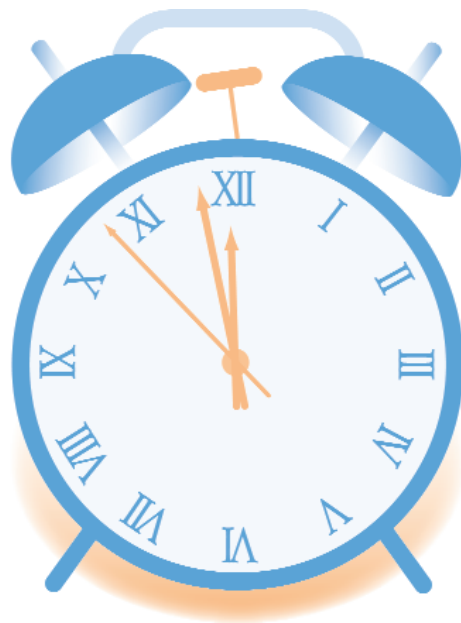




SECURITY OF TENURE

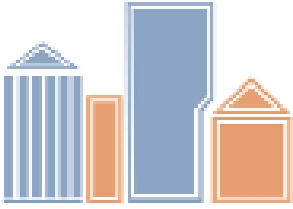
when the lease runs out



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This booklet is not meant to describe or give a full interpretation of the law; only the courts can do that. Nor does it cover every case. If you are in any doubt about your rights and duties, then seek specific advice.

Introduction

The law provides security for long leaseholders to remain in occupation when the lease comes to an end. This booklet will explain your rights to remain in your property at the expiry of the lease and the different options available to you. The rights are provided by Schedule 10 to the Local Government and Housing Act 1989.

In some cases leaseholders can remain in the property on the same terms or, alternatively, the landlord may propose a new, assured periodic tenancy. The Act also sets out limited grounds where the landlord can seek to recover possession of the property, although this will require an order from a court.

The procedures described below are governed by time limits. If these time limits are not kept then you may lose the right to dispute any matter or to apply to buy the freehold or extend the lease.

Note: A lease is, in law, a tenancy and the leaseholder is a tenant; these terms are used as appropriate throughout this booklet.

Eligibility

Tenants must meet two requirements to be eligible for security at the end of the lease:

- the tenant must be in occupation of the house or flat as his or her only or principal home at the end of the lease. Where the landlord seeks to recover possession of the property the tenant must have remained in occupation at the date of any court hearing for possession.
- there must be a long residential tenancy at a low rent. This requires some explanation. A lease is a 'long residential tenancy' and to qualify it must have been originally granted for a term more than 21 years (most leases, for example, are granted for a term of 99 years). You do not need to be the person to whom the lease was originally granted.

The definition of low rent is a little more complicated; there are three situations in which the tenancy will be at a low rent:

1. Where no groundrent is payable.
2. If the lease was entered into before 1 April 1990, the groundrent must be less than two-thirds of the rateable value of the property as at 31 March 1990. (Where the groundrent is subject to increase, then it must remain at all times below the two-thirds of rateable value in order to be a low rent).

This test also applies in cases where the lease was entered into after 1 April 1990 but was the result of a contract made before that date, so long as the property had a rateable value on 31 March 1990.

3. Where the lease was entered into on or after 1 April 1990 then the groundrent must be £1,000 or less a year where the property is in Greater London or £250 or less a year if the property is elsewhere.

This test also applies where the lease was entered into after 1 April 1990 as a result of a contract made before that date but the property did not have a rateable value on 31 March 1990.

Certain properties are excluded from the right:

- where the landlord is the Crown, a local authority or a housing association or charitable housing trust;
- where the lease is of a flat and it has been renewed under the provisions of the Leasehold Reform, Housing and Urban Development Act 1993;
- where the property includes both residential and business use and is let under a business lease (these are covered by the provisions of Part II of the Landlord and Tenant Act 1954);
- where the property is of a **high value**.

There are two situations where the property may be defined as high value:

1. For leases granted before 1 April 1990, if the rateable value as at 31 March 1990 was more than £1,500 where the property is in Greater London, or £750 if the property is elsewhere.

This test also applies in cases where the lease was entered into after 1 April 1990 but was the result of a contract made before that date, so long as the property had a rateable value on 31 March 1990.

2. For leases granted on or after 1 April 1990, where there are no rateable values, you will need to work out the value of 'R' using the following formula:

$$R = \frac{P \times I}{1 - (1 + I)^{-T}}$$

P is the purchase price paid when the lease was granted (if none was paid, P is 0).

I is 0.06.

T is the number of years granted by the lease.

R must not be greater than £25,000.

What happens when the lease comes to an end?

Unless either the tenant or the landlord takes specific steps to end the tenancy it will simply continue on exactly the same terms; the tenant need do nothing unless he or she receives a notice from the landlord. *The fact that the lease has expired does not mean that the tenant has to leave the property.* For the tenancy actually to come to an end either:

- the tenant formally surrenders the tenancy (which he or she need not do unless they choose to do so);

or

- the landlord serves a prescribed notice on the tenant to bring the tenancy to an end.

Should the tenant wish to terminate the tenancy he or she should serve a notice on the landlord giving at least one month's notice. There is no prescribed form for this. The period of notice should expire on the last day of the tenancy (if served before then), or at a later date if the tenancy

has continued past its original expiry date because the landlord has not served the tenant with a prescribed notice.

Where a tenant serves a notice of termination, he or she loses the right to security of tenure and the right to acquire the freehold or extended lease and must leave the property on the date the notice expires.

Where the landlord wishes to terminate the tenancy he must serve his notice in the prescribed form, either:

- **Form 1** – where he wishes to offer an assured periodic tenancy;
- or
- **Form 2** – where he wishes to seek possession of the property.

See Appendix on page 12 for further information on the forms to be used.

There are a limited number of grounds on which a landlord can regain possession and the tenant cannot be made to leave the property at the end of the tenancy except by court order for possession.

Where the landlord wishes to end the tenancy by replacing it with an assured periodic tenancy, new terms, including the rent, will need to be settled by agreement between the landlord and the tenant or fixed by a Rent Assessment Committee.

It is of course possible, at any time, for the tenant and the landlord to agree on a new tenancy to take the place of the lease without notices being served.

The landlord's proposal for an assured periodic tenancy

An assured periodic tenancy for these purposes is a monthly, secure tenancy at a market-level rent. The tenant will no longer have any rights of ownership, as in the lease, and will be subject to the terms of the new assured periodic tenancy. The new assured periodic tenancy provided under Schedule 10 must be for the same premises to which the lease applied. If there is any dispute on the extent of the premises the landlord can apply to the county court for a determination, but must do this *at least two months* before the end of the lease.

The landlord proposes the assured tenancy by serving a notice using Form 1. This notice must be served **not more than 12 months or less than six months** before the date for termination set out in the notice, and this date must not be before the date of the end of the lease.

The notice can be served before or after the end of the lease. It must contain a warning that the leaseholder's rights under the 1967 Act (to acquire the freehold of a house or an extended lease) or the 1993 Act (to renew the lease or take part in a joint purchase of the freehold) will be lost if they are not exercised within the time limits set out in the notice.

In the notice, the landlord must propose an assured periodic tenancy and the new terms which are proposed, including the rent. This will no longer be an annual ground rent similar to that which was paid under the lease. It will be a monthly rent high enough to qualify as an assured tenancy, which is more than £1,000 a year if the property is in Greater London or £250 elsewhere.

If the tenant agrees with the terms proposed by the landlord in Form 1 he does not need to do anything, and the new assured periodic tenancy proposed by the landlord will simply take effect once the lease comes

to an end. However, if the tenant disagrees, he must respond in writing to the landlord's notice **within two months** if he or she wishes to remain in the property, either:

- proposing different terms from those proposed by the landlord and/or
- proposing a different amount of rent.

To do this the tenant must use Form 4.

Failure to respond to the landlord's notice within two months has serious consequences:

- if you remain in occupation it will mean that the terms and rent proposed by the landlord will apply.
- if you are not in occupation you will lose the right to security at the end of the lease.

Where the tenant and landlord cannot agree terms by negotiation the landlord may request that they be determined by the Rent Assessment Committee. The landlord must make the application, using Form 5, **within two months** of the date of the tenant's proposals in his or her Form 4 notice, otherwise the terms proposed by the tenant will be the terms of the new assured periodic tenancy, which will commence immediately the lease comes to an end.

The landlord's notice proposing an interim monthly rent

The landlord may, in addition to his Form 1 proposal for an assured periodic tenancy, serve a notice under Form 3 proposing an interim monthly rent, to begin at least two months after the date of the notice, and no earlier than the date in his Form 1 for ending the tenancy. If the proposed rent is acceptable the tenant need do nothing – this will be the rent applied to the tenancy. Where the leaseholder disagrees with the proposed rent he or she must make an application to the Rent Assessment Committee *within two months* of the date of the notice. Failure to do so will mean the landlord's interim rent will apply. This is done by referring the landlord's Form 3 to the Rent Assessment Committee, together with the reasons why the rent is not acceptable, details of the property (house, flat, number of rooms etc), and a copy of the lease.

If a matter is referred to a Rent Assessment Committee, they can seek extra information from the tenant or the landlord. Failure to comply with the Committee's request without reasonable excuse will result in a summary offence being committed, which is liable to a fine.

In cases where a rent is set by the Rent Assessment Committee, the assured periodic tenancy will begin either:

- on the date originally set in the landlord's notice;
- or
- three months after the date of determination, whichever is the later.

The Rent Assessment Committee's determination will be based on local market evidence and may be higher, lower or the same as that proposed. It will be set according to the property, not the situation of the tenant, and will reflect the rent considered to be reasonable on the open market under a monthly periodic tenancy. Where a tenant is unable to afford the determined (or agreed) new rent, he or she will need to apply

to the local Council for housing benefit or other assistance, or seek advice from the Citizens' Advice Bureau.

It is possible to negotiate the proposed terms of the tenancy and come to an agreement in writing at any time, even if the deadlines have not been met, although where this is the case the landlord is under no obligation to grant an assured periodic tenancy.

Also, even if the Rent Assessment Committee has been asked to determine the rent, it is still possible to reach agreement on the rent (or any other disputed terms) in the meantime, as long as the Committee is sent notification of the agreed terms and can take them into account. Where this is the case the Committee cannot change the agreed terms.

Once the new tenancy is in place, if the landlord seeks to increase the rent payable, the tenant can ask a Rent Assessment Committee to determine the rent if it is believed that the proposed rent is higher than other similar rents in the area. However, the Committee can raise as well as lower the rent depending on what it believes is appropriate in the circumstances.

The landlord's proposal for possession

Rather than proposing an assured periodic tenancy the landlord may seek to gain possession of the property. *Whatever his grounds, or whether the tenant responds, the landlord will not be able to obtain possession without a court order.*

The landlord must serve a notice, using Form 2, **not more than 12 months or less than six months** before the date for termination set out in the form, which must not be before the date the lease ends, setting out in full the grounds which he or she consider justify possession.

If the tenant wishes to stay in the property they must respond to the landlord in writing, **within two months** of the date of the landlord's notice. There is no special form for this. If the tenant does not respond they may lose their rights to remain in the property, or any rights they may have to buy the freehold or extend the lease.

Time limits

- where the tenant has stated a wish to remain in the property, the landlord must apply to the court **within two months** of the date of the tenant's response if he wishes to try to gain possession.
- where the tenant has not responded to the Form 2 notice, the landlord must apply to the court **within four months** of the date of the landlord's notice.

If these time limits are not met, the landlord will not be able to proceed to obtain possession, though the landlord can begin the process again by serving another Form 2.

Grounds for possession

There are a limited number of grounds on which the landlord may seek possession and these are specified in Schedule 2 to the Housing Act 1988. The landlord may only proceed on these grounds, must establish the facts and must also satisfy the court that it is reasonable to grant possession.

Briefly, the grounds are as follows:

Ground 6: That the landlord who is seeking possession (or, if that landlord is a registered housing association or charitable trust, a superior landlord) intends to demolish or reconstruct the whole or a substantial part of the dwelling, or to carry out substantial works to any of it, and that the intended work cannot reasonably be carried out without the tenant giving up possession.

Ground 9: That suitable alternative accommodation is available for the tenant or will be available when the order for possession takes effect. Certain proof is required and conditions need to be satisfied, as required by law, where this ground is used.

Ground 10: That rent lawfully due from the tenant is unpaid on the date on which the proceedings for possession are begun, and was in arrears at the date of the service of the landlord's notice to resume possession.

Ground 11: Whether or not any rent is in arrears on the date on which proceedings for possession are begun, the tenant has persistently delayed paying rent which has become lawfully due.

Ground 12: Where any obligation of the tenancy (other than the payment of rent) has been broken or not performed.

Ground 13: That the condition of the property or any of the common parts has deteriorated owing to the neglect or default of the tenant or any other person residing in the property, and where caused by the person lodging with the tenant or a subtenant, the tenant has not taken such steps as they ought reasonably to have taken for the removal of the lodger or subtenant.

Ground 14: That the tenant or any other person residing in or visiting the property has been guilty of conduct causing or likely to cause a nuisance or annoyance to others, or has been convicted of using the property (or allowing the property to be used) for immoral or illegal purposes, or of an arrestable offence committed in, or in the locality of, the property.

Ground 14A: The property was occupied by a married couple or a couple living together as husband and wife, and:

- one or both are the tenant, and the landlord is a registered social landlord or a charitable housing trust; and
- one partner has left because of violence or threats of violence towards them or a family member living with the partner at the time of leaving; and
- the court is satisfied that the partner who has left is unlikely to return.

Ground 15: That the condition of any furniture provided for use under the tenancy has, in the opinion of the court, deteriorated owing to the ill-treatment by the tenant or any other person residing in the property, and in the case of a person lodging with the tenant or subtenant of his, the tenant has not taken such steps as he ought reasonably to have taken for the removal of the lodger or subtenant.

The following are additional grounds for possession contained in Schedule 10 to the local Government and Housing 1989:

Paragraph 5 (1)(b): The landlord is a public body and, for the purpose of redevelopment after the termination of the tenancy, proposes to demolish or reconstruct the whole of or a substantial part of the property relevant to the landlord's function; and

Paragraph 5 (1)(c)*: That the premises, or part or part of them, are reasonably required by the landlord for occupation as a residence for themselves or any son or daughter over 18 years of age, or their own or their spouse's father or mother and, if the landlord is not the immediate landlord, that they will be at the specified date of termination.

*The court cannot make an order for possession on the last ground where the landlord's interest was purchased or created after 18 February 1966, or where the court is satisfied that, having regard to all the circumstances of the case, including the question of whether other accommodation is available for the landlord or the tenant, greater hardship would be caused by making the order than by refusing to make it.

Where the court refuses to grant possession the landlord's notice lapses and the lease continues until such time as further action is taken. The landlord may then serve a notice using Form 1, proposing an assured tenancy.

Similarly, the landlord may abandon his attempt to obtain possession and can withdraw his notice at any time by writing to the tenant and subsequently serving a Form 1 notice proposing an assured periodic tenancy. Again, in this case there is nothing to prevent the landlord from serving another Form 2 notice at a later date.

Depending on whether the court refuses possession or the landlord withdraws his notice, there is a difference to the possible date for the termination of the lease.

If the landlord serves his Form 1 notice proposing the assured periodic tenancy **within one month** of the final determination of the court, the earliest date he can propose as a date of termination is a date **four months and one day** from the date of his notice.

If the landlord serves a Form 1 notice proposing the assured periodic tenancy **within one month** of withdrawing his Form 2 notice for possession, the earliest date he can propose as a date of termination is a date **four months and one day** from the date of the Form 1 notice, or **six months and one day** after the date of his notice of withdrawal, whichever is the later. The assured periodic tenancy would then take effect.

Where the issue has been through the court process it is likely that the lease will already have come to an end; and so it is unlikely to make any difference to the termination date in the Form 1 notice, or consequently to the date the assured periodic tenancy starts.

However, where the landlord has properly sought, but subsequently withdrawn an attempt at possession, this could lead to a termination date (and the start of the assured periodic tenancy) earlier than the last day of the lease if the Form 1 notice is then served **within one month** of the withdrawal notice.

Enfranchisement rights

Enfranchisement and lease extension rights can still be exercised after the term of the lease has expired, but there are strict time limits for action.

The Leasehold Reform Act 1967 relates to houses and provides statutory rights to acquire the freehold, or to extend the lease by a term of 50 years.

The Leasehold Reform, Housing and Urban Development Act 1993 relates to flats and provides statutory rights to a joint acquisition of the freehold, acting together with other leaseholders in the building, or to an individual extension of the lease by a term of 90 years.

Providing that the leaseholder satisfies the qualification criteria, these actions can be commenced at any time during the term of the lease or after the date of expiry where the landlord has not yet served his notice to terminate the tenancy.

Where the landlord has served his notice (under Form 1 or Form 2) the following time limits apply to enfranchisement or lease extension applications:

- to acquire the freehold of the house under the 1967 Act, or to extend the lease of a house under the 1967 Act, or to extend the lease of a flat under the 1993 Act:
 - the tenant's application must be made **within two months** of the date of the landlord's Form 1 or Form 2 notice.
- to take part in a joint acquisition of the freehold of a building in flats under the 1993 Act:
 - the tenant's application must be made **within four months** of the date of the landlord's Form 1 or Form 2 notice.

Where an application is made under 1967 or 1993 Acts the landlord's notice to terminate the tenancy ceases to have effect.

Appendix

Prescribed forms

These forms are prescribed by the relevant regulations and must be used in actions relating to the termination of long leaseholders.

They are available on The Office of Public Sector Information website: www.opsi.gov.uk. There is also a direct link to these forms through the online copy of this publication on the LEASE website: www.lease-advice.org

Form No 1: Landlord's notice terminating a long residential tenancy and proposing an assured monthly periodic tenancy.

Form No 2: Landlord's notice terminating a long residential tenancy and proposing to apply to court for possession.

Form No 3: Landlord's notice proposing an interim monthly rent.

Form No 4: Tenant's notice proposing different rent or terms for an assured periodic tenancy.

Form No 5: Landlord's notice referring to a Rent Assessment Committee a notice proposing different rent or terms for an assured periodic tenancy.

Form No 6: Notice requiring a landlord or tenant to give information to a Rent Assessment Committee.

Form No 7: Landlord's notice requiring information about subtenancies.

Form No 8: Landlord's notice requiring a landlord to consent to the giving of a notice terminating a long residential tenancy.

Form No 9: Landlord's notice requiring a landlord to consent to making of an agreement with the tenant under Schedule 10 to the 1989 Act.

Note: Form 7 provides a landlord with the means to require information from the leaseholder, or any subtenant, about subletting of the property. The landlord has a right to this information but may not serve this notice earlier than two years before the tenancy is due to end.

The leaseholder must respond to the landlord's enquiry **within one month**; failure to do so could involve the landlord in a loss for which the leaseholder might be held liable.

Useful addresses



Leasehold Valuation Tribunals (Rent Assessment Committees)

London

10 Alfred Place, London WC1E 7LR
Tel: 020 7446 7700

Northern

1st Floor, 5 New York Street, Manchester M1 4JB
Tel: 0845 100 2614 Fax: 0161 237 3656 or 0161 237 9491

Southern

1st Floor, Midland House, 1 Market Avenue, Chichester PO19 1JU
Tel: 0845 100 2617

Midlands

2nd Floor, Louisa House, 92-93 Edward Street, Birmingham B1 2RA
Tel: 0845 100 2615 or 0121 236 7837 Fax: 0121 236 9337

Eastern

Great Eastern House, Tenison Road, Cambridge CB1 2TR
Tel: 0845 100 2616

Wales

1st Floor, West Wing, Southgate House, Wood Street,
Cardiff CF1 1EW
Tel: 029 2023 1687

LEASE, 31 Worship Street, London EC2A 2DX Tel: 0845 345 1993 or 020 7374 5380 Fax: 020 7374 5373
Email: info@lease-advice.org Website: www.lease-advice.org

Communities and Local Government, Leasehold Reform Team, Zone 2/H10, Eland House, Bressenden Place, London SW1E 5DU
Tel: 020 7944 4287 Fax: 020 7944 4287 Email: enquiry@dclg.gsi.gov.uk Website: www.communities.gov.uk

Welsh Assembly Government, Cathays Park, Cardiff CF10 3NQ (Llywodraeth Cynulliad Cymru, Parc Cathays, Caerdydd CF10 3NQ)
Tel(Ffon): 029 20 82 3025 Fax(Ffacs): 029 20 82 5136