

OBTAINING POSSESSION OF YOUR PROPERTY

A: Landlord Procedure

Most private sector tenancies are either Assured Shorthold Tenancies or Assured Tenancies. In the event that you want to obtain possession of your property the procedure you follow will depend on the type of tenancy that has been granted. Both of the procedures below apply to assured shorthold tenancies. Only the second procedure applies to Assured Tenancies.

The general rule is that you cannot obtain possession of a property without a court order. In the event that you attempt to illegally evict a tenant this could lead to criminal proceedings against you and also a claim for damages:

The "Accelerated" two month notice procedure. ("s.21 Procedure")

If your tenant occupies the property under an Assured Shorthold Tenancy ("AST") agreement (all tenancies granted after 28th February 1997) then you can obtain possession of the property so long as you have served 2 months notice. The notice must expire at any time after any fixed term has ended or after 6 months of the tenancy commencing, which ever is the latest. There is no defence to such an action if the notice is valid. Judges are very particular in making sure such a notice is valid so it is sensible to seek advice upon this point.

If your tenant fails to vacate then you can issue a claim for possession in the County Court under the "accelerated possession procedure". This involves sending a form with supporting documentation to Court. The Court will then send details of the claim to your tenant and give them 14 days to respond. The Court will then send all papers to a Judge for consideration. If the notice is valid then the Court will make a possession order. The Judge has discretion of setting the date for possession at any time up to 42 days after they have considered the application. Usually the Judge orders possession within 21 days.

The Court will only order a hearing if:

- there is a problem with the notice; or
- the landlord has requested a hearing if the Court is considering extending the date of possession up to 42 days.

We advise landlords not to request such a hearing as the delay in obtaining a hearing date outweighs any benefit that may be gained.



If your tenant fails to vacate on the date ordered then an application to the Court must be made for a warrant of possession. This sets a date for the bailiff to attend to remove the tenant. Usually the date is set somewhere between 2-4 weeks of the application being made.

The timeline for this procedure is therefore:

Notice served – two months – **Issue Claim** – 14 days – **Defence due** – approximately 14 days – **Judge considers** – up to 42 days – **possession date** – 2-4 weeks – **eviction date**



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Possession Based on Rent Arrears (“S.8 Procedure”)

If you are within a fixed term or you have granted an assured tenancy rather than an assured shorthold tenancy then you can apply for possession based on a number of grounds the following being the most common:

- You previously occupied the property as your home and want to return
- Your mortgage company requires vacant possession as they intend to sell the property
- You wish to carry out demolition or construction works to the property
- Two months rent arrears
- Suitable alternative accommodation is available
- There are some rent arrears or have been persistent delay in paying rent
- There has been a breach of an obligation under the tenancy
- Nuisance/anti social behaviour or conviction
- Domestic Violence

To do this you must first serve the tenant a notice stating the ground that you intend to seek possession on. You can then issue your claim in the Court between 14 days and 28 days after you have served this notice depending on the ground that you rely on. The Claim Form and supporting papers are sent to the Court and a hearing will be listed between 28 days and 8 weeks of the Claim being sent to the Court.

At the hearing the Court will consider the claim.

Some grounds, if proven, require the Court to make a Possession order and offer no discretion to the judge. Other grounds are discretionary. That means that even if proven the Court then has to consider whether it is reasonable to make the order. The Court will look at all surrounding circumstances to decide whether it is reasonable to make an order.

Again if the Court makes an order for Possession and your tenant fails to vacate on the date ordered then an application to the court must be made for a warrant of possession.

The time line for this procedure is therefore:

Notice – 2-4 weeks – Issue Proceedings – 1-2 months – hearing date – 21-42 days - possession date (if order not suspended) – 2-4 weeks – eviction date

B: Tenant Termination

End of a fixed term

Unless the tenancy agreement states otherwise a tenant can leave the property at the end of a fixed term without giving notice. In order to be able to plan your affairs we recommend that a clause is inserted into a tenancy agreement requiring a tenant to give a certain amount of notice even if they intend to leave at the end of the fixed term.

Surrender

If the parties agree that the tenancy will end and the tenant gives up possession, this will end the tenancy

Notice to quit

If the tenancy is a periodic tenancy the tenant can end the tenancy by serving notice. Unless anything to the contrary is specified in the agreement the notice by the tenant must end on the last day of a period of the tenancy and must be of the same length as a period of the tenancy. For example if there is a monthly tenancy running from the 4th of the month to the 3rd of the month then the notice must end on the 3rd of the month and be served 1 month before it expires. A periodic tenancy which has a period of over 6 months only requires notice of 6 months.

If you require any further information on ending a tenancy then please contact Paul Reader at our Tunbridge Wells office.



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