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TENLAW: Tenancy Law and Housing Policy in Multi-level Europe

Tenant Rights Brochure for **ENGLAND and WALES**

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1. Introductory information

- **Give a very brief introduction on the national rental market**

- **Current supply and demand**

The housing market in England and Wales is dominated by owner occupied dwellings (65%), slightly below the EU average 71%. Both the number and proportionate share of owner occupied dwellings increased steadily throughout the twentieth century and continuing until 2006. Since then the number has remained relatively static, but the inexorable increase in the proportion of owner occupiers went into reverse as a result of the impact of the financial crisis on the housing market. Almost all of the remaining dwellings are rented. The rented sector falls into three components:

Renting without a public task		
Private renting	18%	4.3 million
‘Social’ renting/renting with a public task	17%	4.3 million
consisting of:		
Housing associations (social)	(10%)	(2.4 million)
Local authorities (public)	(7%)	(1.9 million)

The private rental sector is largely unregulated and is increasing its share of the market, to such an extent that 2012-13 is the first year that private rentals have exceeded the combined total of rentals in the public/social sector. There is a significant under supply of dwellings to rent, particularly in the larger cities, and this has resulting in sharply rising rents in many areas (as of spring 2014, but predicted to continue for many years). There are also long waiting lists for the allocation of public/social housing.

- **Main problems of the rental market from the perspective of tenants**

These are:

- gross under supply of public/social housing and associated long waiting times;
- strong demand for private rented accommodation;
- rising rents;
- lack of private sector security under shortholds leading to a large churn of tenants;
- poor condition of rental properties;
- high and sometimes illegal fees for handling lettings;
- rent arrears;
- antisocial behaviour; and
- disputes about the return of deposits.

- **Private renting**

The sector

Private landlords operate in a regime of market rents and grant assured shorthold tenancies which lack long term residential security. Private landlords are

predominantly individuals: these make up nine in ten of landlords and are responsible for seven in ten of all private lettings. A further 5% of landlords are companies collectively responsible for 15% of dwellings, including rentals linked to employment. More than three quarters (78%) of all landlords own a single dwelling for rent, and few landlords are full time. A small proportion of housing association stock is also let out at market rents.

The private rented sector has a wider and more varied stock of accommodation than the public/social sector. There is more defective housing, central heating is present in only 81% of the stock and boilers tend to be older and less efficient; indeed energy efficiency is considerably worse in the private rented sector than any other type of housing. Although there are excellent homes to rent, there is a shocking 38% that are not classed as decent, including 9% experiencing damp problems.

Private renters are predominantly young, the largest group being aged 25-34, the majority of whom are working either full time or part time, with a significant subsector of students in full time education. Typical tenants are single or couples without dependent children, so that the typical size of household is one or two, though some families do also rent privately. Ethnicity of tenants is as diverse as within the wider population. Tenants renting privately move far more often than the average.

Outlay on housing is highest in the private rental market. Currently (2012-13) the average private sector rent in England and Wales is £646 per month. This average conceals major regional variations, with average rents in London up to twice as high, followed by the south east of England. Average rents in England and Wales are rising quicker than the rate of inflation. It is forecast that average monthly rents will rise to £800 by the middle of 2015. Private renters typically spend in excess of 40% of gross income on rent.

Assured shorthold tenancies

Assured shorthold tenancies are the most common form of private residential tenancy provided in the private rented sector. This applies where:

- accommodation is let as a separate dwelling (even if some facilities are shared);
- as the tenant's principal home; and
- no exclusion applies.

Their characteristic is that security is limited to an initial period of six months. In England and Wales (unlike Scotland) the assured shorthold is the default form of tenancy granted by a private sector landlord, so no warning notice needs to be served in advance of the creation of the tenant. As a result, assured shortholds account for virtually 100% of the private rented sector. During the initial six month period the grounds on which the landlord can recover possession will be severely limited. It is usual to grant an initial fixed term of six months or a year, and it is possible for a shorthold to be much longer, though a shorthold may also be periodic from the outset. The tenant will be protected during this period and it will be followed by a periodic continuation. However, when contractual rights are ended the landlord will have an automatic right to possession (Housing Act 1988 section 19A).

Rents are subject to market negotiation. The landlord can only increase the rent during the fixed-term using an express rent review provision. Normally, rent increases are taken care of on renewal, the landlord ending the tenancy and giving

the tenant notice to renew at an increased rent. This will reflect prevailing market conditions.

However long the tenant remains in possession his tenancy will remain an assured shorthold; beyond his contractual rights there is no additional security of tenure and, to obtain a possession order, a landlord need only serve an appropriate notice and will then have an automatic entitlement to repossession. As a result shorthold tenants generally leave under a notice to quit.

Much more generous rights are available to those few ageing tenants, called 'Rent Act tenants' whose tenancy was first granted before 15 January 1989.

Advice

These notes are intended to assist potential shorthold tenants, but it is important to get up to date authoritative guidance; good places to start are the official government website www.gov.uk which has a guide to 'Private renting for tenants: tenancy agreements' and the website for Shelter in England (<england.shelter.org.uk>).

- **Occupation agreements lacking assured shorthold status**

A wide range of tenancies and licences are not assured:

Sharing arrangements:

- Property held on a (non-exclusive) licence;
- Accommodation that is not self-contained;
- Resident landlord lettings;
- Serviced accommodation;
- Tied accommodation of employees.

Not principal home:

- Company lets;
- Second homes;
- Holiday lets and out of season holiday lets; and
- Student lets and out of term lets.

These will operate as contractual arrangements, as either tenancies or licences. If the arrangement does create a tenancy there will be minimum periods for notices to quit but little other regulation. In some cases there is protection against eviction, i.e. the requirement to obtain a court order before evicting the occupier. Some of the above lack even this guarantee of due process.

- **Housing with a public task**

This is the way the TENLAW project describes the public and social sectors.

Tenants who are renting publicly or socially tend to be middle aged or elderly, with housing associations particularly housing many of those aged over 65. Although there are many tenants in employment, they are proportionately more who are economically inactive, either unemployed or retired, with fewer childless couples and

more conventional families and lone parents, but people living alone the largest single group. Social/public tenants tend to be rather static.

Stock in the sector includes a lot of purpose built flats and the property is newer, on average, than that owned by private landlords. They are on the whole in better condition with central heating, more modern boilers, better insulation and better all-round energy efficiency than private rental stock. Around 15% of homes in the sector did not meet the decent homes standard, but good progress in dealing with these is being made in the social and public sectors.

Average rents paid in the public/social sector in 2012-13 was £354 a month, just over half the private sector average. This reflects both the subsidies paid to public/social providers and also the types of property in each sector. Rents are increasing and for new build homes in future can be set at up to 80% of market rents. Housing benefit is paid to two thirds of those renting publicly or socially, including a third of those in the sector who are working.

- **(Fully) Assured Tenancies granted by housing associations (social sector)**

Housing associations are the second largest group of landlords. They continue to be called Registered Social Landlords in Wales and are commonly known as social landlords, even if in England they are properly known as Private Registered Providers of Social Housing. They are expected to grant (fully) assured tenancies in normal circumstances. Private sector landlords may confer full residential security by notice but this would be very unusual.

A tenancy under which a dwelling-house is let as a separate dwelling is an assured tenancy if the landlord is a social sector landlord (as described above) and the tenant is an individual who occupies the dwelling-house as his only or principal home (Housing Act 1988 section 1). The exceptions listed above also lack full assurance.

Rents in the social sector are 'low cost' that is below market rates, the exact basis depending upon the regime for public subsidy of housing through which the home was built or acquired. Social tenants pay less, the average net rent in this sector being £83.20 per week in March 2012, around 30% of their gross income on rent.

A (fully) assured tenant has long term residential security. The tenancy can only be brought to an end by the landlord against the wishes of the tenant by obtaining a possession order. The grounds on which possession can be obtained are limited, especially during the good behaviour of the tenant.

- **Secure tenancies granted by local authorities (public sector)**

Large scale public sector housing dates from the First World War, with large scale redevelopment after the Second World War and in particular during the 1960s and 1970s. The status of being a secure tenant was important as the passport to having the Right to Buy, though this could only be relevant to a new tenant taking today after serving a qualification period of five years. The sector has declined in size since 1980 partly as a result of council tenants exercising their Right to Buy and partly as a result of the government policy of subsidising housing associations and encouraging

large scale voluntary stock transfers to housing associations. Few homes have been built recently in the public sector.

A secure tenancy is one granted by a local authority or other public sector landlord under the Housing Act 1985. The basic requirements are similar to those in the private sector, that is

- a house (a technical term also including flats);
- let (a term also including public sector licences);
- as a separate dwelling (with no accommodation shared);
- to an individual;
- who occupies as his principal home; and
- no exclusion applies.

Full residential security is conferred on the tenant. So long as the tenant behaves himself he should have accommodation indefinitely, and if he is asked to move (for example to enable the landlord to carry out work to the property) he should be offered suitable alternative accommodation. When the tenant dies, a secure tenancy may be inherited on two occasions. Tenants have information rights and some rights to be consulted. Social landlords are expected to charge rents that are reasonable. Where the landlord opts to increase rent and the tenant disagrees then the tenant has the right to apply to challenge the fairness of the proposed increase.

- **Limited security in the public sector**

There are a number of circumstances where a tenant who would otherwise be a secure tenant has limited security usually a fixed term. Examples are:

- introductory tenancies granted to those new to the social sector;
- flexible tenancies – fixed term tenancies for a period usually of at least five years;
- temporary accommodation to homeless people;
- demoted tenancies after antisocial behaviour; and
- family intervention tenancies granted after domestic violence.

There is no right to buy, no possibility of succession and strictly limited security of tenure.

- **Recommendations to foreigners on how to find a rental home**

1. The first thing to check is that the potential tenant has the right to live in the United Kingdom, since it would be unwise for a person liable to be removed from the country to sign up for a lease. EU/EEA citizens may have the right to live here either because they are economically active or job seeking or because they are self-supporting.
2. Foreigners should avoid the black market in severely overcrowded low-quality rental properties and 'beds in sheds'; these very basic dwellings are illegal. There is also a considerable market in unauthorised sub-letting of social sector housing, whereby the tenant charges sub-tenants a significantly higher rent than he is paying. New offences were introduced in October 2013 in respect of subletting without consent. These practices are likely to attract the attention of the immigration authorities.
3. Also avoid squatting in residential buildings as this has recently been criminalised and conviction generally leads to a custodial sentence.

4. EU/EEA citizens are likely to be eligible to apply for public/social housing provided they are not self-supporters; details are complex and are set out in outline below (point 5) and in more detail in the National Report for England and Wales (para 6.2). However, in practice it will be very difficult to secure an allocation of housing in a short time scale. It may be wise for an immigrant from another EU state to sign up on the waiting list of a public or social landlord (see 5 below), but realistically they need to turn to the private rental market.
5. Most lettings agents operate online and particulars of property to rent can be obtained by searching. This can readily produce an indication of realistic rent levels. Potential tenants should not be charged for particulars nor for registering as a person seeking accommodation. In many areas there is very strong competition for private rental property.
6. Property should be inspected before agreeing to a rental. It is advisable for a foreigner to ask a native speaker to accompany them to a viewing of a dwelling in order to avoid possible communication problems or misunderstandings. Students should contact the international office of the university they will attend. Foreigners coming to England or Wales for work may ask their employer or colleagues how to find an apartment or whether the company has special dwellings for their workers.
7. Tenants will be offered an assured shorthold tenancy. Unless a longer period is agreed this gives a minimum period of security of six months. Usually there is an initial fixed term of six months and if so the tenant will be liable for rent for the whole of the six months even if they leave earlier.
8. Landlords will invariably offer a written agreement and it is important that the tenant understands this fully. This guide is intended to assist potential tenants but is not a substitute for proper advice. Although landlords are unlikely to agree major changes to the draft form supplied, some details are usually negotiable.
9. A charge can be made for the tenancy agreement and for checks such as credit reference checks.
10. It will almost invariably be necessary to pay rent in advance and in addition to pay a deposit (probably two months). It is important to ensure that the scheme for the protection of tenants' deposits (see 2.2, 4.3 below) is implemented.

○ **Main problems and “traps” in tenancy law from the perspective of tenants**

1. Finding affordable but legitimate accommodation.
2. Lack of understanding that security of tenure under a shorthold is limited; conversely commitment to rent for a fixed period which the tenant afterwards wishes to break.
3. Commitment to a joint tenancy which the other joint tenant(s) wish to break; the person who wishes to remain has no legal right in this situation.
4. Ensuring that the standard of the property is satisfactory and that all installations are working; it is much easier to arrange these matters in advance.
5. Ensuring that the deposit is lodged in a proper tenancy protection scheme and that landlord and tenant sign an inventory of the contents and condition of the property which the tenant has checked.

○ **Important legal terms related to tenancy law**

Assignment	the transfer of an existing lease or the document that effects the transfer.
Common parts	property that all tenants may use although the landlord retains control and responsibility over it; tenants often pay a service charge for the upkeep of common parts.
Commonhold	a freehold flat in a multi-unit building in which the owner has a common interest in the common areas along with the building's other owners (called condominium in America). These are rare since most flats are leasehold.
Deposit	tenant's money placed with the landlord as security for rent and damage.
Dwelling	a unit of residential accommodation; if in a building this is called a dwelling-house.
Freehold	an absolute ownership interest in land.
Habitable	a dwelling in which inhabitants can live free of defects that might harm health and safety.
Housing association	a private, non-profit organization providing low-cost housing; they commonly receiving public funding and some of their housing is allocated to people entitled to state assistance with housing.
Housing with a public task	provision of housing that is not determined by the free market, but through some form of state intervention; (also public/social housing).
Intermediate tenure	a form of tenure that is between ownership and renting, which allows a tenant over a period of time to become the owner of the property.
Joint tenancy	holding of property by two or more persons, each having the right of survivorship.
Landlord	a person or company which lets out property.
Lease	a contract by which the owner of land grants the exclusive right to occupy and use the property in exchange for a rent; (when short in duration, the usual term is tenancy).
Leasehold	ownership of a house or flat under a long lease (i.e. longer than 21 years in duration), with payment of a ground rent.
Let	to grant possession of land in return for a rent.
Licence	an agreement (between the licensor and licensee) granting non-exclusive use of land.
Mortgage	a charge on land created as security for the payment of a specified debt (equivalent to the civil law hypothec).
Notice to quit	a written notice ending a tenancy agreement (usually given by the landlord, less often by the tenant).
Nuisance	a condition, activity or situation interfering with the enjoyment of land.
Occupation	factual possession of land of land (contrast possession).
Overcrowding	more people living in a single dwelling than are allowed by law.

Periodic tenancy	a tenancy that automatically continues for successive periods unless terminated at the end of a period upon notice.
Possession	the right to exercise exclusive dominion over land (contrast occupation).
Private	housing provided for by private landlords, for which the free market determines the rent.
Public	housing provided by a local authority.
Rent	periodic consideration paid under a lease for the use of land.
Repair	returning property to a state of repair; this does not require the curing of inherent defects.
Repossession	(legal) action by a landlord to take back property let.
Residential	related to a residence; non-commercial.
Service charge	a charge for keeping residential property or common parts in repair.
Social	low cost housing provided by a housing association.
Sublease	a lease by a tenant to a subtenant.
Surrender	termination of a lease when the landlord accepts the return of possession.
Tenancy	a lease of land, usually short term.
Tenancy agreement	the document by which a short term tenant holds.
Tenant	one who pays rent for the possession of land under a lease.
Wear and tear	deterioration caused by ordinary use; the tenant is not liable for fair wear and tear.

2. Looking for a place to live

2.1. Rights of the prospective tenant

- **What bases for discrimination in the selection of tenants are allowed/prohibited? What about, for example, status as a foreigner, student, unmarried partner, or person with a short-term work contract?**

Discrimination in relation to a number of protected characteristics are prohibited by the Equality Act 2010; these are age, race, religion or belief, sex, sexual orientation, gender reassignment, marriage and civil partnership, pregnancy and maternity and disability. A landlord may not discriminate against any person on the terms on which accommodation is offered for 'let' (a term here including granting a licence) in relation to any of these protected characteristics. This also applies to the activities of letting agents. The leading authority is *Preddy v. Bull* [2013] UKSC 73 concerning Christian hoteliers who policy was only to let double rooms to married couples; these hoteliers discriminated directly against two homosexual men in a civil partnership when they refused to let them a double room. The same would apply to a landlord or letting agent. An example of discrimination on sexual grounds is *Ghaidan v. Godin-Mendoza* [2004] UKHL 30 concerning the provision of the succession regime in the Rent Act 1977 allowing succession rights to surviving spouses and those who 'lived together as husband and wife'; this had to be interpreted to include same sex couples so that a homosexual partner could also succeed.

There is an exception for small premises where the landlord or a family member is resident in another part of the premises and shares some accommodation. Public and social landlords are subject to more onerous equality duties, though there are very limited circumstances where accommodation can be provided to people of one sex exclusively.

It is illegal for a landlord or other service provider to discriminate because a person is disabled. Disability is defined as a physical or mental condition that has a long-term, adverse effect on a person day-to-day life. Disability discrimination occurs when a disabled person is treated less favourably than a non-disabled person, and they are treated this way for a reason arising from their disability, and the treatment cannot be justified. A letting agent would be treating a disabled person less favourably if they refused to serve them when providing a service, offered a reduced service or a worse standard of service or made an offer on poorer terms.

Aside from statute there is also a Code of Practice on Racial Equality in Housing 2006 which provides guidance. Landlords are quite entitled to satisfy themselves as to the immigration status of potential tenants.

- **What kinds of questions by the landlord are allowed (e.g. on sexual orientation, intention to have children etc)? If a prohibited question is asked, does the tenant have the right to lie?**

Questions asked by a landlord about protected characteristics under the equality legislation (including both sexual orientation and maternity) are not prohibited but may demonstrate discriminatory behaviour. Refusal to let to someone intending to have children would represent direct discrimination. Indirect discrimination occurs

where a person adopts a criterion placing another at a disadvantage because of their protected characteristic which amounts to an unlawful discrimination unless justified as a proportionate means of achieving a legitimate aim. An example is a term precluding a tenant allowing any occupier to make a noise that can be heard outside the flat, which might be a proportionate way of preventing nuisance to neighbours.

- **Is a “reservation fee” usual and legal (i.e. money charged by the landlord to allow the prospective tenant to participate in the selection process)?**

An accommodation agency may not charge a tenant for supplying the tenant with lists of accommodation nor for registering a person as someone seeking accommodation (Accommodation Agencies Act 1953).

A non–returnable ‘holding deposit’ is often required when a tenant agrees to rent a property, to cover the period until he signs the tenancy agreement. This deposit is usually deducted from the security deposit when the tenant moves in. If the tenant changes his mind, his holding deposit will not be returned. There may be circumstances when a tenant is not able to move into the property for reasons beyond his control, but it will be unfair for the agency not to return the holding deposit if the landlord chooses not to go ahead with the tenancy, as Office of Fair Trading Guidance states that the tenant should then receive a refund of all pre-payments.

A letting agency can charge a fee, often called an ‘administration fee’ once a contract has been agreed to accept a tenancy, covering matters such as the cost of preparing the tenancy agreement, checking references, making up the inventory and any other costs of setting up the tenancy. Administration fees in London average £220 (2013) and can be as high as £600.

- **What kinds of checks on the personal and financial status of the tenant are usual and legal (e.g. the landlord requiring an independent credit report)?**

Prior to letting a dwelling, the landlord will often be concerned as to whether or not the tenant will be able to honour the tenancy agreement. Checks usually include credit referencing, bank referencing, employment referencing, and landlord referencing as well as personal referencing. A landlord may ask for a salary statement and, although he cannot compel the prospective tenant to produce one, a refusal may adversely affect the tenant’s standing. In addition to direct enquiries from the tenant, the landlord may resort (after securing the permission of the tenant) to a credit information agency.

- **What is the role of estate agents in assisting the tenant in the search for housing? Are there other bodies or institutions assisting the tenant in the search for housing?**

Estate agents involved in connecting landlords to potential tenants are called letting agents. Their tasks include advertising properties available to rent, showing tenants round available properties, drawing up tenancy agreements and inventories, checking references and renewing tenancy agreements. Letting agents usually operate either through high street offices or online sites, or both. Those operating in a local area are easily traced by an internet search.

- **Are there any accessible “blacklists” (or equivalent mechanisms) of bad landlords/tenants? Is there a system for rating and labelling preferred landlords/tenants?**

No. The private rented market has developed a sophisticated tenant referencing industry with a number of operators offering swift service. Landlords would have to pay to use these services. A tenant who would fail a credit reference may effectively be blacklisted. There are no corresponding checks on landlords, though the Welsh government is proposing (2014) to introduce registration of private landlords in the principality.

2.2. The rental agreement

- **What are the requirements for a valid conclusion of a rental contract (is written form necessary; is registration necessary and if yes, what kinds of fees apply lawfully)?**

A residential shorthold tenancy can be created informally provided that the initial term of the letting is 'not exceeding three years'. If it is to be a legal tenancy it should take effect in possession and otherwise it will operate as a contract for a tenancy. In practice, though, all tenancies are granted in writing, not least to ensure that the landlord is able to enforce terms that are clear.

What is the mandatory content of a contract?

A tenancy agreement can only be concluded by an agreement to grant exclusive possession of self-contained accommodation containing agreement on the parties, property and price (ie the rent). A lease must have a term, either a fixed term or periodic, but if none is specifically agreed this will be implied from the payment and acceptance of rent. These matters can be agreed orally, but they should be recorded in writing. It is necessary that the object of the letting is for residential purposes, so that the tenancy is assigned to the private sector, but it is not necessary to state that the tenancy will be an assured shorthold as this is the default for a private sector letting.

- **Which data and information should be contained in a contract?**

Landlords invariably insist upon a written tenancy which should cover the mandatory terms stated above, and also:

entry date and term - usually a fixed term followed by a periodic continuation (either weekly, fortnightly, four weekly or calendar monthly);

rent - how often it is to be paid, and whether the advance; a weekly tenant must be provided with a rent book giving the name and address of the landlord and certain other details.

services - such as heating and payments for them;

common parts – use, maintenance and service charge;

use – residential use and other terms about use and respect for others;

subletting and assignment – usually an outright prohibition;

condition – repairs (other than those within the landlord's responsibility by statute), any obligation to redecorate, and usually an outright ban on alterations; and

ending the tenancy; etc.

- **Duration: open-ended v. time limited contracts**

The tenancy agreement should state the date from which the term is to run, though it may be implied that this is immediate if nothing else is specified. It is unusual for a residential tenancy to be preceded by a contract, and much more common for the term to run immediately from the grant.

A shorthold granted by a private sector landlord does not require a fixed term in either England or Wales, so it may be a fixed term or periodic. (In the past it was necessary to grant a six month term but this requirement was dropped in 1996.) Either way the landlord will not be able to secure possession simply by serving notice to quit within the first six months unless there is a major breach of contract by the tenant. It is usual to grant at least an initial fixed term of six months (which binds the tenant) though of course the tenant may wish to negotiate a longer deal; year-long deals are common in university towns. There is a small segment of the market where terms of several years are granted in return for a premium.

- **What terms regarding rent payments must be contained in the tenancy?**

Terms to be included are:

- the amount of rent;

- the intervals when this is payable; rent days will be stated in the tenancy agreement and are usually the same as the period of a periodic tenancy.

- payment in advance; this is invariably required by landlords, and since the law presumes that rent is payable in arrears if no other arrangement is made, it is necessary to include this term expressly;

- a method of payment, usually by electronic transfer or standing order;

- any other payments for utilities, service charge and/or council tax.

A weekly tenant will have a rent book basic containing information about the tenancy, and rent demands also require contact details of landlords. There is no objection to the landlord taking a premium when granting an assured tenancy, but this is only usual if a rather longer term than the usual year is granted.

- **Repairs, furnishings, and other usual content of importance to tenant**

Section 11 of the Landlord and Tenant Act 1985 imposes on the landlord the obligation to carry out the major repairs if the term is for seven years or less. The landlord may not contract out of these obligations. The obligation attaches to the landlord under a lease but not to the licensor under a licence. A tenant may apply to the court for an order for specific performance of the landlord's repairing obligations, and he may also claim damages. An obligation to repair only arises when notice has been given to the landlord.

The landlord is responsible for all things which relate to the structure and exterior of the building, including the roof, guttering, chimneys, plasterwork, walls, windows and doors. The landlord is responsible for ensuring that installations within the flat for the supply of key services utilities are kept in good condition. This includes installations for space heating and hot water. It also includes the pipes supplying gas, electricity or water, flues for gas boilers and ventilation, and drains. Problems can arise with

pipes outside the flat. The landlord is responsible for ensuring any gas appliances are safely-installed and working properly and securing regular inspections by a qualified CORGI inspector.

The repairing covenant in the Landlord and Tenant Act 1985 is limited because it only relates to defects which are the consequence of disrepair. It does not apply to inherent defects arising from the method of construction of the dwelling. A requirement to secure fitness is implied in furnished lettings, which may explain why many are unfurnished, but otherwise (in unfurnished lettings) there is no implied term as to fitness for human habitation.

Some tenancy agreements impose more onerous obligations on the landlord, for example a requirement to keep the premises in 'good condition'.

- **Is it legal for the landlord to shift the costs for certain kinds of repairs to the tenant?**

The tenant is usually responsible for minor repairs and internal decorations unless the disrepair is caused by disrepair within the landlord's sphere or wear and tear, then it becomes the landlord's responsibility (*Warren v. Keen* [1954], CA). Tenants do not have to redecorate a property unless they have damaged the decoration, or it is specified in the tenancy agreement. In these cases, the landlord may want to keep all or part of the deposit unless the tenant makes good any damage before he leaves.

In furnished rental apartments, the tenant is usually responsible for keeping furniture in good condition, but the landlord may be responsible for replacing furniture worn out by natural wear and tear.

Tenants often have responsibility for the upkeep of a garden, but tenants are not required to improve a garden already in a bad state. If there is a garden it is wise to agree what needs to be done during the negotiation of the agreement.

- **Is the landlord or the tenant expected to provide furnishings and/or major appliances?**

Residential property can be let furnished, partially furnished or unfurnished, but the latter is probably commonest. If furnished there is an implied condition of fitness for human habitation, which may explain why landlords tend to prefer unfurnished lettings.

The landlord is obliged to maintain installations existing at the outset for space heating and water heating. There is no further liability to maintain or replace electrical appliances such as fridges, freezers, washing machines and cookers, unless stated in the tenancy agreement. What is to be provided should be agreed before the flat is taken. The tenant should keep a copy of the advertising material which may well vary this basic position and may be helpful in case of any dispute.

- **Is the tenant advised to have an inventory made so as to avoid future liability for losses and deteriorations (especially in the case of a furnished dwelling)?**

Yes, this is an essential precaution; an inventory will be important evidence in any dispute about retentions from the deposit. Most landlords provide an inventory as a matter of course, but the condition of items on it needs to be checked and agreed between the parties.

- **Any other usual contractual clauses of relevance to the tenant**

The tenant should make it clear what rights he has over common areas shared between tenants, such as hallways, lifts and stairs. These are outside the statutory repairing covenant, so it is wise to ensure that the landlord accepts responsibility for their upkeep. It may often be possible to imply a term that the landlord has to carry out major works, such as the maintenance of lifts in a block of flats.

- **Parties to the contract**

An assured shorthold arises when the tenant is an individual who will use the property as his principal residence. It is commonly the case that a home is rented by a couple and it is usually appropriate for them to rent together as joint tenants. A legal tenancy can only arise when the tenant is aged at least 18, so special steps would be needed if the potential tenant was 16 or 17.

- **Which persons, though not mentioned in the contract, are allowed to move into the apartment together with the tenant (partner, children etc.)?**

In the private sector, this is a matter of contractual negotiation between landlord and tenant. A spouse has a common law right to live with his or her spouse. It is usually assumed that a tenant is allowed to occupy residential property with his or her spouse or registered partner or cohabitee (of whatever gender). It is usual also for children to live with their parents and for the tenant to share with other family members, but this should be negotiated with the landlord. Tenants should tell their landlord who is in occupation, and landlords may require tenants to disclose this information. Occupancy of the apartment will be limited to a certain number of people by the overcrowding rules and any House in Multiple Occupation licence. Action may be taken to deal both with over occupancy and under occupancy, the latter through caps on Housing Benefit.

- **Is the tenant obliged to occupy the dwelling (as his primary home)?**

This may be an express term of a tenancy agreement. A tenancy will only be a shorthold if the tenant occupies the property as his principal home, and otherwise the tenancy will operate contractually.

- **Is a change of parties legal in the following cases?**

- **divorce (and equivalents such as separation of non-married and same sex couples);**

This depends, first, upon whether the couple are joint tenants or not.

If they are joint tenants, a notice to quit can be served by any one of the co-tenants and it will bring the tenancy to an end. This will occur despite the objection of the other tenant, as held in *Hammersmith and Fulham London Borough Council v. Monk* [1992], HL. Local authorities use this rule to end the tenancy of a violent partner and to relet the property to the victim of the abuse even though in doing so they do not give the party being excluded a right to be heard in court. The court has power to make an occupation order in all cases involving married or unmarried couples, with or without children, and this includes power to exclude one party from all rights of occupation.

If a property is vested in one party, the effects of relationship breakdown can be capricious. The correct thing to do here is to apply to the family court which can order a transfer of a tenancy on divorce (and its equivalents) and also under the jurisdiction over children. The limited security under a shorthold should always be considered when weighing up options.

- **apartments shared among students (in particular: may a student moving out be replaced without permission of the landlord);**

Students sharing a house may either be a group of licensees or they may be joint tenants, depending largely on whether they approached the landlord collectively or separately. It appears that legal tenants are limited to four. If they are joint tenants, a notice to quit can be served by any one of the tenants and this will bring the tenancy to an end, despite the objection of the other tenants, the principle in *Monk* (above). This can also be used where there are, say, four students renting a flat if one of the four decides to end the tenancy against the wishes of the other three. The issue can be avoided by contractual provision, but landlords are reluctant to cede their power to control who becomes a tenant. In practice landlords are often willing to accept a replacement tenant put forward by a person wishing to leave.

- **death of tenant;**

Where a tenancy is held jointly, necessarily by joint tenants, death of one party will effect a survivorship, by which the estate is passed to the survivor who will continue as the tenant automatically after the death. Most private sector assured tenancies will be shortholds, so after the death of the tenant the landlord will be able to obtain possession unless he agrees to accept a partner or family member as a shorthold tenant. Occasionally though a longer tenancy may have been granted in return for payment of a capital premium and in this case the leasehold term has some value and will vest in the personal representatives of the tenant who will pass it on to the beneficiaries entitled under the tenant's will or on his intestacy.

- **bankruptcy of the landlord;**

Payment of rent will be diverted to the trustee in bankruptcy. The trustee in bankruptcy is likely to want to sell the property and will be able to do so at a higher price if vacant possession is offered, so it is likely that the tenant will be asked to move.

- **Subletting: Under what conditions is subletting allowed? How can an abuse of subletting (when the tenant is offered not an ordinary lease contract but only a sublease contract) be counteracted?**

With private rentals the position varies according to whether a premium has been paid and the length of the term. In a relatively long lease for which a capital premium has been paid, the tenant will need to ensure that the term is saleable. This may be achieved by allowing assignment or by requiring the consent of the landlord to an assignment but providing that the consent of the landlord is not to be withheld unreasonably, and this qualification will be implied. In all other cases a private landlord will invariably introduce an absolute bar on all dealings with the lease; this should include assignment, subletting, and parting with possession (e.g. to a mortgagee). It will usually be provided that any fixed term can be forfeited if this term is breached since without such a term, a landlord risks ending up with a assignee who cannot pay the rent. The term against assignment or subletting without consent will be implied into assured tenancies which are periodic or statutory.

- **Does the contract bind the new owner in the case of sale of the premises?**

In general if a borrower grants a tenancy of the mortgaged property, the tenancy will be unauthorised, though this will not be the case if the mortgage envisages letting (as in Buy to Let financing) or if the mortgagee has given consent. In such circumstances if the mortgagee is able to obtain possession against the borrower it will be able to secure possession against the tenants. However a recent statute gives the tenant the right to two months' notice of repossession.

- **Costs and Utility Charges**

- **What is the relevant legal regulation of utilities (i.e. the supply of water, heating and electricity)? Must the landlord or the tenant conclude the contracts for provision of utilities? Which utilities may be charged from the tenant by the landlord? What is the standard practice?**

The utilities would include water, sewerage, electricity, gas, and telephone. In most cases the supply contract would be concluded between the utility provider and the tenant directly. In some cases the landlord might, for example, supply a pre-payment meter for electricity.

If, exceptionally, a landlord concludes a contract for a utility the cost may be recovered from the tenant, usually along with the rent. A landlord must provide the services which are reasonably required the tenant, including, as appropriate, the supply of gas, electricity and water. The tenant must pay for the fuel and water used, usually paying the bill himself. If the landlord pays the fuel or water company's bills, the cost can be included in the rent. Protocols are designed to prevent supplies of services (other than water) being disconnected for arrears of payments, though this remains an ultimate possibility.

- **Is the tenant responsible for taxes levied by local municipalities for the provision of public services (e.g. for waste collection or road repair)?**

Council tax is the local tax which helps pay for services such as waste collection. It is chargeable on the occupiers of residential property and will usually be billed to the tenants directly; alternatively the landlord may collect the tax and pay it over to the council. There is one bill for each home, whether it is a house, flat, bungalow, maisonette, mobile home or houseboat, and whether owned or rented. Homes were banded by value in April 1991, band A being lowest and band H highest. Bands are not affected by changes in general house prices, though homes will be banded when newly built and rebanded after major improvements. Each year the local council sets the level of council tax for each band.

Dwellings are charged on the basis of two adult occupiers, and there is a reduction for a single occupier. Students are ignored, so any property occupied exclusively by students will not be charged. Common areas shared between tenants, such as hallways, lifts and stairs, are outside the statutory repairing covenant, but it may often be possible to imply a term that the landlord has to carry out major works, such as the maintenance of lifts in a block of flats.

Help with council tax bills is available, the amount of any reduction reflecting individual circumstances including income, savings and number of children. The former council tax benefit is now subsumed into the Universal Benefit Scheme.

- **Is it lawful to shift condominium costs, and if yes, which ones, onto the tenant (e.g. housekeeping costs)?**

Yes, except for structural repairs.

- **Deposits and additional guarantees**

- **What is the usual and lawful amount of a deposit?**

Deposits would be usual in the private sector. The landlord under an assured shorthold tenancy will routinely require the payment of a deposit by the tenant as security for the performance of the obligations of the tenancy. The average deposit is just less than £1,000.

- **How does the landlord have to manage the deposit (e.g. special account; interests owed to the tenant)?**

Since April 2007, all landlords have been required to pass any deposit paid by a tenant at the commencement of an assured shorthold tenancy to an authorised tenancy deposit scheme (Housing Act 2004 ss 212-215). The original regime gave some unsatisfactory results to which substantial changes were introduced with effect from April 2012. There are two types of scheme, custodial schemes and insurance schemes, the choice lying with the landlord. In each case the landlord must comply with the initial requirements of the scheme within thirty days of receiving the deposit, providing information and handing over the deposit. Failure gives rise in each case to a claim that the tenant receive three times the deposit. A custodial scheme requires a landlord to pay any deposit received to a scheme administrator, who keeps it in a

separate account until such time as it falls to be paid to the landlord or repaid to the tenant. Interest is payable. The tenant or the landlord may apply, at any time after the tenancy has ended, for the whole or part of the deposit to be paid to him, and, if satisfied that the parties have agreed that the payment should be made or that the court has so decided, the scheme administrator will pay out the relevant amount in accordance with the agreement or decision.

○ **Are additional guarantees or a personal guarantor usual and lawful? What kinds of expenses are covered by the guarantee/ the guarantor?**

A surety as a personal guarantor is often required by the landlord if the prospective tenant has only low-income due to education or study, the parents of the tenant being asked to stand surety. The guarantee will be made by deed and will generally cover rent and other liabilities under the lease.

3. During the tenancy

3.1. Tenant's rights

- **Defects and disturbances**

- **Which defects and disturbances are legally relevant?**

There is no single definition but the legal principle depends upon the particular problem.

- **mould and humidity in the dwelling**

Unless the property is let furnished, there is no implied term requiring the property to be fit for human habitation. So the question is what is the cause of the damp problem; if it comes from disrepair of a structural item (such as the roof or damp proof course) the landlord will be liable to correct the problem, but if it comes from an inherent defect in the construction of the property, the tenant will have no remedy.

- **exposure to noise e.g. from a building site in front of the dwelling; noisy neighbours**

The tenant may have an action in nuisance against the person creating the noise, but it is unlikely that a residential tenant will litigate. The question is what rights the tenant has against the landlord and here the case law is not encouraging. This may be a breach of the implied term for quiet enjoyment ('quiet' here including but by no means restricted to freedom from noise). So the landlord may be obliged to take action to secure a cessation of the nuisance. However, a tenant must always remember when pressing a complaint that he has virtually no security of tenure and the landlord may find removing the tenant an easier solution. A better solution may be to contact the local authority to make a complaint about noise nuisance.

In terms of neighbours, the landlord may be obliged to take action for the same reason against antisocial behaviour causing noise. However, the possibility of action does depend upon the cause of the noise nuisance. A landlord is not liable for inherent defects in the construction of a dwelling and a tenant must take the property as it is and not claim to have a better dwelling. *Southwark London Borough Council v. Mills* (1999, HL) shows the unsatisfactory nature of that rule: tenants living in an inadequately soundproofed block in south London had to put up with being able to hear all the day to day activities of their neighbours, including 'their televisions, their babies crying, their comings and goings, their quarrels and their lovemaking'. No remedy was possible.

- **occupation by third parties**

This concerns the covenant or implied term for quiet enjoyment which is implied in all leases and tenancies. A landlord must grant the tenant exclusive possession of the property let, free from any external interference, and any interference authorised by the landlord will be a breach of that implied obligation. The landlord would need to take action to remove third parties. It will usually be possible to make use of the criminal law since residential trespass has recently been made a crime (Legal Aid, Sentencing and Punishment of Offenders Act 2012, commonly called 'LASPO') and the police can be asked to remove someone who has displaced a residential occupier (Criminal Law Act 1977).

- **What are the tenant's remedies against the landlord and/or third parties in such situations (e.g. unilateral rent reduction vs. rent reduction to be allowed by court; damages; "right to cure" = the landlord's right to repair the defect; the tenant first repairs the defect and then claims the costs from the landlord)**

Theoretical remedies might include injunctions, damages and a set off against rent and in an extreme case the tenant might have the right to repudiate the lease. Withholding rent is not to be recommended and certainly not before notice of disrepair has been given. As ever a shorthold tenant will bear in mind his own very limited security. It may be easier to move than to argue.

- **Repairs of the dwelling**

- **Which kinds of repairs is the landlord obliged to carry out?**

In short-term leases, the primary source of repairing obligations is the Landlord and Tenant Act 1985. Section 11 imposes on the landlord the obligation to carry out the major repairs in a term of seven years or less, and in flexible tenancies of whatever length. The obligation attaches to the landlord under a lease but not to the licensor under a licence. The landlord may not contract out of these obligations. A tenant may apply to the court for an order for specific performance of the landlord's repairing obligations. In addition, he may claim damages. The obligation to repair only arises when notice has been given to the landlord.

The landlord is responsible for all things which relate to the structure and exterior of the building, including the roof, guttering, chimneys, plasterwork, walls, windows and doors. The landlord is responsible for ensuring that installations within the flat for the supply of key services utilities are kept in good condition. This includes the pipes supplying gas, electricity or water, flues for gas boilers and ventilation, and drains. The landlord is responsible for ensuring any gas appliances are safely-installed and working properly. The landlord should be able to produce a gas safety certificate upon request completed after a regular inspection by a qualified CORGI inspector. The landlord is also responsible for the hot water supply.

Some tenancy agreements impose more onerous obligations on the landlord than those implied by the 1985 Act. For example an obligation to keep the premises in 'good condition' obliges the landlord to cure condensation problems which did not fall within the concept of repairs.

The repairing covenant in the Landlord and Tenant Act 1985 is limited because it only relates to defects which are the consequence of disrepair. It does not apply to inherent defects arising from the method of construction of the dwelling. A requirement to secure fitness is implied in furnished lettings, which may explain why many are unfurnished.

Common areas shared between tenants, such as hallways, lifts and stairs, are outside the statutory repairing covenant, but it will often be possible to imply a term – which in practice has to be imposed on the landlord – to carry out major works; so for example the landlord will be responsible for maintaining lifts in a block of flats.

- **Does a tenant have the right to make repairs at his own expense and then deduct the repair costs from the rent payment?**

As already stated, a private tenant has the right to repair and deduct the cost incurred from the rent; however, the landlord only becomes liable under a repairing obligation when notice has been served on the landlord, so it is essential that notice is given and a reasonable time is allowed to elapse before the tenant takes matters into his own hands. This course of action is not to be recommended; indeed one should counsel strongly against it because it is easy to make a mistake and end up in arrears with rent.

- **Alterations of the dwelling**

- **Is the tenant allowed to make other changes to the dwelling?**

Private tenants are most likely to be subject to an absolute obligation not to make any structural changes to the property they are letting, though it is of course possible for the landlord to agree to a particular change. Sometimes the tenant will be restricted from carrying out improvements or alterations without the landlord's prior consent. Should the agreement remain silent in this area there will still be an implied common law condition not to commit 'waste' a concept which includes all changes, whether harmful or beneficial. Where the tenant makes an unauthorised alteration he will be liable for breach of contract and to return the dwelling to its original condition.

- **In particular,**

- **adaptations for disability (e.g. building an elevator, ensuring access for wheelchairs etc.)**

If adaptation is needed of the demised property, this should be negotiated with the landlord before the property is let. A right to make an adaptation may be implied, or it may be possible to use the equality legislation to secure such rights.

When dealing with persons with a disability a landlord must not unreasonably withhold consent to the tenants to adapt the rented accommodation to meet the needs of the disabled occupants. There was no discrimination where a landlord had refused to install a stair-lift in a block of residential flats since none of the reasons for the landlord's refusal related to the tenant's disability and so the tenant was not treated any less favourably than any other potential tenant.

- **Affixing antennas and dishes**

A dish fixed to a property must comply with planning rules. Provided this is so a tenant could usually fix a dish but would be required to remove it and make good any damage at the end of the lease. However, tenancy agreements will commonly bar any alteration that requires physical alteration of the fabric. There is a risk that the ownership of the dish could pass to the landlord and thus accrue to future tenants. Under the common law a thing affixed to a rented property will become the property of the landlord (*Elitestone v. Morris* 1997, HL). The test is based partly on the degree of physical annexation and partly on the purpose of annexation. Ornamental fixtures can be removed but otherwise the landlord could claim things fixed to the property by

the tenant. More often the landlord will require the removal of things fixed with damage being made good.

- **Repainting and drilling the walls (to hang pictures etc.)**

A tenant will generally be entitled to redecorate the property but not to drill holes; any structural change will require the landlord's consent.

- **Uses of the dwelling**

- **Are the following uses allowed or prohibited?**

What uses can be made of the property turns mainly on the express terms of the tenancy agreement. Antisocial behaviour by tenants and their families and visitors is a huge issue, the main controls being antisocial behaviour orders against tenants or family members. A landlord can be forced to address antisocial behaviour by a notice requiring the landlord to control the activities of other tenants. The most likely approach to a shorthold tenant behaving antisocially is eviction.

- **keeping domestic animals**

This will be allowed unless (as is very common) the tenancy agreement says otherwise.

- **producing smells**

The tenancy agreement will generally require the tenant not to cause a nuisance or annoyance to neighbours. Many landlords prohibit smoking in rented flats and require tenants to confirm that they are non-smokers.

- **receiving guests over night**

This will be permitted subject to the terms of the tenancy agreement and the overcrowding rules. All residential tenancy agreements will bar immoral and illegal use ie for prostitution or drug dealing.

- **fixing pamphlets outside**

This would usually be a breach of planning control, but if not may well be prohibited by the tenancy agreement.

- **small-scale commercial activity**

Whether a tenancy is residential or commercial will be determined from the purpose of the letting; anything beyond merely ancillary commercial use will attract either the Landlord and Tenant Act 1954 part 2 for business lettings or the Agricultural Tenancies Act 1995. However, once the residential character of the letting is established, subsequent changes of use that are not authorised by the landlord will not change the character. Landlords are generally very keen to avoid residential shortholds turning into business lettings (which are generally

renewable) so the tenancy agreement will contain a promise not to use for business purposes. (Extensive commercial use might result in business rates becoming payable). None of this is affected by minor commercial use, such as working from home or engaging in internet selling on a small scale, but it is wise to agree with the landlord in advance of the letting what use is to be made of the property.

3.2. Landlord's rights

- **Is there any rent control (restriction of the rent a landlord may charge)?**

Market rents apply in the private residential sector.

- **Rent and the implementation of rent increases**

Assured shortholds give limited security of tenure, so in practice if the landlord wishes to increase the rent it is difficult for the tenant to object; eventually he will have to move out if he is not prepared to agree to an increase. During any fixed contractual period, the landlord can only put the rent up if the tenant agrees, but otherwise the landlord will have to wait until the fixed term ends before he or she can raise the rent. It follows that longer fixed terms will commonly include a rent review provision, which will typically take the form of an annual percentage increase. Otherwise, the landlord must give at least a month's notice of the proposed increase if the rent is paid on a weekly or monthly basis (more if the rent period is longer). The form is 4B (enter 'Assured Tenancy Forms' in www.gov.uk).

A private sector tenant who disagrees with a proposed rent or rent increase may apply to the First-tier Tribunal (Property Chamber) for a decision as to what the rent should be. Application must be made to the Tribunal before the new rent would be due. The Tribunal decides what rent the landlord could reasonably expect if he was letting it on the open market on the same terms, ignoring any improvements made by the tenant. The Tribunal may agree the proposed rent or set a higher or lower rent, which becomes the legal maximum the landlord can charge. It will usually operate from the date specified in the landlord's notice of increase unless the committee considers the tenant would suffer undue hardship when it may delay its effect. The landlord can propose a further increase after a year. As already explained a shorthold tenant is unlikely to refer a rent, though housing benefit authorities may.

- **Entering the premises and related issues**

- **Under what conditions may the landlord enter the premises?**

A tenancy confers exclusive possession on the tenant, the right to exclude the landlord and all the rest of the world (*Street v. Mountford*, 1989, HL). However, exclusive possession in the tenant is quite consistent with limited rights for landlords to enter the property e.g. to view the state of repair or to deal with emergencies.

- **Is the landlord allowed to keep a set of keys to the rented apartment?**

Whatever the technical position deduced from the previous answer, the practical position is that all landlords retain keys to rented properties.

- **Can the landlord legally lock a tenant out of the rented premises, e.g. for not paying rent?**

No (see 4.2 below).

- **Can the landlord legally take or seize a tenant's personal property in the rented dwelling, in particular in the case of rent arrears?**

No; this was known as the right of distress but has been abolished for all leases.

4. Ending the tenancy

4.1. Termination by the tenant

- **Under what conditions and in what form may the tenant terminate the tenancy?**

Residential tenancies usually consist of a fixed term grant followed by a periodic continuation. A notice to quit a rental property can be given to expire on the last day of a fixed term or while it is periodic, either by initial grant or by continuation after a fixed term ends. The periodic tenancy continues between the same parties and on the same terms (ignoring express terms about termination), with the period of the tenancy being determined from how rent was last payable under the tenancy. At this stage it is necessary for the tenant who wishes to leave to terminate the tenancy by giving the landlord a valid notice to quit. The old view requiring strict technical accuracy in notices has given way to a more relaxed view allowing effect to a notice which is comprehensible to the other party. Nevertheless many notices given by tenants are ineffective. The rules are as follows. A notice to quit residential property must be in writing, and of a minimum length of four weeks. A full period of the tenancy is required, so, for example, if the tenancy is quarterly a quarter's notice is required. The latter rule requires the notice to expire on the last day of a period. Service should be by post.

The parties to a rental agreement are free to come to a mutual agreement which allows for termination prior to expiration of the term. The tenant needs to be aware that this will lead to him becoming homeless intentionally which would limit his possibility of applying for social housing in the future. However, landlords rarely agree to accept a short notice from a tenant.

- **Under what circumstances may a tenant terminate a tenancy before the end of the rental term (e.g. unbearable neighbours; bad state of dwelling; moving for professional reasons)?**

Most residential tenancies are initially granted for a fixed term. If so, the tenant cannot terminate the tenancy without the landlord's concurrence during the continuance of the fixed term and any contractual regrant. It is possible for a lease to include a break clause enabling a tenant to break a fixed term, but this is unusual unless the term is long; the terms of a break clause often require the tenant to be up to date with rent etc before being entitled to exercise the break. A tenant who tries to leave early will lose his deposit and may face action for any balance owing.

- **May the tenant leave before the end of the rental term if he or she finds a suitable replacement tenant?**

Tenancies in the residential sector would rarely provide for the tenant to propose a replacement tenant for one who leaves. This might be appropriate where a flat is taken by a group of students to avoid the problem that a notice by one joint tenant would end the tenancy of all the others. However, such clauses are rare and in general the landlord will find a replacement tenant, though he may of course choose to accept a replacement suggested by the previous tenant.

4.2. Termination by the landlord

- **Under what conditions and in what form may the landlord terminate the tenancy (= eviction)? Must the landlord resort to court?**

An assured shorthold tenancy will often include a fixed contractual grant for a term of six months or more. The landlord will be able to terminate the tenancy at the end of the fixed term and any contractual regrant. It is necessary to end any periodic continuation by notice to quit. The landlord must give a statutory notice, which must be of two months duration (Form 3 – enter ‘Assured Tenancy Forms’ in www.gov.uk); this must expire on or after the term date but it is no longer necessary to state the precise date of the end of the tenancy.

At the expiration of the notice the landlord must, in theory, issue a possession action in the county court and the court must make an order for possession which ends the tenancy when executed. It is, in theory, necessary to secure a court order to evict a residential tenant, including a shorthold tenant. The Protection from Eviction Act 1977 applies and creates criminal offences protecting residential occupiers from unlawful eviction and harassment by their landlord or anyone else, including for example turning off utilities. A tenancy is not ended effectively if the tenant is forced out by harassment.

Because possession is mandatory, shorthold tenants tend to move once notice has been given.

- **Under what circumstances may the landlord terminate a tenancy before the end of the rental term? Are there any defences available for the tenant in that case?**

A shorthold can be terminated during a contractual fixed term for various default grounds provided that the tenancy agreement provides for termination on those grounds. The tenant must be given notice of the proceedings for possession and this notice must state the relevant ground as well as giving any relevant information.

	Mandatory	Ground 8	Substantial rent arrears (two months if rent is payable weekly or monthly; three months if quarterly or yearly).
	Discretionary	Ground 10	Rent arrears
	„	Ground 11	Rent persistently late
	„	Ground 12	Breach of obligation
	„	Ground 13	Deterioration of dwelling because of waste, neglect or default of the tenant.
	„	Ground 14	Nuisance or annoyance to neighbours or convictions for antisocial behaviour.
	„	Ground 14A	Domestic violence
	„	Ground 15	Deterioration of furniture
	„	Ground 17	Misrepresentation inducing the grant.

Unless the mandatory ground for rent arrears is made out the landlord is quite likely to wait until the fixed term expires (provided this is not too far distant) after which the normal repossession procedure at the end of a shorthold will give a mandatory ground for possession; this benefits from an accelerated procedure.

- **What happens if the tenant does not leave after the regular end of the tenancy or does not hand in (all) the keys of the dwelling?**

The tenant is not obliged to leave until the notice requiring possession (referred to above) is served. Failure to hand over the keys when the tenancy is properly ended will result in the locks being changed and the cost charged to the tenant's deposit.

4.3. Return of the deposit

- **Within what timeframe and under what conditions does the landlord have to return the tenant's security deposit?**

This should be done within 10 days. The tenant should obtain a breakdown of any deductions.

- **What deductions can the landlord make from the security deposit?**
 - **In the case of a furnished dwelling: may the landlord make a deduction for damages due to the ordinary use of furniture?**

Schemes offer alternative ways of settling disputes which aim to be faster and cheaper than regular court actions. Landlords are able to choose between two types of scheme: a single custodial scheme, which is free to join; and one or more insurance-based schemes. If a landlord fails to protect the deposit, the landlord cannot rely on service of a section 21 notice to obtain possession of the property until either the landlord returns the deposit to the tenant in full or secures agreement to the deductions made.

The deposit should be returned to the tenant at the end of the tenancy, if he has honoured the terms of the tenancy agreement. If the tenant has broken the terms of the tenancy agreement, then at the end of the tenancy the landlord and tenant should agree on the amount of any deductions. If the tenant is unhappy with the amount the landlord wishes to deduct from the deposit or the landlord refuses to engage in the deposit return process, the tenant is entitled to raise their dispute with the relevant tenancy deposit protection scheme.

4.4. Adjudicating a dispute

- **In what forum are tenancy cases typically adjudicated?**

The venue for repossession proceedings is always the county court for the locality where the land is sited.

- **Are there specialized courts for adjudication of tenancy disputes?**

No.

- **Is an accelerated form of procedure used for the adjudication of tenancy cases?**

Court procedure will be 'accelerated' because a possession order is mandatory.

- **Is conciliation, mediation or some other form of alternative dispute resolution available or even compulsory?**

No.

5. Additional information

- **How does a prospective tenant proceed in order to get social or subsidized housing (e.g. dwellings offered by housing associations, municipalities, public bodies etc.) or housing allowances?**

Allocation of social housing usually involves a long wait during which most applicants will have to rent privately. It is essential to get on a waiting list as soon as possible. Pressure is greatest by far in London. There are a number of basic stages.

Eligibility for public/social housing

Housing cannot be allocated to a person who is not eligible for housing. Rules in relation to eligibility have been tightened progressively to apply for an allocation of social housing or to make a homelessness application (Allocation of Housing and Homelessness (Eligibility) (England) Regulations 2006, as amended). A substantial majority of public opinion that favours stronger controls on all EU migration. Detailed advice may be sought on the internet either from the Government website ('Housing' on <www.gov.uk/>) or from the website of the housing charity Shelter (www.england.shelter.org.uk) but in essence the categories eligible are British citizens and 'persons from abroad', who are eligible to apply for social housing. The last category includes:

- (1) Foreign nationals with a right of abode in the UK;
- (2) Nationals of EEA member states with a right to reside in the UK under EC rules based on their economic status (but nationals of Bulgaria, Romania and Croatia must be registered under the Worker Registration scheme;
- (3) In Wales (Homelessness (Wales) Regulations 2006; Allocation of Housing (Eligibility) (Wales) Regulations 2006; in future see Housing (Wales) Bill 2013 cl. 47, sch. 2.) also any person lawfully resident in the UK who is a national of a state which has ratified the European Convention on Social or Medical Assistance or the European Social Charter; this includes all EEA nationals.
- (4) A person granted refugee status or with exceptional and unconditional leave to remain;
- (5) A person with current unconditional leave to remain with habitual residence in the Common Travel Area (of the UK, the British islands, and the Republic of Ireland).

People from abroad who are not eligible for housing are those subject to immigration control and not in any exceptional group:

- a. Asylum seekers;
- b. (In England) EEA nationals who do not have an economic right of residence;
- c. EEA jobseekers if not habitually resident in the Common Travel Area;
- d. EEA nationals for the first three months if not habitually resident in the Common Travel Area;
- e. Those admitted on the condition that they will be self-funding.

Homelessness

A full homelessness duty is owed under the Housing Act 1996 to a person who is homeless unintentionally and has a priority need for accommodation. Suitable permanent accommodation must be offered as soon as possible, and temporary accommodation until somewhere permanent is secured. Lesser duties are owed in other circumstances.

A person is **homeless** if he has no accommodation either in England or the rest of the United Kingdom or anywhere else in the world. EEA nationals exercising their economic rights will often fall outside the category of the homeless because they have accommodation which they could occupy in their home state. A person with accommodation may be homeless if he has accommodation which it is not suitable for him to occupy with his family unit, for example in extreme cases of overcrowding.

The authority must examine whether the applicant had a **priority need**, for example because he or she is:

- pregnant;
- residing with dependent children;
- especially vulnerable; or
- facing violence.

The local authority must also still examine whether the applicant is homeless **intentionally**. Cases where the applicant is responsible for finding himself homeless include

- falling into arrears of rent or mortgage instalments;
- eviction after antisocial behaviour; or
- leaving accommodation (including overseas) in which it would be reasonable to stay.

Homelessness applications are made to the local housing authority. When a duty is established the accommodation offered may belong to the authority, a housing association or a private landlord offering a shorthold. All homelessness decisions are subject to review and appeal to a County Court on a point of law.

Housing List

A person who is eligible and over the age of 16 may register with one or more local authorities or housing associations; some councils and housing associations run joint lists. The public/social lists available in a particular area can be found by contacting the housing department of the local authority; most have websites. The government provides a list of contacts local to an area ('Apply for Council Housing' on www.gov.uk).

Social housing must be allocated in accordance with an **allocation policy** covering transfers and exchanges as well as initial allocations, and the whole scheme must be published. Lists vary in length greatly from area to area however they generally include people who are homeless, people with special housing needs as well as people seeking a transfer to another social sector property. An applicant may either be in a priority group or without special priority or disqualified. A recent change has

allowed the local authority to set qualifications, especially to ensure a local connection through work to the area of the local authority, though employment or family association, an aspect of the government's commitment to 'localism'. This recent change has shortened lists considerably.

Preference is given to certain **priority groups** in allocation, notably

- Persons who are homeless;
- occupiers of overcrowded or insanitary houses;
- people needing to move on medical or welfare grounds; or
- people who will suffer hardship if they are unable to move.

Consideration can be given to:

- financial resources available to meet housing costs;
- behaviour of the applicant and household affecting his suitability as a tenant;
- any local connection.

There is wide discretion to choose methods of banding and points allocation. If an applicant does not a priority need for housing allocation, the above provisions indicate the wide range of factors that might be considered relevant, including period of residence in the locality, age, income, ownership or property, any record of defaults, and so on. The landlord can determine how to weight applications according to their published policy.

Housing benefit

Housing benefit is paid to tenants irrespective of the sector in which they are renting. It is a means-tested benefit paid by local authorities from state funds to households with low incomes living in rented accommodation. Two thirds of social renters and one quarter of private renters are in receipt of the benefit in 2012-13. Claims are increasing significantly. Receipt of housing benefit is associated with age and lone parenthood and unemployment, but even so a third of working households renting from social landlords received this benefit. Qualification rules are complex; readers should refer to the websites of the Government www.gov.uk/housing-benefit or of Shelter www.england.shelter.org.uk.

Private sector claims have recently been subject to significant measures to curtail the cost of Housing Benefit in that sector. Tenants in all sectors are affected by the 'under-occupancy charge' or 'bedroom tax' as it has been labelled by the political opposition. Families living in accommodation larger than they are deemed to need will receive less housing benefit from the beginning of April 2013. Those with one spare bedroom will lose 14% of their housing benefit, while those with two or more spare bedrooms will lose 25%. The new rules allow one bedroom for each adult or couple. Up to two children under the age of 16 are expected to share, if they are the same gender. Those under the age of 10 are expected to share whatever their gender. It is hoped that this policy move will result in £490m savings for the taxpayer in 2013-14. The government estimates that more than 660,000 claimants will be affected, with an average loss of £14 per week.

- **Is any kind of insurance recommendable to a tenant?**

In a private rental, the landlord is responsible for insuring the building itself but the tenant will have to insure the contents that belong to him. The policy should cover a tenant's liabilities as a tenant, for example, under his tenancy agreement he may be responsible for paying for any damage done to the property such as a broken window. Some policies will include cover for accidental damage which will cover for things like a spill that ruins a carpet but will not cover for wear and tear such as carpet that is worn out or faded over the years. More than half of all renters do not have home contents insurance.

- **Are legal aid services available in the area of tenancy law?**

Legal aid is currently (March 2004) being restricted and it is important to seek up to date information. As it stands legal aid is available to anyone facing eviction from their house or who is homeless, though it is means tested. Starting points are the official government website ('Legal Aid' on www.gov.uk), the civil legal advice website (claonlineadvice.justice.gov.uk) and Shelter (england.shelter.org.uk).

- **To which organizations, institutions etc. may a tenant turn to have his/her rights protected?**

A good place to start is the website of Shelter (www.england.shelter.org.uk), the housing and homelessness charity, which provides advice on all aspects of housing and also allows users to identify a local source of advice.