

Landlord Fact Sheet 1

Recovering Possession

Introduction

To recover possession of a residential property, it is necessary to obtain a Court Order, unless the tenant agrees to surrender his/her tenancy. Attempting to recover possession without a Court Order can result in prosecution for unlawful eviction under the Protection from Eviction Act 1977, or a claim for damages.

Where a tenant holds under an Assured Shorthold Tenancy there are two ways in which a Landlord can recover possession.

Accelerated Possession Proceedings

The first method is only available on expiry of the fixed term and does not require the Landlord to show that the terms of the tenancy have been breached in any way.

A *Notice Requiring Possession* must be served on the tenant in a form which satisfies the requirements of Section 21 of the Housing Act 1988 giving at least 2 months notice and expiring on the last day of the tenancy or if the fixed term has expired and the tenant is "holding over", the Notice must expire on the last day of the period of the tenancy. The period of the tenancy will depend on whether the rent is charged weekly or monthly.

Care must be taken to ensure that the Section 21 Notice is correct. An error in a Section 21 Notice will invalidate the possession proceedings and may result in additional costs or costs being awarded to the tenant.

Example: A tenancy started on the 1st of January 2004 for a fixed term of six months. On the 9th September, the Landlord decided he wanted to repossess the property. He will then serve a Notice (at any time before the end of September, to ensure at least two months notice is given) which should expire on the 30th November – the last day of a complete period of the tenancy.

If rent were payable weekly, say on a Monday, then the Notice must expire on a Sunday, at least two months after date of service.

When the Notice expires you can then use the Accelerated Possession Proceedings route to ask the court to make a possession order.

The Court process:

The Landlord completes the Claim Form, attaching a copy of the tenancy agreement, and Notice of Seeking Possession, which is sent to Court. The Court sends it out to the tenant, who has fourteen days to make any response. At this stage he may dispute the validity of the claim, in which case a hearing at Court will be arranged.

This will affect the time spent on the matter, and consequently the legal costs involved.

If the tenant makes no response to the Claim, the Landlord may ask the Court to make an order for possession. The Judge will then consider the paperwork, and if satisfied it is correct, will make an order for possession, usually in 14 days. If there appears to be irregularities with the paperwork, then s/he may once again order a hearing for both parties to attend Court.

When the tenant receives the Order, there is at that stage an opportunity for him or her to apply to the Court to seek more time before the Order becomes effective. The maximum time a Judge can afford the tenant to leave the property is 42 days.

This is a relatively swift method, once the notice period has expired, and as a result the most cost effective in terms of legal costs because there is not normally a court hearing. However the draw back with these proceedings is that if the tenant owes you rent you cannot obtain a money judgment.

If a money judgment is required a Landlord can issue traditional possession proceedings. A Landlord would need to weigh up the cost effectiveness of pursuing the arrears, bearing in mind the ability to enforce any money judgement obtained against a tenant.

For a Landlord the type of possession proceedings to use may come down to a decision on which method will secure possession the quickest.

Traditional Possession Proceedings

These proceedings are available at any time and are based on a breach of the tenancy agreement. You do not need to wait for the initial fixed period to come to an end. Therefore as soon as a tenant falls into arrears you can start proceedings.

You do this by serving a *Notice Seeking Possession* that sets out the breach of tenancy and gives between 2 weeks and 2 months notice depending upon the circumstances. The Notice must be in a prescribed form that meets the requirements of Section 8 of the Housing Act 1988. When this expires you can issue a claim for possession in the county court. For rent arrears the notice period is 2 weeks.

This method requires a court hearing because you will need to show the court that the tenancy has been breached in some way (usually by producing a statement of the rent account detailing the missed payments). A money judgment can be obtained.

The Court process:

The Landlord completes the Claim Form, attaching a copy of the tenancy agreement, Notice of Seeking Possession and details of the breach of tenancy (a rent statement), which is sent to Court. The Court arranges a Hearing date and sends out notice of the Hearing to the tenant. The tenant is able to respond and if appropriate submit a

defence. Alternatively a tenant can turn up to the hearing and indicate that they wish to defend the claim.

At the Hearing the Landlord will ask the Court to make an order for possession. The Judge will then consider the evidence and if satisfied that the paperwork is correct and the Landlord has proved his case and it is reasonable to do so he may then make an order for possession, usually in 14 days.

The Judge does have wide discretion and he may decide in the circumstances that an order for possession may be suspended on terms, for example, repayment of arrears by instalments.

If the tenant is 2 or more months in arrears at the time the Notice was served and is still 2 or more months in arrears at the time of the Court hearing then the court must make a possession order. In other words they do not have any discretion. You could of course still serve a Notice and start proceedings based on one months rent but the court would have the discretion mentioned above whether or not to make a possession order.

Serving the Notice

Whichever route is taken a Landlord must be able to prove to the satisfaction of the Court that the Notice came to the attention of the Tenant, unless the tenancy agreement has a specific clause enabling service to be effective by putting it through the letterbox at the tenant's property.

In the absence of such a clause, it is prudent to arrange for personal service on the tenant, either by the Landlord (ideally with an independent witness) or by instructing an enquiry agent. Recorded delivery by Royal Mail is not considered to be effective proof of service.

The risk of not arranging personal service is that if the tenant subsequently denies receiving the Notice, and service cannot be proved, the whole case will fail, and the Landlord may even have to pay the costs of the proceedings.

We would recommend all Landlord's review their tenancy agreements to ensure they include the clause enabling service on the property address.

Court Costs

If a Landlord is successful he will normally be able to recover the Court Fee for issuing the claim and solicitors costs. However with possession actions the court will only allow you to recover solicitors costs to a fixed amount currently £143.75.

Following the Possession Order

Upon the expiry of the Order, if the tenant does not leave the Property, it will be necessary to instruct the Court Bailiff to carry out the eviction.

The request for the Bailiff to attend attracts a further court fee. Usually the Bailiff will list the eviction appointment within seven days of the request, and the appointment should take place within three weeks of the request, although this will depend upon the local court and how busy they are at any one point in time.

The Bailiff will require the Landlord/his appointed agent will be in attendance so that the eviction can be effective, and will also need to know whether there might be any physical problems with the eviction, such as access to the property, violence from the tenant/associates, dangerous dogs etc. The Landlord is likely to want to attend with a locksmith to ensure the property can be secured against possible future re-entry by the tenant.

Enforcement of a money judgment

The Bailiff can also “distrain against goods” – remove the tenant’s belongings if they are of value, and arrange for their sale, and apply the proceeds of such sale towards firstly the costs of the sale, and secondly any part of the judgement debt owed to the Landlord.

If this is not appropriate a Landlord will have to decide whether to take steps to enforce the money judgment through other means for example an Attachment of Earnings Order.