

Shared House (Joint Tenants) or Individual Rooms (Single Tenants)?

Where a landlord lets to multiple and usually unrelated tenants there are two main ways of doing this:

- (1) **As a Joint Tenancy**, where all the tenants share the house and all its facilities and they do not have exclusive possession of any part. Rooms are allocated between the tenants on a tenant agreed basis. There is one tenancy agreement which includes all the tenants.
- (2) **Individual Tenancies** where the house is let on a room by room basis (sometimes called bed-sits), the tenants having exclusive possession of one a specific room but sharing facilities such as the common areas, lounge, cooking, washing etc.

There is also a 3rd possibility which is that of creating *licences* as opposed to *tenancies*. There are obvious advantages for landlords in this as it means that the lettings don't come under the statutory rules governed by the Housing Acts 1988 and 1996 for Assured Shorthold Tenancies (AST).

However, this is a complex legal area with several cases (note 3) as precedents. What it all boils down to is that where no individual rooms (bedrooms) are granted or specified for individual residents, but rather residents come and go at different times and use whatever room is available to them, then, in theory, no tenancy is created. You should use this option only if you can confidently justify this as a licence situation. Remember, it's not what you call your agreement, licence or tenancy; it's the situation that counts.

Housing with multiple occupants comes under HMO (House in Multiple Occupation) designation where there are **3 or more tenants from 2 or more households**, and will be a licensable HMO where **3 or more storeys are occupied by 5 or more people who form more than one household**, or where the local authority has used its discretionary licensing powers. Special HMO safety provisions are involved. Also, from 6th April 2010 any new tenancy household with between **3 and 6** unrelated occupants will require local authority planning permission under Use Class C4. See: <http://www.landlordzone.co.uk/pdf/LicensingPlanningRules.pdf>

There are pros and cons for each tenancy arrangement for both landlords and tenants:

Joint Tenancies are the most popular for groups who don't change during the course of the tenancy, for example, families or groups of students where all adults must sign the tenancy agreement (note 1). They have the big advantage for landlords of "joint and several liability", which means that all tenants are responsible for all costs both as a group and also individually – this means if the landlord could trace only one tenant he could claim all arrears from the one tenant, or her guarantor if there is one, or where just one tenant defaults, from all the rest.

Where joint tenants are under an Assured Shorthold Tenancy (AST), and where it is their main residence, they are responsible for council tax direct to the local authority, except where they are students, in which case they are exempt. They will also be jointly responsible direct to utilities suppliers for all services to the property.

Difficulties can arise when a single tenant decides to leave. The group as a whole is responsible for the whole rent, so it's a matter of the tenants themselves finding a replacement tenant and jointly signing up a new agreement for the remainder of the term, or a full new term. Alternatively, the

leaving tenant can continue to pay her share, or the remaining tenants can agree to share the additional costs of the missing rent and have one less resident.

Difficulties also arise in this situation over the deposit. The simple solution is for the new tenant to pay-off the leaving tenant with their full deposit amount, agreeing to take over the leaving tenant's liabilities. Otherwise the landlord may be faced with establishing liabilities at that point with an outgoing inventory, taking and protecting a new deposit and paying off the leaving tenant after any deductions. The landlord has the option of protecting the individual deposits as a one whole, or individually for each tenant – assuming he uses the custodial tenancy deposit scheme (DPS).

Individual Tenancies with shared facilities (note 2). These are advantageous where tenants come and go, though landlords should be conscious of compatibility issues. Introducing new tenants into a shared house must be handled with care when the landlord is in effect imposing a new resident on existing ones. Therefore landlords may wish to involve the existing residents in the final decision.

Although this arrangement is far less common than joint tenancies there are some advantages beyond that of the ease of change of tenants. The landlord can easily access the common areas for inspections and repairs as, unlike in a shared house, he has a right to enter. Also, in most circumstances the landlord will be able to charge higher rents.

The disadvantages for the landlord include the loss of joint and several liability, the higher risk of an incompatible tenant driving out good tenants and, as the house as a whole is not controlled under one tenancy, the landlord must be responsible for paying any council tax liabilities and utilities changes. These amounts are normally calculated and taken as part of the rent. The additional factor here is that if a tenant defaults on her rent the landlord is also left with the tenant's council tax and utilities liabilities.

Notes:

- (1) The maximum number of persons able to hold a joint interest in land is 4 (Trustees Act 1924 s34) Where there are more than 4 joint tenants the first 4 should be made tenants, with subsequent residents being added to the agreement as occupiers. A special form of agreement for this purpose has been developed by Legalhelpers.co.uk – see:
- (2) Single tenants in a multi-occupied house can sign a standard AST agreement providing it is made clear which part or room is intended for the exclusive possession of that tenant. Ideally in addition a floor plan with the demise outlined in red should be attached to the agreement.
- (3) Significant case law on multiple occupied premises as licence situations include: *Street Mountford (1985)*, *Uratemp Ventures Ltd v Collins (2001)*, *A.G. Securities v Vaughan (1988)* and *Antodiades v Villiers (1988)*. The most important of these which supports the landlords licence case in multi-occupied, and is still considered the key case and good law despite its age, is *A.G. Securities v Vaughan (1988)*. This involved a landlord letting rooms in a property on licences. The House of Lords, (the highest Court at the time) decided it was a licence rather than a tenancy; the key principle was that the landlord had not let the property to the occupiers with exclusive possession, nor indeed any part of it.

Suitable Tenancy Agreements for these arrangements are available for LegalHelpers