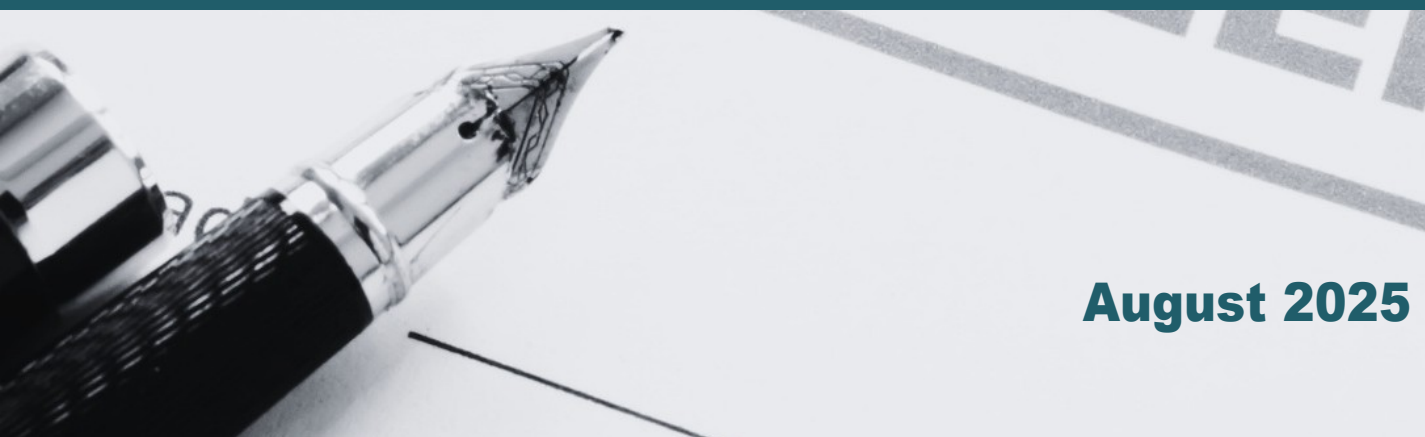




MODEL TENANCY AGREEMENT GUIDANCE, RIGHTS AND OBLIGATIONS



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Introduction

This model tenancy agreement is a ready-to-use tenancy agreement. It has been designed to provide both landlords and tenants with reassurance that each party's rights and obligations are contractually protected. It draws on best practice elsewhere in the world, but it has been adapted to suit circumstances that renters and landlords may face in the Falklands.

It has also been designed with a range of renting scenarios in mind. To this end, several clauses can be customised, and some have been designated as optional altogether. A fully editable version of the model agreement is available, but it is not intended for sections other than those marked optional to be amended or deleted.

This agreement is intended to be open-ended and should not include an end-date. Where the property is let to the tenant through their employment, there are provisions within the agreement for the tenancy to end when the employment ends.

Some of the sections in this agreement require the agreement of the landlord for the tenant to do certain things in the property, such as keep pets or erect a polytunnel. Such agreement from the landlord should be in writing and include any conditions.

Section 1- Tenant and tenants

As the named tenant, you will be the person(s) responsible for meeting all the obligations under this agreement. If you intend to live in a property with other individuals under a house-share arrangement, all the persons who will live in the house should be named tenants in the agreement. As such, you will all be jointly and severally responsible for any payments and obligations under this agreement. For example, if one housemate fails to pay their share of the rent, the other housemates will be responsible for covering the shortfall. Not everyone who lives in the house has to be a named tenant (for instance, if a relative moves in), but under the terms of this agreement, you must let the landlord know if any person over 16 moves in (**see section 12**), and depending on your relationship to that person, the landlord may wish that the person be named as a tenant.

Section 2- Letting Agent

A landlord may choose to appoint a Letting Agent to act on their behalf in managing the property. The letting agent may be responsible for arranging or carrying out maintenance, and as such may be appointed as the first point of contact for the tenant if the landlord chooses. The agreement should list all the things that the letting agent is responsible for in relation to the let property. The landlord, however, remains ultimately responsible for fulfilling their obligations under the agreement, or for ensuring that they are otherwise fulfilled.

Section 4 - Details of the Let Property

The agreement should clearly set out here any areas of the property that are included or excluded from the tenancy agreement, as well as any areas that may be shared with other properties or tenants. This section should also state whether the property is being let furnished, and be accompanied with a document listing all the furnishings and goods included in the tenancy agreement, as well as their state of repair.

Section 6- Occupation and use of Let Property

This tenancy agreement is designed solely for long-term residential lets. It is not designed for holiday or short-term lets. The let property should be used as the tenant's primary home and should not be left vacant for prolonged periods (other than reasonable absences, such as holidays). If a tenant wishes to carry out any business or trade from the let property, it is important that they seek the landlord's written permission to ensure that it does not affect the property's insurance or otherwise put the property at risk.

Sections 7-9 - Rent

Rent is normally paid monthly, but other terms, such as 28 days, may be chosen. If the tenancy commences mid-month (or other period), then the first rent payment should be reduced accordingly, with full rent payments resuming after that.

There are no laws that set limits on rent and rent increases in the Falklands. This agreement, however, stipulates that tenants must be given 3 months' notice of any rent increase, and that the landlord may not increase the rent more than once in any 12-month period. These time-frames are commonplace elsewhere, and are considered to strike a fair balance between giving the tenant sufficient security and advance warning, and the landlord the flexibility to react to increases in operating costs.

Section 10- Deposit

The purpose of a deposit is to provide the landlord with a measure of security to cover costs associated with damage to the property caused by the tenant, or other costs arising from a failure of the tenant to meet their obligations. There is no minimum or maximum deposit set in law in the Falkland Islands, although it is normal practice for deposits to be between one to two months' rent.

A landlord must not hold back a deposit without giving good reason for doing so. Where the deposit is not enough to cover any costs that are due at the end of the tenancy, the tenant remains liable for the shortfall.

The agreed deposit should take into account whether permission has been given by the landlord to have a pet in the Let Property, or any alterations that the Landlord has allowed the tenant to carry out.

Landlords should not charge deposit-associated fees such as holding or administration fees. It is possible that the landlord requests no deposit at all, in which case this section can be left blank. Where the landlord is also the tenant's employer, they may withhold wages or other sums owed to the tenant if the tenant has not left the house in an acceptable condition.

Sections 11-13 - Subletting, other residents, overcrowding

This section of the agreement prevents the tenant from letting out any part of the property themselves. This includes taking in lodgers or charging money for people to stay in the property.

If another person who is aged 16 or more moves into the property, the tenant must inform the landlord. If that person is moving in under a house-share arrangement, a new tenancy agreement must be written up with that person listed as a named tenant.

If the tenant arranges for a house-sitter to look after the property during an absence, you must seek the landlord's permission under this clause.

Ultimately, the tenant(s) remains responsible for the actions of those living in the property and liable for any costs of repairs. Likewise, the tenant may face eviction if the actions of those living in the property constitute a breach of the tenancy agreement.

The landlord may wish to place a limit on the number of people that permanently live in the home to avoid overcrowding. The landlord may also stipulate how many people are allowed to share a room depending on their age or gender, for instance. Where the landlord wishes to stipulate this, this should be detailed in **section 37**.

Section 15- Absences

Under the model tenancy agreement, the tenant must inform the landlord if they plan to be away from the home for longer than two weeks. The landlord may in turn require the tenant to ensure that the heating remains on (during winter) or, if the property is in a building with communal heating, turned low or off in summer. Some landlords may also request that the tenant arranges for the property to be periodically visited during the absence. If the tenant arranges for a house-sitter to stay in the property, the tenant must seek the permission of the landlord. The tenant would remain responsible for ensuring that the house-sitter adheres to all of the tenants' obligations under the agreement, and would be consequently liable for any damage or breach by the tenant. In any event, the tenant's obligations to take reasonable care of the property remain during their absence.

Sections 16 and 17- Reasonable Care and Repairing Standard

Throughout the tenancy, the tenant is responsible for taking reasonable care of the property. Responsibilities under this section include safe storage of fuels and flammable liquids, keeping the property clean, and informing the landlord of any damage that needs to be repaired (whether that damage is caused by the tenant or not). As mentioned above, under the terms of the model agreement, the tenant is ultimately liable for any damage to the property carried out by any person living in the house.

In turn, the agreement lists the landlord's Repair Standards, committing them to keeping the property in a good and safe state of repair. Where a landlord is made aware of a defect, under the terms of the agreement they must carry out a repair or replace the furnishings as soon as reasonably practicable. Regardless of the terms of this agreement, the landlord remains responsible for complying with the requirements of any planning or building control legislation.

Section 18- Access for repairs, inspections, and valuations

Under the terms of this agreement, the landlord may have access to the property in certain circumstances provided they give the tenant 48 hours' notice. Notice is not required if access is required urgently or in an emergency. The landlord can only use a retained copy of their keys to enter the property without the tenant's permission if that access is required to protect the property against damage by weather, fire, or flood.

Circumstances under which a landlord may normally have access to the property include undertaking work on the property, carrying out valuations and inspections, or any other purpose that has been agreed between the landlord and the tenant. This also applies to contractors or trade workers carrying out work on behalf of the landlord. The contractors themselves may give the tenant notice, but the responsibility to ensure notice is given one way or another remains with the landlord.

If the tenant agrees, the landlord (or anyone acting on their behalf) may access the property with less notice to address a non-urgent issue more promptly.

Section 19- Respect for others

As part of the tenancy agreement, the tenant must not engage in anti-social behaviour against any person, including neighbours, anyone in the property itself, the landlord, or any agent or contractor working on behalf of the landlord. This clause defines anti-social behaviour as: "behaving in a way which causes, or is likely to cause, alarm, distress, nuisance or annoyance to any person; or which amounts to harassment of any person" and includes speech.

The tenancy agreement also places a responsibility on the tenant to ensure that the tenant's visitors, guests, not engage in anti-behaviour either. Under the terms of the tenancy, this would be considered a breach of the agreement by the tenant and therefore grounds for eviction.

Equally, this clause commits the tenant to not engage (or ensuring that visitors do not engage) in illegal activities.

Section 21- Ending the Tenancy

The tenancy can be ended by the tenant at any time and for any reason, provided they give the landlord a minimum of 28 days' notice in writing. If the landlord agrees, the tenancy may come to an end before the 28-day period.

If the tenancy is a joint one, with several tenants living in a house-share, all tenants must agree to end the tenancy. One tenant cannot end the tenancy on behalf of the other tenants. If one person

decides to leave the house, it will be up to the other tenants to replace them, or pay their share of the rent.

The landlord can only end the tenancy for one of the reasons listed in this section of the agreement. In their notice to leave the property, the landlord must state which of the grounds listed in this agreement the tenancy is being ended for. Depending on the reason for ending the tenancy, the landlord must give the tenant either 28 days' or 84 days' notice. Only 28 days' notice are required if the tenant is not living in the property as their main home, or if they have otherwise breached this agreement.

If the landlord is ending the tenancy for one of the other grounds listed in the agreement, they must give the tenant at least 84 days' notice and, as above, state the reason for ending the tenancy when they give the landlord notice.

When the tenant is an employee of the landlord, and property is being let to the tenant as part of their employment, the tenancy will end 28 days from the termination of the employment. This is aligned with the current work permit legislation¹, as normally, housing is provided as part of employment when the employer has sponsored the tenant's work permit. Under work permit laws, if a work permit holder's employment is terminated, the work-permit remains valid for 28 days. If at the end of those 28 days, the permit holder has not secured another work permit (and accompanying accommodation arrangements), then they must leave the Falklands. If, however, the permit holder is not able to leave the Falklands within 28 days, the original work permit sponsor remains responsible for housing them.

Section 22- Death of a tenant (Optional)

If a tenant dies during their tenancy, a landlord may choose to transfer the tenancy to the original tenant's partner (unless that partner was also named as a tenant on the agreement, in which case they will remain a tenant and responsible for fulfilling all the obligations under the agreement).

If the tenancy is not transferred, the landlord may require the family of the deceased tenant to vacate the property.

Section 23- Contents and Condition (Optional)

It is common, particularly if a house is being let furnished or part-furnished, for the agreement to include an inventory of all the items in the house included in the let. The tenant should check this inventory against the actual items in the house within the first seven days of the tenancy. Failure to do so may result in the tenant being held liable for any item that is missing.

A record of condition provides the landlord and tenant with an agreed record of the state of repair of the furnishings and the property itself. Again, the tenant should check this record against the actual condition of the property and furnishings to ensure that they are not held liable for any damage that was already present at the start of the tenancy.

¹ Immigration Ordinance 1999 (as amended) https://www.legislation.gov.fk/download/pdf/1833bbbd-f1c6-47f6-8670-2f801e326522/9c05a311-5405-41c4-945a-efce479d4f37/fiord-1999-15_2021-09-01.pdf

If after the first seven days of the tenancy, the tenant has not informed the landlord of any discrepancies in the inventory and record of condition, it will be automatically assumed that there are no discrepancies or that the tenant is content with the terms.

As part of this clause, the tenant must repair or replace (or pay to do so) any item that is damaged or missing at the end of the tenancy, hence the importance of checking the inventory and condition against the agreement. The tenant is also liable for any item that has been damaged or taken by any guest or visitor. This excludes any damage created through fair wear and tear.

This relates specifically to contents, and is additional to the duties of the tenant to take reasonable care of the property as a whole as set out in **Section 16**.

Section 24- Change of Let Property (Optional)

This optional clause allows the landlord to request the tenant to move to another property. This may happen if the landlord wishes to carry out disruptive works on the property, or if the tenant's circumstances have changed and they longer require a property of that size.

The landlord must provide a property that meets the same repair standards as set out in the agreement; they must cover the costs of moving, including any costs associated with changing address; and they must adjust the rent accordingly if the new property is one that would normally have a different monthly rental fee.

Section 25- Service Charge (Optional)

The tenant will usually be responsible for paying service charge, a charge levied by the Falkland Islands Government to cover civic costs such as waste collection. Where the tenant is responsible for paying the charge, they are also responsible for notifying the Government's Public Works Department that they will be paying it. The Public Works Department can be contacted on +500 27193 or admin@pwd.gov.fk

Section 26- Utilities (Optional)

The tenant will usually be responsible for paying all utilities. There are circumstances, however, where some utilities may be covered by the landlord and included in the rent. This is the case with heating fuel costs in properties with communal heating systems, such as blocks of flats. In this case, for example, the tenant does not pay the heating fuel bill, but may instead be invoiced an additional monthly charge by the landlord (**see section 27**). There are other circumstances, such as in sheltered accommodation, where the cost of utilities may be included in the rent.

Section 27- Heating (Optional)

In properties that have a communal system with a single fuel tank, the landlord may pay the fuel bill and invoice tenants a regular charge. Because fuel costs fluctuate, this heating charge may change more often than the rent. The landlord should adjust the heating charge for both

increases and decreases in fuel prices. The heating charge should be paid by the same means and on the same date as the rent.

Section 28- Monthly charge for white goods and rented furniture (Optional)

Some landlords may offer the option of renting out certain white goods and items of furniture to the tenant. Where this is the case, all the goods being rented from the landlord should be included in an annex, along with their respective conditions. The tenant will have the same responsibility to take reasonable care of these goods as any other item in the house that is included in the agreement (**section 16**). Any charge for white goods and furniture will be payable on the same date and by the same means as the rent.

Section 29- Alterations (Optional)

Although it is optional, landlords will often want to have a say on whether the tenant carries out any decoration or alteration to the property, whether it's on the inside or outside. This may include painting walls or raising fences to make them dog proof, for example. If the landlord approves the work, they may also request that the structure be returned to its previous state at the end of the tenancy.

Likewise, the tenant is not allowed to put up any signs or structure on any part of the property without the landlord's permission. This may include commercial signs, greenhouses, polytunnels, sheds, and satellite dishes. Again, if the landlord agrees to any structure being erected, they may also request that it is removed at the end of the Tenancy.

Section 30- Common areas (Optional) and Section 33- Storage (Optional)

Section 30 sets out the tenant's responsibilities in any common areas of the property, particularly regarding keeping those areas clean and tidy. This usually only applies to blocks of flats, and does not change or replace any of the tenant's responsibilities under the Reasonable Care and Respect for others sections.

Section 33 prevents the Tenant from storing items in common areas if it creates a fire risk or is a nuisance to neighbours. This is likely to include non-running vehicles.

Section 31- Private Garden (Optional)

If the property includes a private garden, the landlord may require the tenant to keep it tidy, which may include cutting the grass on a regular basis at the tenant's cost.

In addition to any conditions under **Section 29**, the landlord may also request that their permission be sought if the landlord wants to develop or change the garden in any way, for example by planting a flower bed or digging up a vegetable patch. If the landlord does grant permission, they may also request that the garden be returned to its original state at the end of the tenancy.

Section 32- Bins and recycling (Optional)

Under the agreement, the tenant is required to dispose of rubbish using the appropriate wheelie bins provided by PWD, and according to relevant guidance. While it is the landlord's responsibility to ensure that the property has the appropriate wheelie bins at the start of the tenancy, the tenant must ensure that they are kept safe and secure from wind within the bounds of the property. It is also the tenant's responsibility to move the bins as required to provide access to bin collection services on designated collection days.

Section 34- Dangerous Substances (Optional)

Section 16 calls on the tenant to store fuels and flammable liquids safely. This section, if included in the agreement, completely prevents the tenant from bringing those liquids onto the property in the first place.

Section 35- Pets (Optional)

The Tenant is required to seek permission from the landlord if they want to keep any animal in the property (inside or outside). The Tenant is responsible for any animal in the property, and if the animal becomes a nuisance to neighbours or damages the property or common areas, the tenant will be liable or in breach of the agreement or both.

Section 36- Smoking (Optional)

If included in the agreement, this section forbids the tenant from smoking any substance in the property, including common areas. The tenant is also responsible for ensuring that no guests or visitors smoke in the property or common areas.

Section 37- Additional tenancy terms (Optional)

This section provides a space for both parties to additional tenancy terms to be added to the tenancy agreement. Tenancy terms added under this section are expected to be administrative in nature, or adding detail to any of the previous clauses (for examples, listing how many pets are allowed or what work can be done to the garden). They should not supersede nor vary any of the previous clauses, nor should they include any additional charges. Examples of matters to be included under this clause could be the inclusion of a cleaning service or a list of inspection dates; but the landlord would still have to adhere to their obligations with regards to giving sufficient notice before accessing the property.