

Lease, licence or tenancies – what is the difference?

Carley Jackson provides a review of the types of agreements available and the advantages and disadvantages of each

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If you own commercial or residential property you may be considering renting or letting this out to a tenant and there are several options available. It is important that all parties, both landlords and tenants, know the difference and are able to choose the most suitable for their requirements.

Even if a document is labelled 'lease' or 'licence' does not necessarily mean the courts would interpret the document as such, they would look behind as to what the party's intentions were. The most common types or agreements are explained below.

Lease

A lease is a legal contractual arrangement between a landlord and tenant for a fixed period of time. The key element of a lease is that it grants the tenant exclusive possession of the property meaning that the tenant can exclude both the landlord and third parties from the property (other than for rights reserved to the landlord to enter the property in certain circumstances, for instance, to carry out repairs).



The tenant will be expected to pay rent and if the lease is for a whole property, the tenant is usually responsible for repairing and insuring. If the lease is for part of a property (ie, just the ground floor or one room) then usually the landlord repairs and insures the entire building and claims a proportion back from the tenant by way of a service charge or insurance rent. A lease is commonly used where a person or company wants to take occupation of a property for business purposes, such as a beauty salon.

Licence

A licence is simply a personal permission for a person using the property (licensee) to do something on a landowner's (licensor's) property and this permission prevents the act from being a trespass. A licence can still require a rent to be paid and be for a fixed term; however unlike a lease, it offers very

little security to the licensee and generally either party can terminate the licence on short notice. A licence can be used for short-term informal arrangements, for example a self-employed associate using a room in a surgery, or even a car parking space.

It is important to ensure that a licence is correctly drafted, as if not, the terms included could make it a lease rather than a licence. If a licence is poorly drafted and granted for longer than six months, this may allow the tenant greater protection under the Landlord and Tenant Act 1954. This protection is known as security of tenure and allows business tenants the right to remain in the premises once the lease ends and the right to a renewal lease on the same terms.

If this protection arises then a landowner may be left in a position where they will have difficulty in getting possession of the property back as business tenancies can only be terminated in limited circumstances and following a formal procedure.

Tenancy at will

This is the most flexible arrangement between a landlord and tenant and this agreement can be terminated at any time by either party and for any reason. A tenancy at will does not create a legal interest in land (like a lease does) and should only be used on a short-term basis.

This type of arrangement is suited to allowing a tenant immediate access to a property for example whilst lease negotiations continue.

Assured shorthold tenancy

This is the most common form of agreement that landlords grant to residential tenants. An assured shorthold tenancy agreement (AST) is usually granted for six or 12 months and the landlord must give the tenant at least two months' notice to leave. If the landlord and tenant wish to extend the original tenancy period, a new agreement should be drafted.

The AST will usually set out the terms and conditions under which the tenant can live in the property. If a deposit is payable, the landlord should protect the deposit in a government-approved scheme and the deposit should be returned at the end of the tenancy.

When deciding which is the correct agreement, the parties should look at what their existing and future plans are. The interests of the parties can often conflict as tenants will want to keep the rent low with as little repairing obligations whereas a landlord will want the maximum rent and to ensure the property is kept in the best condition possible. **D**

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