



Bord Um Thionóntachtaí Cónaithe
Residential Tenancies Board

Lease v Licence

(The following note is applicable to all tenancies, including tenancies provided by an Approved Housing Body)

INTENTION TO CREATE A LICENCE

If the intention of the parties is to create a licence, the documentation should be unambiguous. The agreement should state that any rights conferred are purely personal and that the arrangement is for the temporary convenience of the parties. The agreement should also state that occupation of the premises by the licensee is non-exclusive. If practical, the licensor should retain the right to relocate the licensee to alternative accommodation. The licensor should keep a set of keys and will usually have regular access to the premises. The licensor should carry out fit-outs and repairs (it is inappropriate for a licensee to be obliged to carry out repairs) and where practical, the licensor should be responsible for cleaning the premises.

FACTORS FOR CONSIDERATION

The Courts will consider a number of factors when determining whether an agreement is a lease (landlord/tenant relationship) or a licence (licensor/licensee relationship). These factors include:-

- exclusive possession;
- assignment/sub-lease;
- termination;
- rent; and
- title of agreement.

Licence

A licence can be best described as a permission to enter onto and/or occupy a dwelling (without which a trespass would occur). Some client examples of a licence are a person staying in hotel, hostel or guesthouse or a person sharing a house with the owner.

Simply naming a letting agreement a Licence does not automatically mean it will be accepted as being a Licence and not a Lease. Neither the RTB nor the Courts will accept the title of a document without looking at the actual terms and substance of the agreement when assessing whether it has jurisdiction to deal with it. Some of the main characteristics of a Licence include (please note this list is non-exhaustive):

- The licensee must not be entitled to exclusive use of the dwelling, i.e., the owner has continuing access to the accommodation
- The licensor can move the licensee to another room or change the occupants (this should be possible and be used).
- The rights in the license are personal to the licensee (they cannot be assigned by the licensee to another person). A licence can be revoked or terminated by the

person who grants it (licensor) provided reasonable notice is given (minimum statutory notice time periods do not apply).

- The intention of the parties was for a licence agreement to be created.
- There is no interest in or rights to the dwelling (it cannot be assigned).
- A licensee may or may not make payments in respect of their occupation
- Examples of a licence are a person staying in hotel, hostel or guesthouse or a person sharing a house with the owner.

Lease

In general terms, a tenancy is created when a landlord grants to a tenant exclusive use of land or a part of a building in exchange for rent or valuable consideration. A tenancy comes under the meaning of the Residential Tenancies Acts which govern how tenancies operate in Ireland. Some of the main characteristics of a tenancy include (please note this list is non-exhaustive):

- The intention of the parties was for a tenancy arrangement to be created.
- A tenancy agreement is in place (a tenancy can take a number of different forms and may be oral, written or implied).
- The tenant enjoys exclusive occupation of the dwelling.
- Rent or other valuable consideration is paid.
- A tenant generally has control over whom they live with. Once the tenant has exclusive occupation of their own room, it shouldn't matter if they don't have control over who they live with, as could occur in bedsits and group home type scenarios.
- The tenant generally has control over what happens in their home.
- The landlord needs to obtain prior authorisation from the tenant to enter the dwelling.
- A tenancy can only be terminated in accordance with the Residential Tenancies Act and the valid terms of any tenancy / lease agreement.

Student Accommodation

Student accommodation is referenced in the Residential Tenancies Act where it is provided by an education institution, defined in the Act under the definition of a "public authority." Section 3(2)(c) states that this type of accommodation does not come within the remit of the Residential Tenancies when the accommodation providers are public authorities for the purposes of the Act.

Section 4(1)(g) defines public authorities as, amongst other things, "*a recognised educational institution, namely, any university, technical college, regional technical college, secondary or technical college or other institution or body of persons approved of, for the purpose of providing an approved course of study, by the Minister for Education and Science.*"

Not all student accommodation style dwellings are exempt from the Act. Section 25(4) of the Act relates to dwellings which were constructed with the benefit of what is commonly known as Section 50 tax reliefs. Section 50 tax relief style dwellings were usually constructed off campus but with the intention of being solely used as student accommodation. These dwellings are subject to the Act in terms of registration requirements and access to the RTB's dispute resolution service (as they are tenancies) but they do not benefit from Part 4 rights.

With regards to private student accommodation not requiring registration, proof of a licence would need to be satisfied with the RTB. In order to do this, the owner of the

dwelling or their agent, would potentially have to act on the conditions to create a licence. Simply inserting the terms of a licence in the rental agreement will not suffice.

The owner of the dwelling, or their agent, would have to exercise their rights to deny exclusive occupation of the dwelling and their right to move occupants around at their discretion.

We have set out below a convenient table comparing the basis characteristics of a lease and a licence.

TABLE COMPARING LEASE AND LICENCE

Lease	Licence
The Residential Tenancies Act 2004 (the "RTA") applies to tenancies i.e. leases.	The RTA does not provide protection to licensees. A licensee can, in certain circumstances, request that the landlord makes the licensee a tenant.
<p>The landlord and tenant relationship created by a lease creates a property interest in land.</p> <p>This interest can be transferred by sub-letting or by assignment, subject to the terms of the agreement, or any statutory provisions that apply.</p> <p>Both a landlord and tenant have responsibilities under the RTA (sections 12 and 16). A lease brings with it statutory rights and obligations.</p>	<p>A licence creates a personal right (known as a personal privilege).</p> <p>These personal rights cannot be assigned or passed onto anyone else.</p> <p>A licence is a mere permission – for example, permission to enter a premises, where without permission there would be a trespass.</p>
<p>Under a lease, the tenant must be entitled to exclusive possession of the dwelling/premises.</p> <p>The tenant can exclude third parties <u>and</u> the landlord from the dwelling/premises. This means that the landlord cannot enter the premises whenever he/she chooses.</p> <p>Obviously the landlord can inspect the dwelling on notice to the tenant.</p>	<p>The licensee has no right to exclusive possession.</p> <p>There is a difference between sole occupation and exclusive possession. For example, a person staying in a hotel/guesthouse/hostel will have sole occupation, but will not have exclusive possession.</p> <p>A person who rents a room from an owner who also occupies the dwelling/premises will usually be a licensee. This is because the owner stays in control of the premises.</p> <p>In other words, the owner will usually have continuing access to the premises.</p>
Under the RTA, a tenancy can only come into being where a property is let for " <i>rent or valuable consideration</i> ". Rent is usually in the form of on-going periodic payments i.e. regular payments.	The payment of rent is not necessarily required. If a payment of consideration is necessary, this could be made in the form of a one-off, lump sum, licence fee.
The landlord and/or tenant can bring a dispute to the attention of the RTB.	<p>A licensee can refer a matter to the RTB if he/she believes that a tenancy exists. The RTB will determine whether the relationship is one of landlord & tenant (lease) or licensor & licensee (licence).</p> <p>If it is determined that a licence exists, the RTB will not be able to deal with the matter any further.</p>
A lease can only be terminated subject to the terms of the agreement itself and in accordance with the RTA.	A licence is a revocable right – it can be taken away (depending on the terms of the licence).