

What to do if you want to leave your tenancy

If you want to leave your tenancy you will have to give your landlord/lady one month's notice of your intention to leave. This should be given in writing. If your tenancy is a fixed term tenancy then you may have to continue paying the rent until the end of the fixed term if you wish to leave before it has expired. If you leave without paying the outstanding rent your landlord/ lady may go to court to recover any outstanding rent due until the end of the fixed term.

Contact us

To speak to a Housing Officer contact Housing Operations:
01635 519530 Or email us: housing@westberks.gov.uk

There is also plenty of information on the Housing pages of the West Berkshire Council website:
www.westberks.gov.uk/housing

Housing

West Berkshire Council Offices
Market Street
Newbury
Berkshire
RG145LD

If you would like any part of this leaflet explained, translated or provided in another format such as large print, audio or Braille, please contact us on the number above.

Assured & Assured Shorthold Tenancies

Private rented accommodation is an alternative to social housing. If you are looking for private rented accommodation this handout will help you understand the different types of tenancies available.



Tenancies in the private sector

There are primarily two types of tenancy available in the private rented sector today. These are Assured Tenancies and Assured Shorthold Tenancies. These tenancies were introduced by the Housing Act 1988 but important changes were made to them by the Housing Act 1996. As a result of these changes most tenancies starting after 28th February 1997 are Assured Shorthold Tenancies. Your tenancy will not be an Assured Shorthold Tenancy if:

- **immediately before the new tenancy you had a different type of tenancy with the same landlord**
or
- **your landlord has given you a notice at the start of your tenancy telling you that you will not be an Assured Shorthold tenant**

If your tenancy started on or after 28th February 1997, you can ask your landlord to give you a written statement of the terms of your tenancy if you do not already have them.

You should always seek advice before signing a new tenancy agreement or moving to a new tenancy.

REMEMBER: If you are an Assured Shorthold tenant or an Assured tenant your landlord/lady cannot make you leave the property unless they have an Order for Possession from court. Your landlord/lady will be guilty of a criminal offence if they evict you without a Court Order or try to harass you into leaving the property. If this happens to you, you should contact Housing Operations on 01635 519530 and call the police.

The court may make an absolute order that will specify a date on which you will have to leave the property, or it may make a suspended order, which allows you to remain in the property subject to certain conditions being met.

- If an absolute order is made and you do not have to leave the property on the date specified in the order then your landlord/lady will have to go back to court to get a bailiff's warrant. If you are served with a bailiff's warrant and you do not leave the property before the date specified on the bailiff's warrant the court bailiff will evict you from the property.
- If a suspended order is made you will be allowed to remain in the property subject to you meeting certain conditions. If you stop meeting any of the specified conditions your landlord/lady can immediately go back to the court and apply for a bailiff's warrant.

Depending on which grounds for possession your landlord/lady is using they may be able to use the **accelerated procedure for possession**. This means that an order will be made without a hearing - as long as all the necessary paper work is complete. If you are served with notice and do not think that your landlord/lady has grounds for possession then you should seek legal advice immediately and make arrangements to attend the court hearing.

At the court hearing you should make sure that you have the chance to say why you think your landlord/lady does not have a ground for possession. The court will then make a decision based on everything that has been said.

If your landlord/lady offers you a fixed term replacement tenancy then they will only be able to seek possession during the fixed term if you have rent arrears or have broken a term of the contract. After the fixed term has expired they may then seek possession on any grounds.

Remember your landlord/lady does not have a guaranteed right to possession at the end of the fixed term. If at the end of the fixed term your landlord/lady does nothing at all then the tenancy will continue to run on the same terms and become a statutory periodic tenancy. It will continue in this way until your landlord/lady either issues you with a replacement tenancy or until they seek possession through the courts.

How to get an Order for Possession

If your landlord/lady wants to recover possession of the property they must first serve you with notice.

- If you have an Assured Shorthold Tenancy you are entitled to 2 months' notice.
- If you are an Assured tenant you are entitled to 2 months' notice or 2 weeks' notice, depending on which grounds for possession your landlord/lady is using.
- If you are an Assured tenant your landlord/lady must give you notice on a special form called '**Notice seeking possession of a property let on an Assured Tenancy or an Assured Agricultural Occupancy**'. This form will set out which grounds for possession your landlord/lady is using.

When the notice period has expired your landlord/lady can start court proceedings. You will then receive a court summons and the court will hear your case and make an Order for Possession if it is appropriate.

Assured Shorthold Tenancies

An Assured Shorthold Tenancy is a fixed term tenancy, which lasts for a fixed period of time. The initial period is usually for 6 months but it may be for a shorter period of time if you both agree. Alternatively, an Assured Shorthold Tenancy may be a periodic tenancy that runs from one rent period to another.

Most tenancies created after the 28th February 1997 will be Assured Shorthold tenancies unless the landlord/lady serves notice at the start of the tenancy to say otherwise. If your tenancy started before the 28th February 1997 it will only be an Assured Shorthold if your landlord served you with notice at the start of the tenancy stating that it was to be such.

- If you have a fixed term Assured Shorthold Tenancy your landlord/ lady does not have a guaranteed right to possession during the first 6 months of the tenancy but will be guaranteed to get possession if they apply for it at any time thereafter. During the fixed term they can only seek possession if you have rent arrears or if you have broken one of the terms of the contract, and the terms of the tenancy make provision for it to be ended on these grounds.
- If you have a periodic Assured Shorthold Tenancy then your landlord/lady can seek possession on any ground at any time and will have an automatic right to possession after the first 6 months of the tenancy.
- If you have an Assured Shorthold Tenancy and your landlord/ lady wishes to evict you they must first serve you with two months' notice and then get an Order for Possession from the County Court if you have not left the property when the notice runs out. They cannot use any other means to make you leave the property.

When Assured Shorthold Tenancies come to an end...

If you have a fixed term Assured Shorthold Tenancy your landlord/ lady may bring the tenancy to an end when the fixed term finishes (provided that they have served you with 2 months' notice and get a Court order). Alternatively, if they do not wish to end the tenancy they may agree to give you a replacement tenancy.

The replacement tenancy may either be a fixed term tenancy or a periodic one. The rules for ending a replacement tenancy will depend on whether it is a fixed term tenancy or a periodic tenancy and are as set out above.

If your landlord/lady does nothing at all then the tenancy will continue to run and will become a statutory periodic tenancy. It will continue to run on this basis until you leave or until you are given a replacement tenancy, or until the landlord/lady requires possession.

Assured Tenancies

An Assured Tenancy may be for a fixed period or it may be a periodic tenancy. If it is for a fixed period your landlord/ lady can only seek possession during the fixed term if you have arrears, or if you have broken a term of your contract. After the fixed term they can seek possession on any grounds.

- An Assured Tenancy is different from an Assured Shorthold Tenancy in that you, as the tenant, have more security. If you have an Assured Tenancy your landlord lady does not have a guaranteed right to possession at the end of the tenancy and you have a right to remain in the property unless your landlord/lady can prove to the court that they have grounds for possession.

- If you have an Assured Tenancy your landlord/lady cannot replace it with an Assured Shorthold Tenancy unless you agree to them doing so. You should not accept a new tenancy agreement without seeking legal advice as you could be worsening your housing situation.

A tenancy that started before 28th February 1997 will be an Assured Tenancy unless your landlord/lady served you with a notice at the start of the tenancy to say it would not be an Assured Tenancy?

A tenancy that started on or after 28th February 1997 will only be an Assured Tenancy if at the start the landlord / lady gave you notice that it was not an Assured Shorthold Tenancy or included a declaration to this effect in the tenancy agreement.

When Assured Tenancies come to an end...

When an Assured Tenancy comes to an end your landlord/lady may offer you a replacement tenancy. This may be a fixed term tenancy or a contractual periodic tenancy.

Any replacement tenancy will automatically be an Assured Tenancy whatever the tenancy agreement says, unless you agree that the landlord/ lady can replace it with an Assured Shorthold Tenancy. You should not agree to them replacing your Assured Tenancy with an Assured Shorthold Tenancy until you have sought legal advice as you may be worsening your housing situation.

