

## RENT ARREARS FACT SHEET - LANDLORDS

A tenant in rent arrears is the most common problem for a landlord. How to deal with the problem is not always easy.

We recommend that the first step you take is to talk to the tenant about the problem. It may be that they have an immediate cash flow problem which is short term and can be overcome. If you can negotiate with your tenant as to how they will be able to catch up, this can often be the best solution all around. This is especially so if the tenant in question has been in the property for some time without any problems.

However even at this early stage you may want to consider serving either a s.21 notice or a s.8 notice (Please see below for an explanation of these notices).

In the event that an agreement cannot be reached or is broken then the only real option is to apply for possession of the property.

There are two ways of doing this:

### 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 28<sup>th</sup> 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, whichever 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**

**Total approximate time:** 3 - 5 ½ months

**Advantages:** If notice is in correct format, there is no defence. Cheaper procedure than s.8 procedure.

**Disadvantages:** Cannot claim for rent arrears at the same time.



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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 rent arrears.

To do this you must first serve the tenant a notice stating that you intend to seek possession on the basis of rent arrears. You can then issue your claim in the Court 14 days after you have served this notice. 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. There are three grounds that can be relied on:

- There are 2 months rent arrears at the date that the notice was served and at the date of the hearing
- There are some rent arrears on the date that the notice was served and at the date the proceedings were issued by the Court
- There has been persistent delay in paying the rent.

If the first of these grounds is proven then the Court must make a Possession order. The Court can only delay the date for possession for 42 days as in the accelerated possession procedure.

The difficulty with this ground is that the tenant could reduce the arrears to a level below 2 months rent the day before the hearing which would mean that you will only be able to rely on the discretionary grounds detailed below.

Grounds 2 and 3 above are discretionary. That means that even if proven the Court then has to consider whether it is reasonable to make the order. If the tenant has a reason for the arrears and a proposal for payment then the Court may not make an order or may suspend any order on terms that the tenant makes up the arrears.

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. 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 time line for this procedure is therefore:

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

**Total time: 3 months – 5 months**

**Advantages:** Could be quicker than the “accelerated procedure”, you can also apply for a money judgment for the rent arrears

**Disadvantages:** Defendant could reduce the level of the arrears and thus defeat the claim for possession, more expensive than the “accelerated” route as there is a need for a hearing. In some circumstances the matter may not be dealt with at the first hearing thus leading to more delay.

## A final note about rent arrears

It is our experience that most tenants get into arrears because they cannot afford to pay the rent. This means that it is usually uneconomic for a Landlord to pursue a tenant for arrears. Whilst this is not always the case, you need to consider this before embarking on such procedure. Usually it is sensible to obtain possession so that you can then let the property to another rent paying tenant.

If you do obtain a judgement for rent arrears then there are various ways that this can be enforced:

- an order to a tenant's employer to pay some of the tenant's salary to you;
- charging orders over property which depending on the amount of the debt be followed by an order for sale; and
- an order that third parties (such as banks) who owe the tenant money pay the money to you instead.

If you need to discuss these procedures in more detail then please contact Paul Reader at our Tunbridge Wells office.



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