



Possession proceedings

Sometimes relations between a landlord and a tenant go wrong or it is just the case that you as the landlord want the property back, to sell or to occupy.

To evict a tenant there are strict procedures to follow which will depend on the nature of the tenancy they have.

Assured shorthold tenancy agreement (AST)

First we will deal with the situation where your tenant is occupying the property under an AST where:

- the tenancy has or is about to expire and/or
- there may be rent arrears

If you don't follow the correct procedures, you may be guilty of illegally evicting or harassing your tenant.

There are two ways a landlord can start an eviction process – using a section 21 notice (for eviction on or after a fixed term has ended) or using a section 8 notice (for eviction at any time, including during a fixed term).

Evicting a tenant when a tenancy finishes – section 21 notices

The process for a 'no fault' eviction at the end of a tenancy, is known as a section 21 process. This is a procedure which at times is quite technical and if the technical requirements are not completed the notice may fail. Fixed term tenancies run for a set amount of time (usually six months) and for you to terminate the tenancy at the end of that fixed period, or at a contractual break point, you must:

- provide your tenant with the correct section 21 notice. If the tenancy was created after 1st October 2015, this notice must be in a prescribed form and

you can see a copy [here](#). This form may also be used for tenancies created before that date but not yet expired. It can be used for those tenancies created before 1st October 2015 which may have 'rolled over' to a statutory period tenancy before or after that date.

NB with effect from 1st October all tenancies will require the prescribed section 21 notice (form 6) above (unless the property is in Wales (see below).

- give at least two months notice and that notice cannot expire before the end of the fixed period. In other words the expiry date on any notice must be a date which is after the last day of the tenancy agreement.
- ensure the tenant has occupied the property for at least four months before that notice is served if the tenancy was created after 1st October 2015.
- must have protected the deposit and served the prescribed information to the tenant within 30 days of having received it.

Rules for terminating the tenancy after the end of the fixed term

A statutory periodic tenancy (SPT) occurs when the AST has expired. The tenancy will continue on the same terms and conditions as the original written agreement but there are differences if you wish to terminate the agreement. In other words the fixed term expires at the end date of the agreement and the tenancy then becomes periodic e.g from month to month.

Where you wish to give your tenant notice to leave at this point you must:

- provide your tenant with the correct section 21 notice giving at least two months notice. If the tenancy was



created after 1st October 2015 the correct section 21 notice is in the prescribed form and this must be used. You can find this [here](#). The expiry date of the notice period must be at least two months from the date of the form (allowing for the time taken to serve the notice) and can expire part way through a rental period. This means it does not have to expire on a rent day. Unless the tenancy states so?

- For tenancies created prior to 1st October 2015 which have 'rolled over' either before or after that date you can use the prescribed form (above) but may choose to use the old style notices under section 21(4) (a) Housing Act 1988. There is no prescribed form although they can be purchased from commercial organisations. There is some confusion surrounding the law on these notices and whether they had to expire on a rent day. The case of *Spencer v Taylor* overturned the previous position where the notice had to expire on a rental period day, which means that the notice can expire at any time as long as the minimum of two months notice has been given. The older style notices can be 'tricky' and if you are concerned about this you should seek advice.

If the tenant does not leave at the end of the notice period you may then start eviction proceedings. These are known as accelerated possession proceedings (see below).

Is the section 21 notice valid?

For a section 21 notice to be valid it has to be the correct form giving your tenant the correct amount of notice as set out above. You also have to make sure you have complied with other statutory requirements.

For tenancies starting after 1st October 2015, for the section 21 notice to be valid, you must also have;

- registered your tenants deposit with a tenancy deposit service within 30 days of receiving it.
- served your tenant with the prescribed information.
- provided an EPC at the start of the tenancy.
- provided a gas safety certificate at the start of the tenancy.
- provided an up to date copy of '[How to Rent](#)'.
- Must not be within the first four months of the tenancy starting

If the tenancy started before 1st October 2015 only the first two points will apply. Failure to register your tenants deposit at all is generally fatal to the section 21 notice and cannot be remedied without either returning the deposit in full to your tenant or obtaining an order from the court. The other issues, once remedied, will allow you to serve the section 21 notice again.

We are sometimes asked how long a section 21 notice remains valid. For notices issued in relation to tenancies created prior to 1st October 2015, the notice has no specified expiry time. For tenancies created after that date, notices issued in relation to those tenancies have a 6 month validity period. However as of 1st Oct 2018 all s21 notices will have a 6 month validity period so that if possession is issued after 6 months the claim will not succeed.

Retaliatory Eviction

For tenancies started after 1st October 2015 there is an additional protection for tenants where landlords seek to issue a section 21 notice, and issue proceedings, because the tenant has complained about lack of repairs or poor repairs. This is known as retaliatory eviction and was introduced in the Deregulation Act 2015.

This means that if your tenant has complained to the council about necessary works, and the council have issued a notice for works to be done, a section 21 notice cannot be issued for at least 6 months from the date of the council's notice. The purpose of this is to prevent landlords from starting possession proceedings just because a tenant complains about repairs.

A section 21 notice may also be invalidated in circumstances where the local authority have not yet issued a relevant notice but the tenant has been unable to contact the landlord despite taking all reasonable steps to complain about the condition of the property and so first complained to the authority.

Is the section 21 notices for property in Wales

If your property is situated in Wales some of the above may not apply. You will still need:

- To register the deposit with one of the tenancy deposit schemes.
- Give notice of the registration by serving the relevant prescribed information form.
- Undertake an immigration check.

However in order to serve a section 21 notice you will have to be a registered member of '[Rent Smart Wales](#)' and you can check to make sure your membership is up to date. If you are not a member your section 21 notice will be invalid. You must also be licensed, and therefore authorised, as a landlord and you can find more information [here](#).

The form of section 21 notice to be used is not prescribed. In other words you should not be using the Form 6 referred to above. It is recommended that you use the 'old style' forms which you can obtain from commercial sellers which will contain the correct reference to the Housing Act 1988.

Termination of a tenancy during the fixed term (section 8 notice)

During the fixed term of your tenancy, a landlord can only terminate a tenancy if the tenant breaks the terms of your agreement and that reason falls within one of the specific reasons set out in section 8 of the Housing Act 1988. These include some grounds which are classed as mandatory grounds and others which are discretionary.

What this means is that if you seek possession on a mandatory ground and that is proved, the court will grant possession. If the ground cited is discretionary then it is for the court to decide whether or not to order possession and that depends on the facts of the case. In some cases the courts can order 'suspended possession' which means the tenant is able to stay for a set period of time or if certain conditions are adhered to. For example the tenant may be able to stay as long as they stick to a rent arrears payment schedule.

One of the principal mandatory grounds is when a landlord is seeking possession because the tenant is in arrears with their rent. Therefore, if your tenant is either eight weeks or two months in arrears with the rent the landlord may issue a section 8 (ground 8) notice.

In order for you to succeed on this ground you must:

- issue the correct notice, often referred to as a section 8 notice. This notice must be in a prescribed format. You can see one [here](#). It is often referred to as a statutory Form 3. This means it is an approved form where the wording has been carefully drafted to make sure that the tenant understands it and the nature of the action that is being taken.
- Follow the instructions carefully to complete the form. Failure to complete it as required can lead to a claim for possession being denied.
- the form must set out the 'ground' on which possession is being sought. For rent arrears this means ground 8 (not to be confused with section 8) and this is known as a mandatory ground. This means that if you prove that 2 months/8 weeks arrears are outstanding at the time the notice is issued and at the time of the court hearing, and there are no other issues such as outstanding repairs, the court should grant possession. To complete the form you must use the exact wording for the relevant ground detailed in schedule 2 of the Housing Act 1988. These can be found [here](#).
- give your tenant 14 days from the tenants receiving the notice to pay the arrears before issuing court proceedings

There are other grounds which you may also include for an action of this type, such as grounds 10 and 11 which concern late and irregular payment of rent. However these are discretionary grounds and if proved the court **may** grant possession. It is generally recommended that these grounds be used in addition to the ground 8 when issuing this notice.

If the amount outstanding is not paid in full within the time given, by law no less than 14 days - you may commence possession proceedings to recover the property and to recover the rent due. However it is worth noting that the tenant has up until the court date to pay the rent arrears.

NB a section 8 notice can be issued during the fixed term and during the SPT. It can also be issued at the same time as a section 21 notice (see above).

How do I serve the notice on the tenant?

One of the questions we are most frequently asked about notices is, how should it be served? When faced with this issue these are some things to consider;

- the notice must be served addressed to all the tenants at the property being let.
- whether or not to send the notice by registered or recorded delivery as if it is not collected or accepted you will know about it and may have to start all over again some weeks later.
- get a proof of posting from the post office if you are sending by ordinary first class post. Make sure also that you allow three working days for delivery.
- if you are delivering in person try to get the tenants to sign a copy of the notice. If they are not in it is acceptable to post the notice through the letter box but it would be useful to have a witness and perhaps some video evidence.
- for hand delivery to the property, time will start to run from the following day.
- complete a certificate of service known as an N215 which you can find [here](#).

Accelerated possession – Section 21 Proceedings

Where you have given the tenant 2 month's notice using the correct form, and the tenant has not left the property, you may be able to apply for an accelerated possession order. This is intended to be a quick process and may be completed without a court hearing.

To summarise you can only do this if:

- your tenant has occupied the property on an AST or a statutory periodic tenancy
- there is a written tenancy agreement a copy of which can be attached to the application
- you have given the required written notice (a minimum of 2 months) in the right form and if the tenancy was created after 1st October 2015 this has to be in a prescribed form (see above).
- your tenant is not being asked to leave before the end of a fixed-term tenancy
- the deposit your tenant paid has been properly protected in an approved scheme and you have received the prescribed information (see above).

Where the tenancy was created after 1st October 2015:

- You have also provided copies of the energy certificate, gas safety certificate, the booklet 'How to Rent' (see above)
- the section 21 notice was not issued after a repair notice from your council – see retaliatory eviction above.
- The section 21 notice is not over 6 months old.
- The notice was not served before the first 4 months of the tenancy.

If you have not followed the rules above it may be possible for your tenant to apply to the court to stop the proceedings and/or the court will not grant the accelerated possession order and any court fees you may have paid will not be recoverable.

As of 1st Oct 2018 - the new provisions will apply to all tenancies in England but the differing rules for Wales will continue to apply (see above).

How it works

You will need to complete the necessary form N5B in triplicate. The court will send a copy of the application to the address of the rented property where your tenant is living. If the tenant wants to challenge the application they will need to do this within 14 days of receiving notice of the application. If they do not do this the matter may proceed without a court hearing.

A judge will look at all the evidence and decide either to:

- issue a possession order meaning your tenant has to leave the property within a stated time. This is usually what happens, Or

- have a court hearing. This may happen if the paperwork is incorrect or your tenant has raised an important matter which requires further consideration.

If a possession order is made either with or without a hearing your tenant will be given 14 or 28 days to leave the property. In some exceptional cases this may be extended to 42 days although this is unusual. If they do not leave at the end of the time, you can apply to the court for a warrant for possession. This means a bailiff attend the property to make sure the eviction takes place.

Possession proceedings for non-payment of rent (section 8)

If you have served your tenant with a section 8 notice and the rent has still not been paid and the tenant has not left you may wish to start possession proceedings. For this type of action there is no accelerated option but you can apply online to start the process. You can find more information about this [here](#).

When your tenant receives notice of these proceedings it is possible to defend the application if they can show either the section 8 notice was defective, the amount of arrears is wrong, or they want to counterclaim for disrepair. If that is the case they will need to make sure that they complete the necessary form to file the defence with the court. The possession hearing is generally 4- 8 weeks after the application is issued. Your tenant should receive at least 21 days notice of that hearing.

If your claim is successful, the court will grant a possession order. The court order will also order the tenant to pay any outstanding rent and the costs of the application. They will be given a time to vacate the property and although this time may depend upon the circumstances of the case, it will generally be 14days after the hearing. A judge could award up to 42 days if there are exceptional circumstances raised by the tenant that are accepted by the judge. If they do not leave at

the end of that time you can apply to the court for a warrant for possession meaning bailiffs will attend the property to make sure the eviction takes place.

If your tenant leaves the property before proceedings for eviction are issued, but the rent remains outstanding, you may bring an action in the small claims court to recover any outstanding amounts less than £10,000

Rules for excluded tenancies or licenses (lodgers)

If you share the property with your 'tenant' there is no formal process required to terminate the agreement and a court order is not required to evict them. This is because they are not classed as a tenant but as a licensed occupier. In these circumstances you only need to give you 'reasonable notice' to leave and this doesn't have to be in writing, although we would always recommend that it is.

In some circumstances there may be a lodger agreement which sets out any fixed term or notice provisions. To find out more about letting rooms in a house and a landlords rights see [here](#).

What is reasonable will depend very much on the circumstances of the matter which can include:

- how long the occupier has been living there
- the nature of the issues requiring you to want your occupier leave
- how often rent is paid
- whether you get on with your tenant
- if the rent is up to date

If your lodger does not leave at the end of the notice period it may be possible for you to change the locks to prevent access to the property provided that you return all property belonging to them.

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