

## 2. Accelerated Proceedings

This method is much quicker and cheaper as it does not involve any giving of evidence (other than the application form and statement in support of it) nor does it involve any hearing (if it proceeds smoothly).

Usually this method will take 1-2 months to obtain possession unless either the tenant objects to your right to possession or if the Court requires more information or clarification of a point.

You should note that the procedure for obtaining possession must be strictly adhered to. If the Court has any doubts about the notice, the grounds for possession, the tenancy agreement or any other point, then it may require a hearing, which will cause a delay.

The Court fee for both methods is £150.00

### **Possession – Enforcement**

Once an order for possession has been obtained from the Court then you still must not evict the tenant nor try to force them to leave the property yourself.

You must instead apply to the Court for a Warrant of Possession ('a bailiffs appointment'). This will set a date on which the bailiffs will attend the property to forcibly remove the tenants.

It usually takes between 2-4 weeks to obtain an appointment, depending on how busy the bailiffs are, and it will cost a further £95.00.

### **Housing Benefit Tenants**

If you have rented your property to tenants who are receiving Housing Benefit payments then it is likely that they will require to be re-housed by the local authority. If this is the case then a Court Order and Bailiffs appointment will be required before the local authority has a duty to re-house the tenants.

*This leaflet is designed to be a brief guide to possession claims by a landlord. It is not a step by step procedural guide to obtaining possession and you should therefore always seek legal advice if you are in any doubt as to how to regain possession of your property. Please note that the partners of Neves cannot accept any responsibility for any loss suffered by any person acting in reliance on the contents of this booklet.*



## Landlord And Tenant

### A Brief Guide To Possession Proceedings



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You have rented your property but you now want to recover possession and evict your tenants, what do you do?

### Type of Tenancy

Firstly you need to decide what type of tenancy you have granted to your tenants, as this will decide the ways in which you may (or may not) regain possession of the property.

This guide only deals with two types of tenancies, Assured Tenancies and Assured Shorthold Tenancies. Other tenancies such as Protected Tenancies, Secured Tenancies and Long Leases are more rare and have specific regulations relating to them. If you have granted one of those other types of tenancies we can of course provide you with specific advice for your situation.

#### 1. Assured Tenancy

If the tenant occupied the property before 1<sup>st</sup> March 1997, then it is possible that the tenancy is an Assured Tenancy.

All tenancies entered into before 1<sup>st</sup> March 1997, but after 15<sup>th</sup> January 1989, are Assured Tenancies unless they are exempt under the Housing Act 1988 (HA 88).

The exemptions include business or holiday lettings; and lettings at no rent, very low rent (less than £250 per year) or very high rent (more than £25,000 per year).

The tenancy also cannot be an Assured Tenancy if a Section 20 Notice was served before the commencement of the tenancy stating that it was going to be a Shorthold Tenancy. This Section 20 notice may have formed part of the tenancy agreement paperwork and therefore you should check your agreement carefully.

#### 2. Assured Shorthold Tenancy

Tenancies entered into after 1<sup>st</sup> March 1997 are automatically Assured Shorthold Tenancies unless they are stated to be otherwise. It is no longer necessary to serve a notice under Section 20 HA 88.

#### (iii) Service

The notices as detailed for all the Tenancies above can be served by:-

- (a) personally handing it to the tenant (it is deemed to be served immediately).
- (b) posting it through the letterbox at the property (it is deemed served that day).
- (c) posting it by first class post (Recorded Delivery is preferable) (it is deemed served 2 days after posting.)

Proof of service will be required by the Court.

### Possession – Proceedings

If you have served the notice, which has now expired and the tenant still has not left the property, then you must issue Court proceedings to obtain possession.

**WARNING** – You must not attempt to evict the tenants yourself, or force them to leave. If you do, you may be guilty of a Criminal Offence, harassment or unlawful eviction and your tenant may obtain an injunction allowing them to return to the property and they may also be able to obtain a payment in damages from you, which can run into thousands of pounds.

You will not be able to obtain possession if a deposit has been taken from the tenant in respect of a tenancy agreement entered into on or after 6<sup>th</sup> April 2007 where the deposit has not been protected in the manner described above at page 2.

You then have a further decision to make, as to the type of proceedings that you want to issue: -

#### 1. Normal Proceedings

This is a full application to the Court, which includes the giving of statements and evidence at a full Court hearing. The Judge will then make a decision as to whether possession should be granted.

This method will take between 2-4 months to obtain a decision (in addition to the notice period that must also be given).

This method must be used if the form of tenancy is an oral agreement, if the type of tenancy is an Assured Tenancy, or if you are seeking to recover rent arrears as well as possession.

Before Court proceedings can be issued, you must serve a notice upon the tenant informing them what ground(s) you are seeking possession on.

If you are relying on Grounds 3,4,8,10,11,12,13,15, or 17 then you must serve a 2 week notice upon the tenant.

If you are relying on Grounds 1,2,5,6,7,9, or 16 then you must serve a 2 month notice upon the tenant.

These notices must be in the prescribed form and must state in full, the grounds upon which you rely.

## 2. If you have an Assured Shorthold Tenancy

- (i) All of the grounds as detailed above, apply equally to Assured Shorthold Tenancies.
- (ii) There is also one further mandatory ground for possession.

If the fixed period (the period that you have agreed with the tenant for the tenancy) of the agreement has expired, then the Landlord has a mandatory ground for recovering possession.

To recover on this ground you must serve a 2 month notice upon the tenant informing them of your requirement for possession.

You may serve the notice at any time during the fixed term period giving the last day of the tenancy as the expiry date of the notice. The notice period however must be at least 2 months from when the tenant receives the notice.

If the fixed period of the tenancy has expired and the tenant has remained at the property they will have a 'Periodic Tenancy,' which is implied by law and which will be on exactly the same terms as the previous fixed term tenancy except that it will continue indefinitely until you either terminate it or grant a new tenancy.

To terminate a Periodic Tenancy you must also serve a 2 month notice in a slightly different format to the notices required above. The notice period must be at least 2 months from when the notice is received by the tenant, the notice must expire on a rent day (eg if rent is paid every Friday, then the notice must expire on a Friday) and it must state the relevant section of the Act.

## Form of Tenancy

Secondly, you need to decide what form of agreement you have granted to your tenant. Was it a written agreement or was it an oral (verbal) agreement?

This will again decide what methods of possession you can use.

1. A written agreement should be signed by both you as landlord (if you have a letting or managing agent then they may sign instead of you) and by your tenant (if you have more than one tenant then each of them should sign the agreement). Ideally the signature of both you and your tenants should be signed in front of independent witnesses who should then also sign and insert their name and address.

The written agreement should include all the terms of the contract including what rent is payable, and when, and to whom, (a full UK address should be given for the payment of rent, if it is not then the rent is not legally enforceable until such an address is supplied), and what deposit is payable if any.

If a deposit is payable then this should be protected by a tenancy protection scheme. Either the deposit should be lodged with an authorised person or insurance from an authorised provider should be obtained. For more information see [www.direct.gov.uk/en/tenancydeposit/index.htm](http://www.direct.gov.uk/en/tenancydeposit/index.htm)

2. An oral tenancy is just as enforceable as a written agreement, however there is then the problem of showing evidence of what the terms are.

Some terms are implied in to all agreements, whether written or oral. Payment of rent is not implied and therefore must be specifically agreed. There are however certain implied obligations placed on you as landlord in respect of repairs. These include keeping the structure of the property in good repair, keeping the water, gas, electricity, and sanitation services in proper working order, and ensuring that the heating and water heating systems are in proper working order. Failure may result in an action against you by the tenant for damages.

For all Assured Shorthold Tenancies there is also an implied term which provides that the period of the tenancy cannot be less than 6 months. This therefore means that you cannot obtain possession of the property until at least 6 months occupation has expired.

Once you have established the type and form of tenancy that you have, then you must decide whether you can get possession and if you can how you can do it.

## Possession – Grounds

### 1. If You Have An Assured Tenancy

There are 17 different grounds for possession and you must be able to prove at least one to be able to start the possession proceedings. The first 8 grounds are called 'Mandatory', if you are able to prove any of these then the Court must grant you possession. The last 9 grounds are called 'Discretionary', and even if you can prove one of the grounds, the Court may still decide not to grant possession and may give the tenant a second chance.

#### (i) Mandatory Grounds

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| Ground 1 | If you require the property for your own occupation. To obtain possession under this ground then you must have served a notice at the start of the tenancy stating that you may require possession on this ground at a later stage.                     |
| Ground 2 | This ground applies to mortgage companies requiring possession.   |
| Ground 3 | This ground applies to properties usually let as a holiday home.  |
| Ground 4 | This ground applies to properties that are part of an educational institution and are usually let to students.  |
| Ground 5 | This ground applies to properties usually used by a minister of religion.   |
| Ground 6 | If you intend to demolish, reconstruct or redevelop the property and it cannot be achieved without removing the tenant. To use this ground you must not have bought the property with the tenant in occupation.   |
| Ground 7 | If your tenant has died whilst in occupation and there are no other persons entitled to take over the tenancy then this ground may be used. It must be used within 12 months of the tenant's death.   |
| Ground 8 | If there are at least 8 weeks or 2 months of rent unpaid (there are different amounts attributable if rent is paid quarterly or yearly). There must be the required amount of rent arrears at the date of any Court hearing for this ground to succeed. |

#### (ii) Discretionary Grounds

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| Ground 9  | If you have offered the tenant suitable alternative accommodation.  |
| Ground 10 | If there is some rent due (no specific amount) at any Court hearing.  |
| Ground 11 | If the tenant is persistently late in paying the rent (no arrears at the date of the Court hearing are required).   |
| Ground 12 | If the tenant has breached any of his obligations under the agreement.  |
| Ground 13 | If the condition of the property has deteriorated due to acts of neglect or waste by the tenant or other person in occupation.  |
| Ground 14 | If the tenant has caused a nuisance or annoyance to neighbouring owners/occupiers, or has been convicted of using the property for immoral purposes or has been convicted of an arrestable offence committed at the property. |
| Ground 15 | If you have rented the property as 'furnished' and the furniture has deteriorated due to ill treatment by the tenant or other occupier.   |
| Ground 16 | If the property is rented to the tenant as part of the tenant's employment and he is no longer employed in that capacity (eg a caretaker employed by a school who lives in a house in the school grounds)                     |
| Ground 17 | If you were induced into granting the tenancy by a statement which was false and which was made knowingly or recklessly.  |