breached the Court can Order possession even if it has been rectified by the time of the possession hearing.

Ground 13 - the Tenant Damage Ground

The tenant has failed to look after, or has damaged the property or any common parts. This includes damage caused by anyone staying with tenant and would include damage caused in shared external hallways etc.

Ground 14 - the Bad Behaviour Ground

The tenant or a person staying with or visiting them, causes or is likely to cause a nuisance to someone either living in or visiting the locality. Or they have been convicted of using the property for illegal or immoral purposes or have committed an arrestable offence in or near the property.

Ground 14A - the Domestic Violence Ground

When tenants are a married couple, civil partners or co-habitees and one of them leaves permanently because of domestic violence or the threat of domestic violence by the other towards them or any of their family living with them. This ground can only be used by landlords who are non-profit registered providers of social housing, registered social landlords or charitable housing trusts. Other landlords should use ground 12 or ground 14.

Ground 15 - the Furniture Damage Ground

Furniture in the property provided by the landlord as part of the tenancy, has been damaged by the tenant or any person staying with them.

Ground 16 - the Former Employee Ground

The property was let to an employee of the landlord, or a former landlord, and then ceases to be an employee of the landlord.

Ground 17 - the Lying Tenant Ground

The tenant gives a false statement to induce the landlord to enter into the tenancy or encourages someone else to do so. It is necessary to prove inducement, so the most obvious example would be where the tenant encouraged someone to give a false reference for them.

Which Grounds should be listed?

It would be wise for a landlord to list all the grounds applicable, as the situation could change by the time the case is heard in Court and having more evidence will make the case stronger. However, if landlords refuse to take payments from tenants or accept any other positive changes to the situation, the court will take that into consideration.

If a possession order is granted, the tenant must leave the property on the date

given which in some circumstances can be immediately. If they fail to do so the landlord can send in baliffs to evict the tenants.