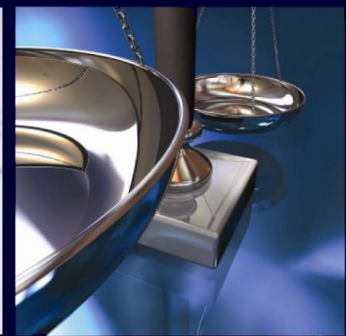


The Landlords Guide to Possession



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The landlords guide to possession.

This brief guide is designed to give landlords the basic information that will help them understand the legal process of applying for possession of residential property. This guide does not apply to commercial property.

The initial steps

A landlord may have many reasons for wanting to regain possession of a property which has been let to a tenant. The most common reasons are that the tenant has not paid the rent or the landlord wants to take the property back so that it can be sold.

The first step in regaining possession starts with terminating the tenancy.

Notice

In order to terminate the tenancy the landlord must serve a notice on the tenant informing them that the tenancy is being brought to an end. The notice must also specify a date when the tenancy will terminate.

The type of notice that you use will depend upon the nature of the tenancy, for the purposes of this article we assume that the tenant is an assured short hold tenant under the Housing Act 1988 (as amended) ("the act"). There are other types of tenancy but they are less common and we will not deal with those in this article.

Notices generally fall into 2 categories. Firstly, if a tenant is in breach of the agreement then you will serve upon them a notice under s8 of the Housing Act 1988. The second type of notice that is commonly served is where the tenant has not necessarily broken the agreement but the landlord wishes to recover the property for other reasons. This will require service of a notice pursuant to section 21 of the Housing Act 1988.

Section 8 notice

A notice served pursuant to S8 of the Housing Act 1988 must specify the grounds upon which the landlord is relying to terminate the tenancy. Under the act there are 14 grounds which are set out in schedule 2. These must be quoted in the notice itself. You must also give a date for the tenancy to terminate and this must not be less than 14 days (longer in some cases) from the date of service of the notice upon the tenant. The notice must be served at the tenants address. It is usually a good idea to send the notice by recorded delivery.

Section 21 notice

If the landlord wants to recover possession but the tenant has not broken the agreement in any way the landlord can terminate the tenancy by service of a notice under s21 of the act.

A section 21 notice must give the tenant 2 months notice of the landlord's intention to recover possession of the property. A section 21 notice cannot terminate a tenancy within 6 months of the start of the tenancy.

If the tenancy is for a fixed term then again the tenancy cannot be terminated until the fixed term has expired.

Once the notice period has expired the tenant no longer has any right to remain in the property.

What if the tenant will not leave?

If, following expiry of the notice period, the tenant refuses to leave you must commence proceedings to obtain an order for possession from the court. You must not try and force the tenant to leave by force or intimidation as they are both criminal offences under the Protection from Eviction Act 1977.

Court Proceedings

It will be necessary to fill out and send to the court the papers to start the process of obtaining possession. The claim form (N5) must be completed and sent to the court along with the correct fee (currently £280). The correct court is the one closest to the area in which the property is situated.

The court will then list the matter for a hearing. This will not be less than 30 days after the issue of the claim.

The hearing will be given a 5 minute slot in the judges list. If matters are straightforward then possession will usually be given at that hearing. However, if the tenant defends the claim the judge will give directions to enable the matter to have a full hearing. That will usually mean the claim will be delayed by several months.

If an order for possession is made it will usually take effect 14 days after the hearing.

Retaking possession

If the tenant has not vacated the property after you have received an order for possession, it will be necessary to instruct the bailiff.

This will require a further application to the court and payment of a fee.

It is an administrative process and there are no further hearings.

The bailiff will send to you notice of a time and date when the tenant will be evicted.

It is usually good practice to attend the eviction with a locksmith. They can then change the locks to prevent the tenant from regaining entry to the property.

Conclusion

Possession proceedings can be complicated and there are many traps along the way for the inexperienced landlord. If you get it wrong you will not remove the tenant and may end up paying their legal expenses. Therefore, we would suggest that in all cases legal advice is sought to ensure that you get it right first time.

If you require specific advice contact Andrew Grant on 01244 394 230.

This article is for guidance only and should not be relied upon as specific legal advice.

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This article is intended as a general statement only and does not purport to render any specific advice, legal or otherwise. Specific advice on a particular problem should always be sought.

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