

Tenure in Training Flats

Briefing for accommodation providers

Let's end homelessness together

Homeless Link, Minories House, 2-5 Minories, London EC3N 1BJ | 020 7840 4430

www.homeless.org.uk | Twitter: @Homelesslink | Facebook: www.facebook.com/homelesslink

© Homeless Link 2017. All rights reserved. Homeless Link is a charity no. 1089173 and a company no. 04313826.

Tenure in Training Flats

Briefing for accommodation providers

Contents

Introduction	3
Definitions and terms	3
Legal framework and regulation	3
Terms of the agreements	5
Support	6
Access	6
Health & Safety and condition of the property	7
Nuisance and ASB	7
Move on (including move on to more supported accommodation)	7
Breach of the agreement	8
Useful resources and websites	9

Produced by

The Innovation and Good Practice Team

With thanks to

DCLG, Sue Baxter

Published

June 2017

Introduction

Training flats play an important role in assisting vulnerable clients to experience living more independently, whilst still receiving support and assistance. They provide a step down from more intensively supported environments, such as, hostels or care homes where staff are available on site 24-hours a day. They provide the opportunity for clients to test out daily living skills, assessing where they may require support in managing their accommodation and maintaining the terms of their occupancy agreement.

Training flats can take many forms, including flats located within a higher supported environment, flats located adjacent to a hostel or flats that are dispersed within the locality. They can be self-contained e.g. a mental health scheme has a bedsit in an annex, or shared e.g. two young clients may be sharing a flat adjacent to a young persons' hostel.

Using the correct occupancy agreement in these arrangements is critical for housing providers, both in ensuring they operate within the housing law framework, and the agreement enabling this to be an effective learning experience for the client. The decision about what occupancy agreement is appropriate sits with the landlord, as this agreement is a legal contract between them and the client.

Managing agents will need to negotiate with the landlord if they feel that the occupancy agreement the landlord proposes does not, for example, allow access where required. Commissioners can also suggest that a type of occupancy agreement best supports the outcome they want the service to achieve, however the decision is the landlord's.

This guidance has been produced to help accommodation providers identify which type of occupancy agreement is appropriate for their training flats, and to use this as the basis for discussion with landlords. It does not constitute legal advice and should not be relied on as such.

Definitions and terms

Client – person living in the flat

Occupancy agreement – generic term for tenancy or licence

Provider – landlord of the property or an organisation who is acting on their behalf

Registered Provider (RP) – Housing Association who is registered with the Homes and Communities Agency

Legal Framework and Regulation

The legal framework on occupancy agreements is complex, not least because housing with support does not have its own legal identity, so is subject to the same legislation as other forms of housing. The following is a summary of the law that identifies the type of agreement that will exist in training flats depending on their characteristics.

Common Law – difference between a tenancy and licence

In the absence of an Act of Parliament, Judges will decide a common-sense approach to a case which sets a precedent for future cases on the same facts. The difference between a licence and tenancy is set in common law where the court decided the following characteristics represent a tenancy: A term which could be weekly or fixed, payment by the occupant (or someone on their behalf e.g. social services) and exclusive possession

Homeless Link

of part of the accommodation which can just be one room. If any of these are not present, the arrangement is a licence.

In training flats, the client **may** not have exclusive possession as the provider needs access to provide support services required. Providers will need to identify what type of support they are providing, how often and at what times.

- If staff are available 24 hours a day and access will be needed at any time to check on the welfare of the client, it will probably be a licence.
- If the staffing is office hours, support is visiting and access is only required once a week, it will probably be a tenancy.

There are many arrangements that fall in between these two examples, so the suggested test for a licence is: does the provider require 'unfettered access'? This means access at any time of the night or day to provide services that the client genuinely needs and that there is staffing available to provide this, which could include 'on-call'. Providers should seek further advice if they are unsure whether a tenancy or licence exists.

Protection from Eviction Act 1977 – type of licence

All licence holders enjoy the benefits of the Protection from Eviction Act 1977 unless they are expressly excluded. This means the client must be given a 28 day Notice To Quit and if they do not leave, the provider must take them to court. The arrangements excluded from the Act include hostels (defined as shared housing) provided by or on behalf of a Local Authority or Registered Provider. For these arrangements, the client need only be given reasonable notice and there is no requirement to go to court.

- If the training flat is a one bedroom or studio flat where the client has their own bathroom and kitchen it will be a protected licence
- If the training flat is shared housing and the provider is a registered provider or local authority, for example, two clients with their own bedrooms sharing kitchen and bathroom, it will be an excluded licence.

Another exception to the Act is where units are block purchased, for example, Social Services pay for a training flat to be used for clients stepping down from a mental health registered care home.

Housing Act 1988 – Assured Shorthold Tenancies

The Housing Act 1988 introduced Assured Shorthold Tenancies and, post February 1997 if the conditions for a tenancy exist, the agreement will be an Assured Shorthold Tenancy (unless the Landlord is a Local Authority). Tenancy agreements provide a greater level of rights and security than licences. The main characteristics in relation to training flats are:

- Covenant of 'quiet enjoyment' in that the client's enjoyment of their home should not be disturbed and they can exclude (amongst others) the provider from the property (see later section on access).
- Repairs and maintenance obligations are set out in legislation
- The provider must serve a notice and go to court if they want the occupant to leave.

There are special arrangements for young people under 18 who should be given a tenancy (see the Resources section at the end).

Homeless Link

Consumer Rights Act 2015

This legislation prohibits putting terms in occupancy agreements that are not reasonable or create a significant imbalance between the provider and the client. Terms that have been deemed to be unfair include a blanket 'no pets' – what would be acceptable is the client having to ask permission and the types of pet being restricted, for example, only goldfish or caged birds. Providers are recommended to review all terms to see if they might be regarded as unfair, for example, no alcohol in a service that is not specifically for alcohol misuse.

Human Rights Act 1998

The Human Rights Act 1998 can only be relied upon if the provider is a public body e.g. a Registered Provider or Local Authority. Under Article 8 the provider cannot interfere with a client's home, family life or their privacy unless it is lawful or reasonable. This Act can be used to challenge any occupancy agreement term or defend an eviction even where the provider is entitled to possession under the agreement. Providers are recommended to review if they have acted lawfully, including following any set policies and procedures and that the action is reasonable before they serve a notice.

Equality Act 2010

It is unlawful for a provider to discriminate against a client in terms of their (protected) characteristics, either in the terms of the agreement or in taking eviction action. This Act can be used to defend an eviction, for example, where a client is being evicted for anti-social behaviour and they can demonstrate the behaviour is because of their mental health disability. In this case providers can only proceed with the eviction if they can show it is reasonable.

Homes and Community Agency Regulatory Standards

In addition to working within the legal framework, providers who are registered with the Homes and Community Agency and their managing agents are required to adhere to the Regulatory Standards. There is a specific standard on Tenure which includes issuing tenancies and licences:

- Which are compatible with the purpose of the accommodation, the needs of individual households, the sustainability of the community, and the efficient use of their housing stock.

Providers also need to make sure the terms and use of tenancies and licences:

- Meet all applicable statutory and legal requirements

Terms of the Agreements

The terms in the provider and client's requirements will differ dependent on whether an agreement is a tenancy or a licence. Legally, a tenancy means the training flat is a client's home, whereas a licence in a training flat is just a permission to live there. Tenants can expect more rights about how they use their home, whereas licence holders will be limited. A term in a licence stating no overnight visitors may be reasonable, where the same term will not be reasonable in a tenancy.

In addition to Human Rights, Equalities and Fair Contract requirements, terms in any occupancy agreement need to be robust enough to rely on if an eviction is required. Providers should go through the terms of their agreement to establish if they would eventually evict a client if they breached it; if not, it should be removed. There may be another way of describing what is required, for example, a 'good neighbour' agreement.

Support

Support is an integral part of the training flat offer; its provision and the client's engagements should be part of the agreement. For licences it can be part of the general terms, but in tenancy agreements it can only be described as a reason a notice may be served. It is good practice to explain the requirement to engage in support at the beginning of the agreement, this way it is clear to the client what is expected. This term could be adapted to either a tenancy or licence:

- This agreement has been issued to enable you to receive specialist support services to enable you to experience living independently in your training flat. The support services *provider* provides and your obligations are set out in your support agreement appended. The support *provider* provides is an essential part of your agreement. If you withdraw from or do not engage with support, need a different or higher level of support, or do not require the support agreed will review your stay and may take steps to end this agreement.

Access

Access to the client's training flat presents a tension between the client having the opportunity to experience living with less support, and the provider needing to ensure they are managing. This also represents the significant difference between a licence where the provider can access at any time and a tenancy where access must be negotiated with the client.

In licences, the provider should still respect client privacy, for example, always knocking before entering and stating that they are entering if there is no answer. The client is required to give the provider access and cannot bar their entry. An example of a licence term is:

- *Provider* will respect your privacy but requires access to your flat at any time to inspect the condition of your flat or the property or to carry out repairs or other work, to provide support or other services, if we need you to move to another property, if we have cause for concern about you or another welfare or safety or when we have brought your agreement to an end.

As tenants have the 'covenant of quiet enjoyment' (see earlier section) they can refuse the provider entry into the flat and change their locks, although providers are not obliged to inform clients of this. The only recourse would be serving a notice on the basis that the client has breached the agreement. It is very important to ensure that access arrangements are clear in the tenancy agreement, including in the event of an emergency. If a client changes their lock, the requirement to give access in an emergency can give providers a basis to negotiate holding a key. An example of a tenancy term is:

- You must allow access to *provider* staff, agents, contractors or anyone acting on our behalf to inspect your flat, to carry out repairs or other works to your flat or adjoining property or to provide you with support or other services. We will give you at least 24 hours' notice however, we will need emergency access if we have substantial concern about you or another's welfare or safety.

It is essential in tenancies that access arrangements are seen to reasonable, as clients can challenge unnecessary requests for access or entering their property. Providers who are having to access a client's flat on a regular basis, for example, to provide welfare support may need to identify whether future arrangements should be on a licence agreement. Providers are not however able to change existing clients agreement from a tenancy to a licence unless the client moves to another property.

Health and Safety and condition of property

Training flats provide an important opportunity for clients to assess if they can maintain their property, in terms of keeping healthy and safe. The main difference between a tenancy and licence is the provider will establish if there are problems more quickly and easily as they are able to access the property, whereas with tenancies they may find that the client is not amenable to allowing access. Health and safety terms can however be generic, both tenancies and licences are obliged not to compromise their or other's health and safety. This 'umbrella' term can be used to address lots of behaviours, from interfering with fire detection equipment to leaving items in the communal areas. A generic term could be:

- You must comply with any rules for fire safety and for other health and safety matters, and not behave or allow your visitors to behave in a way that is dangerous or likely to be dangerous to the health and safety of any other resident, visitors, staff or any other persons in the vicinity.

Whilst providers want to ensure that clients can maintain the condition of the property this has been traditionally difficult to define. Often terms used include the working 'clean and tidy', whether in a licence or tenancy agreement this is a subjective test. It would not be unreasonable in licence agreements to be more prescriptive as to the condition of the property, given that staff are accessing it on a regular basis, however this generic term allows for this distinction.

- You must ensure your flat:
 - Does not cause a nuisance to other tenants, neighbours, *provider* staff, agents or contractors
 - Does not present a health and safety hazard
 - Can be easily restored to the condition it was let to you in
 - Does not prevent *provider* staff agents or contractors carrying out their duties

Nuisance and ASB

Training flats prepare customers for the challenges of living in environments where they are expected to self-manage behaviour which adversely impact on others. In this respect, there is less difference between the terms of licence and tenancy agreement, but more about the steps the provider takes to manage this. It may be helpful to explain in the terms what is meant by nuisance or anti-behaviour, as well as using other ways of addressing this, for example, a good neighbour agreement. A term for licences and tenancies could be:

- You or your visitor will not cause a nuisance or annoyance, or do anything that is likely to cause a nuisance or annoyance, or behave in a violent or threatening way towards your neighbours, other residents, our staff, agents, contractors or board members, or anyone lawfully in the area near the Premises. Examples of nuisance and annoyance include, but are not limited to: Bringing or consuming unlawful substances on the Premises, Persistent or prolonged playing loud music, Door slamming, Arguing and shouting, Offensive drunkenness, Racist conduct, Pushing, kicking or otherwise assaulting other people, Threatening to assault others (e.g. raising fists), Using dogs in a threatening way, Offensive gestures, Swearing, Rubbish dumping outside of designated areas.

Move on (including moving to more supported accommodation)

Training flats are designed to provide a bridge to more independent accommodation, as well as assessing where clients are currently struggling to manage and may still require a more supervised environment. This means that clients will be expected to move at some point and it might be helpful to put a maximum period on this. It is important to establish in the terms of either tenancies or licences that the client must engage with move on process specifically, and that moves can be to a hostel or more supported environment. The main

Homeless Link

different with agreements is excluded licences enable the provider to move the client giving a reasonable notice period without going to court. For protected licences and tenancies, the client has to be given a notice and the provider would have to go to court if they did not agree to move. A term that could be used in all agreements might be:

- This training flat is designed to provide you with temporary accommodation whilst *provider* support and assess whether you have the skills to live more independently. The intended length of stay would not be expected to be longer than xx months and may be shorter depending on your requirements. We may assess you need to move to more supported accommodation or we may assess that you are ready to move to independent living. If you do not engage with all possible move-on options *provider* will review your stay and may take steps to end this agreement.

Breach of the agreement

An important element of the training flat experience for clients is identifying what action may be taken when they breach their agreement, and using the support provided to respond to this. Providers should establish clear protocols outlining action taken on breach of agreement which, where possible, mirror arrangements in more independent environments. Warning letters should detail which term of the agreement has been breached and how, an action plan of what is needed to resolve the situation, and what support is going to be offered by the provider and other agencies. It should be clear, either in the agreement or in the accompanying documentation, under what circumstances immediate notice will be given. Below are details of what notices can be given on the relevant occupancy agreements.

- Excluded licence – Notice Terminating Licence To Occupy with reasonable notice period
- Protected licence – Notice To Quit with 28 day notice period
- Assured Shorthold Tenancy – depending on reason s21 notice with 2 month notice period or Notice of Seeking Possession where the notice period is dependent on the ground used

All notices should be sanctioned by a manager who can review reasonableness to avoid Human Rights and Equality Act challenges. The covering letter should detail how the client can appeal and give an opportunity for them to make representations that can be considered and responded to by a senior manager.

Useful resources and websites

Supported Housing Alliance

www.homeless.org.uk/supported-housing-alliance

Housing Law training

www.homeless.org.uk/events/training

Housing management and law overview

www.sitra.org/policy-good-practice/housing-management-and-law/

Homes and Communities Regulatory Standards

www.gov.uk/government/publications/regulatory-standards

Unfair Contract Terms

www.gov.uk/government/publications/consumer-rights-act-2015/consumer-rights-act-2015

Protection from Eviction Act 1977

www.legislation.gov.uk/ukpga/1977/43

Reducing Evictions and Abandonments Toolkit

www.homeless.org.uk/our-work/resources/reducing-evictions-and-abandonments-toolkit



What we do

Homeless Link is the national membership charity for organisations working directly with people who become homeless or live with multiple and complex support needs. We work to improve services and campaign for policy change that will help end homelessness.

Let's end homelessness together

Homeless Link
Minories House, 2-5 Minories
London EC3N 1BJ

020 7840 4430

www.homeless.org.uk

Twitter: @Homelesslink

Facebook: www.facebook.com/homelesslink

© Homeless Link 2017. All rights reserved.
Homeless Link is a charity no. 1089173 and
a company no. 04313826.