Landlord And Tenant

This Leaflet Applies to you if:

You are the tenant of a furnished or unfurnished dwelling house (i.e. a building or part of a building used for living in) UNLESS the rent includes payment for meals and personal services.



D. Radzik

Am I A Tenant?

You are a tenant if you live in a property or part of a property owned by someone else of which you have **exclusive possession** for a **set term** in return for the regular payment of a sum of money called the rent.

Exclusive possession is the right to keep all others out of the set property, including your landlord.

A set term can be **either** a single period of time ending on a fixed set date, for example 5 years (a fixed lease), or a short but definite period of time in the first place (a week, a month, a year) which will continue for further periods of the same length until ended by notice to quit **(a periodic tenancy).**

If you do not have exclusive possession for a set term in return for paying rent you are not a tenant but **a licensee.**

The most important difference between a tenancy and a licence is that the law does not give licensee the same protection it gives to tenants. For example, it is much easier for a landlord to recover possession of her/his property from a licensee than a tenant.

Note: Even if your landlord says you are a licensee you may in fact be a tenant. If you are in any doubt whether you are a tenant or a licensee get legal advice.

Does My Agreement With The Landlord Have To Be In Writing?

A tenancy can be made orally (by word of mouth) or in writing. A lease is the same thing as a tenancy but the word "lease" is usually used to refer to a written agreement between a landlord and tenant for a fixed number of years.

If a lease is for more than 3 years it must be made by deed. A deed is a formal document, which must be signed before a notary public and registered in the Deeds Registry.

If your agreement with the landlord is in writing it will set out your rights and duties and those of the landlord in what are called covenants.

Note: Even if your agreement with the landlord can be created orally it is better for it to be in writing to avoid later argument.

Repairs

Whatever your agreement with the landlord says, the landlord is legally obliged to make sure that the property is in repair and in all respects reasonably fit to live in at the start of and during the tenancy.

(There is one exception to this rule, which is if your lease cannot come to an end for at least 3 years and the lease says that you must make the property reasonably fit to live in.)

The landlord or her/his agent can enter the property to inspect its condition but must first give you 24 hours notice in writing of her/his intention to do so.

If the landlord fails to keep the property in repair you can:

- send her/him a notice by registered post setting out the repairs that need doing and their estimated cost and requesting that they be done within 30 days of receipt of the notice; and
- if the landlord fails to do the repairs within 30 days, do them yourself and deduct the cost from the rent.

In addition if the health of you or someone living with you is affected, the landlord may be sued for damages.

Note: Although you have no duty to repair the property you must use the property in a "tenant-like" manner that is you must take proper care of it.

Security Of Tenure

Unless you leave the property of your own free will the landlord cannot get possession of the property from you unless:

- she/he ends the tenancy by giving you a notice to quit of the proper length if your tenancy is a periodic one. (A notice to quit is not needed if the tenancy was for a fixed period and has ended because the fixed period has come to an end). The landlord must give you at least 4 weeks notice to end at the end of a completed period of the tenancy. For example, if you have a monthly tenancy, the notice must come to the end of a calendar month; and
- gets a court order for possession against you

Getting a possession order

The court can only make a possession order on one or more of the following grounds:

1. If you have not paid the rent or have broken any other obligation to the landlord. The court can suspend the operation of the possession order on condition that you pay the rent or comply with the obligation.
2. If you or someone living with you has caused a nuisance or annoyance to neighbours or other tenants.
3. If you have been convicted of using the property for illegal or immoral purposes or have allowed the property to deteriorate (apart from fair wear and tear).
4. If you have given notice to quit (but later changed your mind) and as a result the landlord has agreed to sell or let the property. The landlord would have to show that your not leaving would cause her/him financial loss.
5. If the landlord requires the property as a home for or for use by herself/himself for work purposes.

6. If the landlord reasonably requires the property for use as a home by any member of her/his family or someone who works full time for her/him. The court must be satisfied that reasonable alternative accommodation is available to you. Other accommodation will be suitable if:

   (a) you will have the same or similar security of tenure; and
   (b) it is reasonably suitable to your means and needs as regards rent, size and nearness to your workplace.

7. If the property or part of it has been compulsorily acquired or is needed for public purposes.
8. If the property is legally required to be knocked down.
9. If the property is required for repairs, improvement or rebuilding. The court must be satisfied that greater hardship would be caused by refusing to grant the order. Among the matters the court must take into account in deciding this is whether or not other accommodation is available for you.
10. If your tenancy was conditional upon your being an employee of the landlord and your employment has ended.
11. If the property was let to you because you were employed by the landlord and you are no longer so employed or you have been offered alternative accommodation.

Further, even if the landlord has one or more of the above grounds the court can only make an order if it thinks it reasonable to do so.

The court can postpone the hearing of an application for possession and the coming into effect of a possession order. It can also order the landlord to pay compensation to a tenant who will suffer loss or damage as a result of an order being made.

A tenant can **appeal** against a possession order to the Full Court of the High Court and from there to the Court of Appeal (see Section Number 20 on Going to Court).

If the landlord sells the property this will not affect your rights as a tenant. The new owner will become your landlord and will have the same obligations to you as the previous owner.

Protection from harassment and the threat of eviction

The law protects you in case the landlord tries to take a short cut to possession by harassing you into leaving or evicting you without a court order or threatening to do so.

1. If the landlord or anyone on her/his behalf harasses you by doing anything to interfere with your peaceful enjoyment of the property you can sue her/him for an order to stop the harassment and damages. Examples of harassment are threats and abuse; frequently cutting off water or electricity; changing the locks.
2. If the landlord removes the roof, windows, door or any other part of the property without your consent and otherwise than in the process of doing repairs she/he will be guilty of a criminal offence.
3. If your landlord throws you out of the property without a possession order or tries to do so she/he will be guilty of a criminal offence and you can sue her/him for an order to let you back into the property or to stop trying to evict you and for damages.

If I Die What Happens To People Living With Me?

If you die the tenancy will automatically pass (in the following order) to:

- your widow/widower is she/he is living with you in the property when you die, or
- your reputed wife/husband if she/he has been living with you in the property for at least 6 months when you die, or
- a member of your family or household who is living with you when you die (if there is a dispute as to who should become the tenant a magistrate can be asked to decide), or
- a dependant who has been living with you for at least 6 months when you die.

Rent

The amount of rent you pay, should be assessed (fixed) by a magistrate. If the landlord has not had the rent assessed you can apply for assessment.

Note: At the time of writing it is not possible to get a rent assessed, as there is no magistrate carrying out rent assessments.

You must be given a **receipt** for every rent paid. If the landlord refuses to accept a payment of rent, buy a money order to the value of the rent and send it to the landlord by registered post.

Do I have to pay increases in rent?

No. Whether or not your rent has been assessed the landlord cannot increase it except for your proportion of any increases in rates and taxes payable on the property by the landlord. Otherwise, an increase may only be imposed with the approval of a rent assessment magistrate.

If the landlord has demanded an increase in rent and you have paid it you can recover the increase paid during the last 12 months. This is so even if you agreed to the increase. You can get your money back by deducting it from the rent.

Premiums

It is illegal for a landlord to ask for any money in addition to the rent as a condition of renting property to you. If you do pay anything extra (called a premium) you can get it back from the landlord.

Can I Sub-let?

You cannot sub-let all or part of the property without the written consent of the landlord. But if the landlord unreasonably refuses to allow you to sub-let you can apply to the Magistrates' Court for permission to do so.

If you sub-let you will be the sub-tenant's landlord and she/he will have the same rights against you as you have against your landlord.