

Tenant Fact Sheet 1

Defending Possession Proceedings

Introduction

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

The Court action that will be taken will depend upon the type of tenancy agreement you have. This fact sheet looks at three different agreements:-

- Assured Shorthold Tenancies
- Assured Tenancies
- Secure Tenancies.

The starting point in any possession proceedings case is to consider the type of tenancy agreement you hold. Confusingly, the description on the agreement may not be conclusive, so legal advice is essential to determine the status of the tenancy.

1. Assured Shorthold Tenancies.

Since 1989, most tenancy agreements provided by private landlords (as opposed to Council or Housing Association Landlords) have been assured shorthold tenancy agreements.

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

If a Tenant does not pay rent, the following may happen

These steps should be followed by your landlord if you fall behind with your rent:

A document called a "Notice Seeking Possession" will be served on you. The Notice does not mean that you have to leave the home immediately, but it is the first step that the Landlord must take before starting the court action against you. It is a "warning shot" and should prompt the tenant to get in touch with the Landlord urgently to try to rectify the situation.

The landlord should contact you to discuss your situation - in the case of the Council this should happen automatically at some stage after having received your Notice Seeking Possession if you are still struggling with your rent. If on the other hand your landlord is a Housing Association you may only receive a letter advising you about your rent arrears and asking you to pay them off. However, if you know that you are in difficulties contact your landlord yourself don't wait for them to contact you.

If you have been through stages one and two and your rent arrears are still mounting then you will receive a 'Court Summons'. This is a letter from your local county court asking you to attend on a certain day and at a certain time for a hearing. The form will show how much your rent arrears are, what payments you have recently made if any, plus other information about your tenancy, including your name and address. There will also be a special form called a **'Reply to Summons Form'** attached to the summons which allows you to tell the court:

Whether you agree with what the landlord is claiming your side of the story about your financial situation, so that the court can make a fair decision

You should not delay in contacting the landlord and if required seek independent advice immediately.

The Court Hearing: The summons will have the date and time of your court appearance on the front sheet. *Make sure you are able to attend. If you are not able to attend on this date seek immediate advice.* It is often possible to get free help and advice. In some circumstances it may even be possible for a CHAS Housing Adviser to accompany you to court on the day.

In court it is possible that the judge will make an order for you to be evicted from your home usually at the end of four weeks. However, if you are able to come up with a sensible plan for paying your rent and an amount of the arrears, the judge will usually allow you to stay. The court will also look at other things such as whether you or someone in your home are seriously ill, whether you have young children, *but remember it is always best to seek advice.*

What if I can't keep to an arrangement made at court?

Follow the Golden Rule and seek immediate help from CHAS and notify your landlord.

In some cases if you genuinely can't afford the arrangement it may be possible to get the court to change it. If it is only a temporary problem, the landlord may be willing to allow you to make an informal arrangement for a few weeks until your circumstances return to normal.

If you do break the court agreement which is called a **'Suspended Possession Order'** then you will receive a notice advising you that the court bailiffs will be calling to evict you from your property at a certain date and time.

This is a very serious situation and you must act immediately if you are to have a chance of keeping your home. You will need to apply to court for a hearing to argue for the bailiffs warrant to be suspended. You can do this on form N244 which is available from the county court. *Again follow the Golden Rule it is better to get help if you are faced with a bailiffs warrant and the sooner you seek advice the better.*

Some Common Reasons for Rent Arrears.

Rent arrears can occur for many reasons. It is sometimes possible to sort out the problem without it ever getting to court. Below are some of the common problems which lead to rent arrears.

1.Housing Benefit Problems.

If you are on Income Support, or Income Based Job seekers Allowance and you are the tenant of your home you will usually be entitled to full Housing Benefit. However, you must make sure that you claim the benefit. Providing details of where you live and the rent you pay to the DSS or Benefit Agency as part of a fresh claim for Income Support or JSA doesn't in itself count as an application, you must ensure you have claimed on the proper form provided by the council - These are available from your local area housing office. *Failure to do so may lead to losing out on benefit and ultimately to you losing your home!*

A useful tip: It is advisable to ring up Housing Benefit a couple of weeks after making a claim to ensure that it has been received.

You must respond to any requests for information or fill in forms sent to you by Housing Benefit, especially since the council regularly carries out reviews of benefit. If you fail to fill in a review form you will have your benefit cancelled. Sometimes it is possible not to realise that your benefit has been cancelled for many weeks so be vigilant. Remember if you receive anything from Housing Benefit through the post which you do not understand ask advice.

If you have an adult son or daughter or other adult other than your partner, who are working they could effect the amount of benefit you are entitled to. Likewise if you have an adult living with you who is twenty five or over and on benefits, you will almost certainly receive a reduction in your benefit. This is a very common way in which rent arrears gradually build up. *Remember, if you are the tenant the full rent is your responsibility, even if you are on benefits so if an adult is working and not paying their share you need to do something about it, because it is you who will be held liable for the rent!*

2.Problems with the Landlord.

Sometimes people are unhappy with their landlord, usually because they have failed to carry out repairs, or keep the property in a good condition. Although you should never withhold rent because of this without first taking expert advice, people do sometimes do exactly this. If a landlord is taking you to court because of this it may be possible to 'counter claim' against them for disrepair. In some cases this can greatly reduce the amount of the debt or even clear it entirely. Sometimes the landlord may withdraw court action if you can present a good counter claim. However, you should always follow the Golden Rule before attempting this.

3.Money Problems.

Money problems is probably the most common reason for people getting into rent arrears and failing to keep up with court orders. Most money problems stem from an inability to cope with all of your outgoings. Most people don't like to think that they need advice on 'budgeting' but the truth is there are tactics for dealing with money problems, especially where there are lots of debts involved. **The first tactic is sort out the 'Priority Debts' from the less important debts.** Your home should always

be seen as a high priority. Your landlord may call around less often than the loan shark or even the milkman but at the end of the day you stand to lose your home if you don't pay your rent, whilst a letter from a debt counsellor or a Citizen's Advice Bureaux may put an end to threatening letters from the credit card company. If you feel you have a money or debt problem which is affecting your ability to pay your rent *you should seek advice from a Citizen's advice bureau.*

Sometimes money problems might be made worse by a failure to claim all the benefits you might be entitled to. It might be worth seeking advice from an advice agency who will be happy to run a benefit check for you, similarly if you or a person you care for has a disability there may be disability benefits you can apply for and of course if you are in work but only paid a low wage you may qualify for an in work benefit such as Family Credit.

Top Tip:

If you are on Income Support or Job Seekers Allowance it may possible to have your rent arrears to the Council or Housing Association taken out of your benefits. This way you will not have to worry about budgeting to pay off your arrears as it will be deducted directly from your benefits. If this would be of help to you contact your landlord or the Benefits Agency.