

Possession Proceedings

A Quick Guide

This guide is intended to give general advice to landlords wishing to obtain possession of their residential properties which have been let to a tenant under an Assured Shorthold Tenancy (AST).

There are two types of procedures available to landlords under the Housing Act 1988 (as amended by the Housing Act 1996) (the "Act"):

1. Accelerated possession proceedings, and
2. Normal possession proceedings.

Accelerated possession proceedings are mainly used in cases where the landlord's priority is to regain possession of the property at the end of a fixed term and not where the landlord is seeking a money judgment or costs order e.g. for rent arrears, since arrears cannot be claimed.

SECTION 21 NOTICES

When a tenancy is coming to an end or has ended, the landlord is required to serve a Notice Requiring Possession, also referred to as a Notice Seeking Possession, under Section 21 of the Act.

A Section 21 Notice can be served either: a) to operate a break clause, or b) to bring the tenancy to end, and gives a landlord an automatic right of possession without having to give any grounds (reasons) for seeking possession.

There are two ways to bring the tenancy to an end:

1. If the landlord wishes to bring the tenancy to an end at the end of the fixed period, a notice under Section 21(1)(b) of the Act will need to be served.
2. If the fixed term has expired, meaning that the tenancy has become what is known as a statutory periodic tenancy, a notice under Section 21(4)(a) of the Act will need to be served and must expire on the last day of a period of the tenancy.

Landlords should be careful to serve the correct form of notice, both of which must provide a period of at least two months' notice in length.

NORMAL POSSESSION PROCEEDINGS

If a landlord wants to bring a tenancy to an end early e.g. because of rent arrears or other breaches of the Tenancy Agreement, then normal possession proceedings will need to be issued. The landlord must usually serve the tenant with a Section 8 notice which allows them to seek possession using various grounds listed in Schedule 2 to the Act, including rent arrears of at least two months and/or anti-social behaviour.

A Section 8 Notice can be served at any time during the fixed period and must allow a period of two weeks before proceedings can then be issued. The most common grounds for a Section 8 notice are:

- **Ground 8** (rent arrears) which allows the landlord mandatory possession:

Both at the date of the service of the notice under Section 8 of this Act relating to the proceedings for possession and at the date of the hearing—

- a) if rent is payable weekly or fortnightly, at least eight weeks' rent is unpaid;
- b) if rent is payable monthly, at least two months' rent is unpaid;
- c) if rent is payable quarterly, at least one quarter's rent is more than three months in arrears; and
- d) if rent is payable yearly, at least three months' rent is more than three months in arrears;

and for the purpose of this ground "rent" means rent lawfully due from the tenant.

- **Ground 10** (rent arrears of at least two months' at the date the Section 8 notice was served on the tenant):

Some rent lawfully due from the tenant—

- a) is unpaid on the date on which the proceedings for possession are begun; and
- b) except where subsection (1)(b) of Section 8 of this Act applies, was in arrears at the date of the service of the notice under that section relating to those proceedings.

- **Ground 11** (persistent rent arrears):

Whether or not any rent is in arrears on the date on which proceedings for possession are begun, the tenant has persistently delayed paying rent which has become lawfully due.

- **Ground 12** (breach of tenancy other than rent arrears):

Any obligation of the tenancy (other than one related to the payment of rent) has been broken or not performed.

- **Ground 14** (anti-social behaviour):

The tenant or a person residing in or visiting the dwelling-house—

- a) has been guilty of conduct causing or likely to cause a nuisance or annoyance to a person residing, visiting or otherwise engaging in a lawful activity in the locality, or
- b) has been convicted of—
 - a. using the dwelling-house or allowing it to be used for immoral or illegal purposes, or
 - b. an indictable offence committed in, or in the locality of, the dwelling-house.

In both the accelerated and the normal possession procedures, it is imperative that the requisite notices comply with the regulations and are prepared and served on the tenant correctly. Any error, however slight, may result in unnecessary costs being incurred and delays in obtaining possession of the property.

NB: If there are arrears for which a judgment is required and a Section 21 notice has been served, this type of proceedings is also appropriate.

WILL THERE BE A HEARING?

Once the relevant notice periods have expired and proceedings have been issued, in the case of accelerated possession proceedings, a hearing may not necessarily have to take place.

If a landlord applies to the court for accelerated possession, the court will send a copy of the application to the tenant(s), who are entitled to challenge the application within 14 days of receiving it.

A judge will then decide whether to:

- a) issue a possession order, giving the landlord the right to evict the tenant(s) and take possession of the property (this is normally the case), or
- b) have a court hearing – this usually only happens if the paperwork isn't in order or the tenant(s) raise an important issue.

In the case of normal possession proceedings however, a hearing will have to take place and an Order for Possession will then be made where appropriate.

ENFORCEMENT

Once a possession order has been obtained, unless the tenant voluntarily leaves the property by the deadline imposed by the Courts, enforcement action will need to be taken to evict the tenant from the property. An application to the Court for a warrant for possession will need to be made and the Court will then appoint a bailiff to attend at the property.

It is important to note that if a money judgment or costs order has been made against the tenant, then a landlord may be able to use any deposit monies they are holding towards those rent arrears, though this will be subject to the relevant regulations set out within the particular Tenancy Deposit Protection (TDP) Scheme used. If the TDP Scheme allows, then it is important to note that the deposit monies cannot normally be taken towards rent arrears/dilapidations etc. until possession has been obtained.

Once possession has been obtained, the likely scenario will be that a landlord will not know where a tenant has moved to. It is for the landlord to decide whether they wish to incur further costs in order to try and trace a tenant, especially where a tenant has no assets against which a judgment can be enforced.

COSTS

The costs of litigation can be quite high especially if the claim is disputed however, wherever possible, we handle our own advocacy without the need to instruct Counsel and try to minimise costs by providing our clients with a "one-stop" service.

For more information on how we can assist in the preparation and service of requisite notices and issue of possession proceedings through to enforcement, please contact Tony Kent at tony.kent@mackrell.com or Tanya Hamway at tanya.hamway@mackrell.com. Alternatively, please call us on **0207 240 0521**.

This guide is not intended to be an exhaustive statement of the law and gives general information only. You should not rely on it as legal advice and we do not accept liability to anyone who does rely on its contents. This guide is correct at the date of printing.