

When is a Tenancy at Will not a Tenancy at Will?

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Which of these examples have the correct terms for a Tenancy at Will?

Example 1	Example 2
Lease: Tenancy at Will	Type of tenancy: Tenancy at Will
Term: 7 years from and including the date of the Lease	Tenancy start date: Beginning on and including the date of the agreement, determinable at any time by either party (formally or informally)
Full Repairing Lease: Yes	Full Repairing: No. Keep the property clean and tidy and make good any damage. On termination of the agreement, remove all furniture and items belonging to the Tenant
Rent: £43,750 per annum exclusive, payable quarterly in advance	Rent: £[] per [week/month] payable on the first day of every month/a specified day in the week
Rent Deposit: equivalent to 3 months	Rent Deposit: Not applicable
Alienation: Assignment and subletting of whole only permitted with consent (not to be unreasonably withheld or delayed)	Alienation: The Tenant is not permitted to assign, underlet, part with or share possession or dispose of the property or any part of it
Alterations: Internal alterations only permitted, with consent (not to be unreasonably withheld or delayed)	Alterations: The Tenant is not permitted to make any alteration or addition to the property whatsoever
Landlord & Tenant Act 1954: Lease to be contracted out of the security of tenure provisions	Landlord & Tenant Act 1954: Not applicable

The word 'will' is crucial to understanding the key ingredient when drafting a Tenancy at Will. Both parties at will can terminate the arrangement on notice (formally or informally) at any time. Thus, a Tenancy at Will would be preferable to both a Tenant and a Landlord who requires the occupation to be on a short term basis with fewer strings attached.

A Tenancy at Will does not have a fixed term. The Tenant will not benefit from security of tenure provisions and will be unable to remain at the property pursuant to a statutory right, which might otherwise have been the case had the Tenant been occupying the property under a Lease.

Under a Tenancy at Will, the Tenant is not permitted to assign, underlet, charge, share or part with possession to a third party. If the Landlord disposes of the property, the Tenant at will must vacate it. This is in contrast to a Tenant occupying pursuant to a Lease, where the Tenant would have remained for the term of that Lease (subject to any break clause and forfeiture proceedings).

The terms of a Tenancy at Will are less onerous than clauses within a Lease. Terminology is important when drafting tenancy documentation. Indeed, a court will look unfavourably on a Landlord who is seeking to remove a Tenant on the basis the Landlord argues the Tenant is occupying under a Tenancy at Will, when in fact the language used and the terms reflect the existence of a Lease.

Did you guess correctly? Example 2 would be more indicative of a Tenancy at Will.

If you require advice on business property, leases or a tenancy at will, contact Sonia at BTMK at sonia.elmer-soman@btmk.co.uk and more information regarding our services in this area can be found at www.btmksolicitors.co.uk/commercial-law/commercial-and-business-property/