# NOTES ON PRIVATE TENANTS AND RIGHT TO RENT

*This is a note to help people running hosting schemes. It is not professional legal advice but has been put together using the latest information available.*

1. Private sector tenancies are definitely within the “right to rent” scheme.
2. It is only a tenancy if money or the equivalent is paid to occupy as the home
3. BUT the landlord is responsible for checking (and refusing or reporting!) all adult occupants, and that includes people who do not pay anything
4. Lodging arrangements are also covered by the right to rent
5. So it depends on who is counted as the landlord really.

It is probably easiest to think of this in terms of scenarios

## Tenant wants to rent somewhere in order to host

The prospective landlord is expected to act reasonably. So if a single person says “I need a 2 bedroom flat because someone else will be living there” then the landlord must ask who that person will be and check their documents.

If the tenant does not tell the landlord that someone else will be living there and the landlord does not know and could not reasonably be expected to know, then everything is fine until

i) the landlord finds out. Then what happens will depend on whether the tenant has permission to let other people live with them or not. If the tenant needs permission then the landlord needs to give it at that point and needs the documents to do it. If the tenant does not need permission then arguably who that guest is is none of their business so could be OK

ii) but if the Home Office send the landlord the relevant notification (under the 2016 amendments to the right to rent) then the landlord must ensure that the guest leaves as soon as is reasonable. There is guidance on this and you can find it all via the [www.housing-rights.info](http://www.housing-rights.info) website

## Tenant already renting but has to ask landlord’s permission to have anyone else living there

Then the tenant asks for permission and the landlord asks for documents.

## Tenant already renting but does not need landlord’s permission to have anyone else living there

Then really what is happening here is that the tenant decides who lives with them. This is unusual in the private rented sector but the rule in secure council tenancies. In this situation it is the tenant who becomes the “landlord” for the purposes of the right to rent. So since they are not charging rent this is an arrangement that is outside the right to rent provisions. But if the actual landlord or the tenant receives a notification from the Home Office under the 2016 provisions then they will have to get the guest out reasonably quickly. The legal position of the actual landlord here is a bit unclear, but presumably they can tell the Home Office that the tenant has power to decide who lives there and so the landlord is not liable and the tenant is and the Home Office can then serve notice on the tenant. But really the legal situation here is very unclear since the tenant is not providing accommodation covered by the right to rent provisions. We will need to see what the courts make of things once cases start emerging. But for tenants in this situation they really have nothing to fear as long as they get legal advice as soon as they get such a Home Office notice.

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