

# NATIONAL TRADING STANDARDS

Estate and Letting  
Agency Team

Protecting Consumers  
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## GUIDANCE ON PROPERTY GUARDIANS

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## What are Property Guardians?

The concept of Property Guardians has gained momentum in recent years where people can obtain short-term occupation of a building paying rent, sometimes discounted wholly or partially, and the property owners can take solace in the fact their property is occupied by someone looking after the property.

## Why are NTSELAT authoring this guidance?

Property Guardian companies are advertising properties for occupation on the basis occupation is by way of a licence and not a tenancy, the latter affording the occupant additional legal rights as well as placing a landlord/letting agent/property agent under the remit of the Tenant Fees Act 2019 and other relevant lettings agency legislation, of which NTSELAT, through Bristol City Council, are the regulators within England.

## What is the difference between a licence and a tenancy?

The difference is based, primarily, on the concept of “exclusive possession”, a legal test established in the case of *Street v Mountford*.<sup>1</sup> That case determined that notwithstanding the description of an agreement to occupy as being a “licence” if there is exclusive possession it is indicative of being a tenancy. A court can, and will, rebrand a licence to a tenancy in such circumstances if the licence agreement is a sham or otherwise artificially described as a licence - irrespective of the subjective intentions of the parties.

Exclusive possession means an occupier has rights to exclude persons, including a landlord, from the property. A tenancy agreement can, however, give a landlord rights of entry on certain occasions, for example inspecting the property, giving reasonable notice. The exercising of such a right of entry does not declassify the status of the agreement as being a tenancy agreement.

A tenancy must be certain over the duration of the “term”, the length of the tenancy. A term which purports to conclude upon the date of an event occurring, such as the end of a war<sup>2</sup>, is uncertain in duration. Upon the conclusion of the fixed term of a tenancy where the occupier and the landlord both wish the tenancy to continue the tenancy agreement automatically becomes a “periodic” tenancy which implies the duration of the tenancy runs from month to month.

Finally, a tenancy must include the transfer of consideration, usually rent, between the tenant and the landlord (or their agent by proxy).

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<sup>1</sup> [1985] 2 WLR 877

<sup>2</sup> *Lace v Chantler* [1944] KB 368

A licence is less nuanced. It is a personal agreement between the licensor and the licensee NOT to grant exclusive possession. A traditional licence would exist where a landowner takes in, for example, a lodger or an au-pair.

## What if there are multiple occupants of a property?

A property which is occupied by multiple persons, who are not related and are from different family units, is a House of Multiple Occupation (“HMO”) and is to be licenced accordingly. HMO’s have distinct and separate living areas for exclusive possession and are therefore classed to be individual tenancies though certain facilities, such as a bathroom or a kitchen, may be shared.

## What if the property is commercial and occupied as a residence?

The recent First Tier decision of *Oxley v Live In Guardians Limited*, LON/00BG/HMF/2019/0037, found that a commercial property converted for multiple occupation by guardians qualifies as a HMO, which resulted in a Rent Repayment Order being made as no HMO licence had not been obtained.

Conversely a commercial property which has not been converted for occupation remains a commercial property and is not a HMO.