



Council Tax liability when tenants move out

Unfortunately, it is possible that a client may remain liable for council tax – even after they move out – if they leave a property without formally ending their tenancy. Clients can end up being liable for council tax on two properties at once, as well as being liable for two lots of rent. Whether council tax liability ends when a tenant leaves will depend on what basis the tenancy is continuing on, and it can affect both fixed term and periodic tenants.

Council Tax legislation

Liability for council tax is determined by the council tax hierarchy set out in [s6](#) of the Local Government Finance Act 1992 (LGFA 1992). In order to work out who is liable, the list must be read from the top and the first description to apply will be the person who is liable:

- a resident with a freehold interest in the property
- a resident with a leasehold interest in the property, or the superior leasehold interest if there is more than one
- a resident who is a statutory or secure tenant
- a resident who is a licensee
- any other resident, such as a squatter
- where there is no resident, the non-resident owner.

Once a tenant has moved out, neither the tenant nor the landlord are 'resident', so the first five classes don't apply to either of them.

We then arrive at "the owner of the dwelling". On first impressions this would appear to be the landlord, however, this is misleading, as the term 'owner' in this context has a specific legal meaning. The legal definition of "owner" for these purposes is set out in s6(5) LGFA 1992 and includes anyone who has a material interest in the whole or any part of the dwelling. "Material interest" is defined in s6(6) LGFA 1992 as "*a freehold interest or a leasehold interest which was granted for a term of six months or more*". This therefore includes an assured shorthold tenant if they have a contract for at least 6 months.

When Does liability end?

Where the client is still within a fixed term tenancy, and the fixed term is of at least six months, the tenant will be the 'owner' and will continue to be liable, even after they have left, if they failed to end the tenancy. On the other hand, where a tenancy has *always* been periodic on a monthly, weekly or quarterly basis then the tenant's council tax liability will end on the day that the tenant moves out. The property may stand empty until a new tenant moves in, but the landlord would be the 'owner' and therefore liable for any council tax whilst the property is empty.

The position is more complicated where the tenancy initially began with a fixed term but is now periodic.

Most private tenants have assured shorthold tenancies, which allow a tenant to continue on a periodic basis when the fixed term expires, even if this is not explicit in the contract. If an assured shorthold tenancy agreement is silent about what happens at the end of the fixed term, and if the tenant does not move out when it expires, a periodic tenancy would arise automatically. This is referred to as a 'statutory' periodic tenancy because it arises by virtue of legislation ([s5\(2\)](#) of the Housing Act 1988). Strictly speaking this creates a new tenancy, not a continuation of the original one.

On the other hand, sometimes an assured shorthold tenancy agreement will specifically state that the tenancy will become periodic once the fixed term expires. In that case, the tenancy will continue after the fixed term regardless of whether the tenant remains in occupation or not. This is a 'contractual' periodic tenancy, not statutory. Crucially, this means that this is not a new periodic tenancy, but a new phase of the original tenancy. This distinction was drawn by the Court of Appeal in *Leeds City Council v Broadley* [\[2016\] EWCA Civ 1213](#).

Where there is a statutory periodic tenancy, the absent tenant will not be liable for council tax. This new tenancy has always been periodic and so it is not a material interest granted for at least six months. The landlord will be the 'owner' in this case.

However, if the tenancy is contractually periodic, it is still part of the original tenancy. Assuming that the fixed term was for at least six months, then the tenancy (the 'material interest') was granted for at least six months and so the tenant remains the 'owner' and is liable for council tax until the tenancy is formally ended.

Ending a tenancy

This is assuming that the tenancy was not ended when the tenant left. As soon as the tenancy ends the landlord will become the 'owner' and will be liable from that point until the property is re-let.

If the tenant or landlord served valid notice then this will end the tenancy, although notice served during the fixed term may not be effective. If no valid notice was served it is also important to check whether the tenancy was 'surrendered'. This is where both the landlord and tenant agree that the tenancy has ended without any formal notice. Where this is disputed, the onus will be on the client to prove that a surrender has happened so they will need to see whether the landlord has re-let the property or acted in any other way inconsistent with the tenancy continuing, such as letting themselves into the property to redecorate. If you need advice on whether a tenancy has legally ended, please contact [NHAS](#) on 0300 3300 517.

Where a client is being charged for council tax for a period where a property was empty it is worth checking with the council whether they have a policy about empty properties. There are now only [limited circumstances](#) where an empty property is automatically exempt from council tax. For example, if your client has gone into hospital or is on remand. However, some councils have a policy of allowing a period of time where they will not charge council tax for a property that is empty.