

FREE REPORT

Landlords Eviction Procedures in England & Wales With the compliments of



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DEFINITION OF SHORTHOLD TENANCY: A tenancy of residential premises that is granted after February 1997 is an Assured Shorthold Tenancy (or AST); unless the document creating it expressly states that it's creating an Assured Tenancy (as opposed to an Assured Shorthold Tenancy).

Accordingly, all tenancies that are created verbally are Shorthold. So are all tenancies that are created in writing, if the document doesn't say what type of tenancy it is creating (i.e. 99% of all cases).

There are two ways of obtaining a court order to end a Shorthold tenancy: either section 21 or section 8 of the Housing Act 1988. Both are explained below.

But if the tenancy is an Assured Tenancy, as opposed to a Shorthold, the section 8 procedure is the only means of obtaining a court order to end the tenancy.

SECTION 21 POSSESSION: Where the tenancy is an Assured Shorthold Tenancy (informally just called a Shorthold tenancy) the landlord can evict the tenant under section 21 of the Housing Act 1988.

The landlord must comply with each of the following requirements, and the tenant has a valid defence to the claim if the landlord does not do so.

Firstly, the landlord must give the tenant written notice under section 21 of the Act, ending the tenancy. If the rent is paid weekly or monthly, which is the usual arrangement, the tenant must be given not less than two months notice to leave.

However, if the rent is payable quarterly the tenant must be given not less than three months notice. If it is payable six monthly or annually the tenant must be given not less than 6 months notice.

The notice cannot take effect during the first 6 months of the tenancy. If the tenancy has an initial fixed term exceeding 6 months, the notice cannot take effect during

that fixed term. Therefore the tenant always has at least 6 months in the property.

It is, however, perfectly possible for the landlord to give the notice during the first six months, or during the initial fixed term, provided the notice does not take effect until that period has ended.

For example, in a typical tenancy (i.e. one where the rent is payable monthly) a landlord will often give the 2 months notice at the end of the 4th month of the tenancy, to take effect at the end of the 6th month.

It can legally be given at the beginning of the tenancy, in which case the tenant is actually given 6 months notice, rather than 2 months.

But it cannot be back-dated, nor given before the date on which the tenancy starts. This is so that the landlord cannot cheat the tenant by ending the tenancy during the first six months.

The notice is known as a section 21 notice. It must be in writing, but does not have to be in any particular form.

Secondly, if the tenant does not move out when the notice expires the landlord must obtain a Court order for possession (i.e. an eviction order).

Therefore the tenant does not have to leave just because the notice has expired. The tenant is entitled to remain in the property while the landlord applies for and obtains a court order. That process usually takes another month.

Thirdly, if the tenant does not leave when the Court order is served the landlord has no right to remove the tenant. The tenant can only lawfully be removed by the Court bailiff. The landlord must therefore go back to the Court and apply for the bailiff to visit. That process usually takes a further 2 weeks.

However, the tenant should take into account the fact that on each application to the Court the landlord will incur legal fees (including solicitor's charges and Court fees), and the Court will normally order the tenant to pay part or all of those legal fees.

The advantage to the landlord of using the section 21 procedure is that it's faster than the section 8 procedure outlined below, because no hearing takes place. The matter is decided based on the written documents submitted to the Court, so the eviction happens quickly.

The disadvantage to the landlord of the section 21 procedure is that no claim can be made for anything except the eviction order. So he cannot make a claim for rent arrears, and must sue in a separate action for any arrears not covered by the rent deposit.

SECTION 8 POSSESSION: By section 8 of the Housing Act 1988, the landlord cannot evict the tenant within the first six months of the tenancy, or during the fixed term (if it's longer than six months), except on one of the following grounds: the "section 8 grounds".

The landlord can only use these grounds if:-

(a) The tenancy agreement contains a provision that allows early termination on the ground in question;

(b) The landlord gave the tenant notice, before the tenancy began, that the ground in question might be relied on. (Note: This only applies to some of the grounds - see below.)

One consequence of this is that possession cannot be obtained under Section 8 if the tenancy was created verbally.

To obtain possession the landlord must -

1. Give the tenant 2 weeks notice ending the tenancy. The notice (called a "notice seeking possession" or "section 8 notice") must be given in writing. The notice can be more than 2 weeks in some cases (depending which ground for possession is relied on - see below); and can be shortened by the court in some cases (again, depending which ground for possession is relied on - see below).

2. The landlord must obtain a Court order (called "a possession order"). To do this he must apply to the Court, satisfy it that the ground in question applies, and (for some of the grounds - see below) satisfy it that it's reasonable for the Court to make the order.

3. If the tenant does not leave once a Court order is granted, the landlord must apply to the Court bailiff to evict the tenant.

The grounds which can be relied on (the "section 8 grounds") are:

Ground 2: That there is a mortgage on the property, created before the tenancy began, and the lender wants to sell the property (e.g. because of mortgage arrears) and that the landlord notified the tenant in writing before the tenancy began that he might seek possession on this ground (though the court can waive this requirement).

Ground 8: That the rent is more than two months (or eight weeks, if payable weekly) in arrears, both when the landlord gave the section 8 notice and at the date of the court hearing.

Ground 10: That some rent was in arrears, both when the landlord gave the section 8 notice and when the court proceedings were begun.

Ground 11: That the tenant has persistently delayed paying rent.

Ground 12: That the tenant has broken one or more provisions of the tenancy agreement, other than payment of the rent.

Ground 13: That the condition of the property has got worse because of damage or neglect by the tenant or any person living with the tenant.

Ground 14: That the tenant, or someone living in or visiting the property, has caused a nuisance or annoyance, or been convicted of using the property, or allowing it to be used, for immoral or illegal purposes (e.g. prostitution).

Ground 15: That the tenant, or someone living with the tenant, has damaged the landlord's furniture.

Ground 17 (Only available if the tenancy was created after 28 February 1997): That the tenant induced the landlord to grant the tenancy by making a false statement.

THE NOTICE PERIOD: At least 2 months notice must be given for Ground 2. At least 2 weeks notice must be given for Grounds 8, 10 to 13, 15 and 17. In the case of Ground 14, Court proceedings can start as soon as the section 8 notice has been served.

Where the landlord relies on any Ground other than Ground 14, he cannot begin the Court proceedings during the relevant notice period.

The advantage to the landlord of the section 8 procedure is that it can be used to terminate the tenancy during the first six months or during the initial fixed term if there is one (the periods when the section 21 procedure can't be used).

CRIMINAL OFFENCES THE LANDLORD HAS TO BE CAREFUL NOT TO COMMIT: The landlord has to obtain a Court order to evict the tenant, who cannot legally be evicted (i.e. without his consent) in any other way.

However, the tenancy can be surrendered, by agreement of both the landlord and the tenant, at any time, even during the fixed term.

To evict a tenant, the landlord must go through the correct procedure: applying to Court, proving the ground, obtaining a court order, and then using the court bailiff to evict the tenant. If the landlord evicts the tenant in any other way, the landlord commits a criminal offence - see below. Also, if the landlord tries to frighten a tenant into leaving, the landlord commits a criminal offence - see below.

The criminal offence of harassment is committed if the landlord:-

1. Behaves in a way that is intended to interfere with the peace or comfort of the residential occupier, or members of his family
2. Persistently withholds or withdraws services which the residential occupier reasonably requires to occupy the premises as his home
3. Knows, or has reasonable cause to believe, that his conduct is likely to make the residential occupier leave the premises, or not use part of them, or not use services the tenant is entitled to use, or not try to exercise the right to use those premises or services.

The tenant can sue in the County Court for financial compensation for any acts of harassment. If the landlord is convicted of harassment at an earlier criminal hearing, there will be little difficulty in obtaining this compensation.

The landlord may also have broken other parts of the tenancy contract.

A landlord commits a criminal offence of illegal eviction if:-

- a) The landlord evicts, or tries to evict, a residential occupier without following the required legal procedure; or
- b) Behaves in a way intended to interfere with the peace or comfort of a residential occupier or members of his household and, as a result, the occupier gives up the tenancy; or
- c) Persistently withholds or withdraws services which a residential occupier reasonably requires to occupy the premises and, as a result, the occupier gives up the tenancy.

Illegal eviction is a criminal offence under the Protection from Eviction Act 1977 (as amended by the Housing Act 1988), punishable by up to two years imprisonment and an unlimited fine.

A residential occupier who has been illegally evicted may:-

1. Apply for a court order reinstating the tenancy; or
2. Sue for damages (i.e. financial compensation). This can include any injury or damage to property, as well as the statutory damages for the illegal eviction.

ENDING A TENANCY DURING THE FIXED TERM: The tenant cannot end the tenancy during the fixed term, unless:

1. The tenancy agreement contains a "break clause", i.e. a provision expressly authorising the tenant to give notice ending the tenancy during that fixed term (typically the fixed term will be six months); or
2. By a surrender of the tenancy, with the landlord's agreement.

A fixed term tenancy can't be terminated early by the tenant unless the agreement allows this or the landlord agrees. If the tenancy does not allow this and the landlord does not agree to an early termination, the tenant will remain bound by the agreement and liable for the rent for the whole period.

If the tenant wrongfully leaves early, the landlord can sue for the rent due for the remainder of the fixed period. In that case the landlord does NOT have to mitigate his loss by re-letting the premises.

THE LEGAL POSITION WHEN THE FIXED TERM ENDS: If the tenant wishes to move out on the day the fixed term ends, the tenant is not required to give notice to the landlord. This is because the contract between the landlord and tenant ends when the fixed term ends. The tenant no longer has any contractual obligations (either to give notice, or to pay rent).

This is so even if the tenancy agreement contains a provision (called a "break clause" - see above) specifying that the tenant must give notice if he wants to leave. Such a clause only applies where the tenant leaves early, before the end of the fixed term.

If the tenant stays beyond the fixed term, a periodic tenancy begins. This happens automatically, by operation of law, without either the landlord or the tenant having

to do anything.

The period of the tenancy is determined by the frequency that the rent is payable: if rent is payable monthly, a monthly tenancy arises; if it is payable quarterly, a three-monthly tenancy arises; etc.

To end a periodic tenancy, the tenant must give the landlord one period's notice, in writing, expiring on the last day of a period (i.e. expiring on the day before the rent is due). Thus if the tenancy is a monthly tenancy the tenant must give not less than one calendar month's notice. It is best to give the notice a few days early, because it will be invalid if less notice is given than is required.

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