

Possession -Social Landlord Housing Association/Trust & Private Landlords

Simple case of Landlord (Private Landlord, Housing Association or Local Authority) wanting to get their property back from a tenant, they must first contact the tenant and issue them with formal notice. This is even more prevalent in Social Landlords such as local authorities and housing associations, who are obliged to follow Pre-Action Protocol for Possession Claims. Most social landlords have policies of dealing with rent arrears and the steps they will take to support vulnerable tenants. Failure to follow the policies may support a defense to the claim.

Possession Claims by Social Landlords

The protocol applies to residential possession claims brought by local authorities and private registered providers of social housing.

Prior to issuing any notice of intention to seek possession, the landlord (ltd) must take reasonable steps to ensure the tenant understand any information given to the tenants. The ltd is under a legal duty to show to the court that reasonable steps were taken to ensure such information was clearly communicated to the tenant.

The court would expect that the landlord would have engaged with the tenant and tried every resolution available to avoid any Court proceedings at an early stage. Where the tenant fails to pay the rent owed to the ltd, the ltd must contact the tenant as soon as reasonably possible. The ltd must discuss the tenant's financial circumstance, the tenant's benefit entitlement and the repayment of the arrears. Both parties should come to an agreement to pay an affordable sum for the tenant to pay towards the arrears, based on the tenant's income and expenditure.

Possession proceedings should not be initiated against a tenant who can demonstrate he/she has provided all evidence needed to process claim for housing benefit or universal credit, who has reasonable expectation of receiving the benefit and who has/can pay the sums not covered by the benefits. The ltd is obliged to take effective ongoing liaison with housing benefit departments and the DWP and with the tenant's consent make direct contact before taking enforcement action. Both parties should work together to resolve any housing benefit or universal problems.

Serving Possession Notices

Landlord must give formal notice to an occupier before the claim is commenced, if a possession order is required. The *Housing Act 1985 and 1988* states that ltd can terminate a secure and assured periodic tenancies by obtaining and enforcing a possession order and before applying for a possession order a statutory notice must be served.

After service of notice but before issuing proceedings, the ltd is obliged to make reasonable attempt to contacts the tenants to discuss the amount of arrears, the cause of the arrears, the repayment of the arrears and the housing benefit or universal credit position. Where the tenant agrees to pay a reasonable amount, the ltd must postpone court proceedings so long the tenant keeps to the agreement.

Assured Tenants (not assured shorthold tenants)

If the nuisance ground is used, proceedings may begin two weeks or two months after service of the notice. Rent arrears ground are required only two weeks' notice. The notice must expire 12 months after the date proceedings can be commenced. It is to be noted that for secure tenancies, a different kind of notice is required where the lld is relying on the new absolute anti-social behaviour ground for possession.

Private landlord assured shorthold tenancies (Possession)

Assured shorthold tenants (ASTs) have limited substantive security of tenure after the first six month of tenancy. The lld must serve notice at least two months before making a claim for possession.

The common notice used in such tenancies is the section 21 notice. No justification or reasons are required. It is referred to as the no fault ground. The requirements/provisions are laid out in s21 of the HA 1988. Lld can only use this if he is not seeking possession on rent arrears.

ASTs section 21 notices are enforced by provisions that a landlord has to comply with their strict requirements.

If a lld fails to comply with the s21 requirement, then the sanction employed by the court is that section 21 notice will fail and should not have been served.

However, landlords may decide to use other grounds to seek possession where the tenant is in arrears or the section 21 ground cannot be used. There are other grounds to seek possession against an AST within six months of a tenancy.

The same type of notice can be served to the AST. This is called the section 8 notice under the HA 1988 s.8. The grounds must be proved. This is available for the first six months. The claim can be commenced after two weeks rather than two months (if for instance the claim is based on arrears). The lld has to prove a ground under s8.

The tenant must be given at least two months to vacate the property, taking into account of the length it may take for the notice to be received, if posted. However, the law requires the notice not to be served within the first four month of the tenancy. After serving the notice, the lld must issue a claim of possession within six months, if not, the landlord cannot rely on the section 21 notice and a new notice will have to be issued to the tenant.

Social landlord (PRP) assured shorthold tenancies

Some social llds provide assured shorthold tenancies (ASTs), and will always require s21 before a claim for possession can be made, unless possession is sought under Ground 8. Additional notice requirements may be applied depending on the particular type of assured shorthold tenancy. This is the way to deal with each of the notice requirement.

Notices to quit

Either the landlord, or the tenant can furnish on either party, a notice to quit. Lld's notices to quit are ineffective in respect of secure and assured tenancies including assured shorthold tenancies and can only be determined by obtaining a possession order.

Before a lld can make a claim for possession, any contractual periodic tenancy which is not secure or assured must be ended by notice to quit. All periodic tenancies can be ended by a tenant's notice to quit. The time limit is 28 days for the notice to quit or a complete period of the tenancy, whichever is longer.

Secure tenants

The notice must be served in the prescribed form as laid out in HA 1985 s83. It is similar to a notice of seeking possession and requires the following information be given:

- Particulars of the conduct that has caused the lld to seek a demotion order
- The earliest date on which the proceedings may be begun, at least 28 days.

*The notice lapses 12 months after the date specified.

The notice will specify on what ground the landlord is seeking possession. The grounds 1- 17 grounds for possession which are either mandatory or discretionary grounds. Mandatory grounds are grounds 1- 8 where if proven the court has to grant possession. Discretionary grounds are 9-17 where the court has to decide on the reasonableness of granting the possession.

Assured Tenants

Landlord must first serve notice of intention to demote a tenant before starting proceedings. No prescribed form of notice is required.

Demoted tenancies_ notices before applying for possession

Lld must always obtain a possession order when wishing to evict the demoted tenant and further notice must always be given to the tenant before starting the possession claim; even though the demoted and demoted assured tenants have limited security of tenure. For both introductory and demoted (local authority) tenancies the requirements of the notice of intention to seek possessions are similar.

Secure Tenants

Notice for secure tenancies must be served. A right to review of the decision to seek possession is available to introductory, demoted and flexible tenants and tenants facing possession on the absolute anti-social behaviour ground. The review decision must be communicated to the tenant in writing with reasons.

The precise details and time limits for the review do differ. For demoted and introductory tenancies there is no particular form for making the request.

In contrast. For flexible tenancy reviews and the review under the mandatory anti-social behaviour ground the request must be in writing and state the grounds upon which the review is requested.

Court Proceedings (Possession)

Landlord should provide tenant up to date rent statements ten days before the hearing date and the lld must disclose what the lld knows about the tenant's housing benefit or universal credit position.

The date and time of the hearing must be notified to the tenant. The tenant must be advised to attend the hearing and should record such hearing. If the tenant agrees to comply with the agreement made after the issue of proceedings to pay current rent and a reasonable sum

towards the arrears the lld should agree to postpone the proceedings so long as the tenant keeps to the agreement. If the tenant stops paying the arrears then the lld must warn the tenant of the intention to restore the proceedings and give clear time limits within which to comply.

Issuing a possession of claim

Failure to comply with Part 55 may get a case struck out or adjourned when issuing a possession claim. Most claims for possession can be brought to county court. CPR Part 55 covers three types of possessions claim. If the particulars of claim rely on statutory grounds for possession, the particular of claim must set out the ground/s relied on.

Rent Arrears cases (Possession)

If the claim includes a claim for non-payment of rent the particulars of claim must set out specific information about the arrears. In particular a schedule of arrears must be provided. There must be two-year period immediately before issue, or, if the first date of default occurred less than two years before the date of issue, from the first date of default. With mortgages arrears, if the claim is for possession is brought by a mortgage (lender of a secure loan) the particulars of claim must state whether certain notices and charges have been registered under the Matrimonial Homes Act 1967. All the necessary details must be provided.

Defendant's response

The defendant must complete the defence form and attend the hearing. However, failure to file a defence form does not prevent a defendant from attending the hearing and contesting the claim. There is no provision for default judgement under CPR Part 55.

First Hearing – Possible Outcomes

At the first hearing these are the possible outcomes:

- some form of possession order is made against the defendant
- the claim is dismissed, and the claimant may have to initiate new proceedings
- Where a defendant contests a claim, but has not filed a full defence in advance, the judge hearing the claim has a discretion to decide the case at the first hearing,
- to adjourn to a future hearing and/or to give case management directions.
- However, if the claimant does not know the claim is being defended, it will not be decided at the first hearing (usually for lack of time) the claimant should attend court with the necessary evidence to prove the case.

What type of possession order?

The order the court makes depends on the type of tenancy you have and the legal reason for your landlord's claim.

The order could be "Outright Possession" order

Generally, you'll be ordered to leave your home within 14 days of the order, or 42 in cases of 'exceptional hardship'. Ask for extra time when you send in your defence form or at the hearing. If you don't leave by the date ordered your landlord can apply for the court bailiffs to evict you.

"Suspended Possession"

This means you can stay in your home and you must stick to any conditions agreed by the parties and the court sets out, such as paying current rent plus an amount towards rent arrears.

If you break any of the conditions your landlord can apply straight away for the court bailiffs to evict you.

"Postponed Possession"

Same as for suspended orders above, except that if you breach a condition of the order your landlord must go back to court to fix a date when you must leave. After that date has passed, your landlord can ask the court bailiffs to evict you. The court will also decide if you must pay any of your landlord's legal costs

Procedures -Possession

The accelerated possessions procedure

The accelerated possession procedure is available only for assured shorthold tenancies, including demoted assured tenancies and fixed term 'flexible' assured shorthold tenancies. This can only be used where the original tenancy agreement is a written agreement; and the only remedy sought is a possession order _ rent arrears or any other form of relief cannot be claimed under the accelerated procedure. The accelerated procedure enables a landlord to obtain a possession order without a court hearing. There are a number of stages the person needs to follow.

Interim possession orders

A quicker procedure for obtaining possession orders (IPOs) against trespassers is available under CPR Part 55 Section III. It does not apply to all claims against trespassers, only cases where the occupiers entered as trespassers

When the court is considering a claim for possession on a discretionary ground it also has the extended discretion. On any such adjournment, stay, suspension or postponement, the court must impose conditions regarding the payment of rent arrears and rent (unless to do so would cause exceptional hardship or otherwise be unreasonable) and may impose such other conditions as it thinks fit. The court may discharge or rescind the order for possession it thinks it appropriate to do so, taking into account the tenant's situation. If the claim for possession is established on a mandatory ground, or where no grounds are required (for example, claims against assured shorthold tenant or non-secure tenants) the court does not have the extended discretion. But where an order is made on a discretionary ground, like for instance with rent arrears, conditional orders are often made, thus giving the tenant an opportunity to avoid being evicted, but they have to comply with the conditions. The landlord is granted the right of possession, but the enforcement of the order is suspended on terms that the tenant must repay the arrears and costs by instalments, until they are cleared.

What happens after possession is granted to claimant?

Enforcing possessions orders

The landlord will require a writ of possession or warrant to enforce the eviction.

The enforcement of possession orders can be executed in both the county court and in the High Court under the CPR Part 83.

Secure and assured tenancies terminate when the order is executed by the court. This means the tenant can remain in the property between the order being made and the actual eviction by court enforcement officers.

Challenging the order?

The possession order may be challenged in three ways:

- appeal against the order. A defendant can appeal against the making of a possession order, but an appeal will only succeed if it can be established that the decision was wrong or unjust.
- apply to set the order aside. This must be supported by evidence. Some conditions must be satisfied though.
- apply to vary the order. Where the order has been made on a discretionary ground, the court retains the 'extended discretion' up to the actual eviction. Under the extended discretion the possession order may be varied if the court thinks it reasonable to do so. The enforcement of the order may be stayed or suspended.

Counterclaims

It is possible to request the court to suspend or stay a warrant, to obtain permission to bring a counter claim within proceedings so as to reduce or extinguish the arrears.

After Eviction

After the eviction, the power to stay or suspend execution is taken away from the court's hand. The tenant still has two ways to regain occupation:

- setting aside possession order. If the possession order is set aside, the warrant itself 'falls away' and the tenant is entitled to re-occupy.
- setting aside the warrant. The court may set aside the warrant if it satisfies the warrant was defective or obtained by fraud or there has been abuse of process. This will amount to breach of the court's rule.

Abuse of process

The court may refuse to grant permission for a warrant to be executed where the possession order is more than six years old. A warrant can be set aside if the court finds that there was oppression in its execution.