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A Guide to Evicting Tenants



Northwich office
2 Castle Street
Northwich
Cheshire
CW8 1AB

Tel: 01606 74301
Fax: 01606 871034

winsford office
Grange House
5 Grange Lane
Winsford
CW7 2DH

Tel: 01606 592159
Fax: 01606 861381



reception@mosshaselhurst.co.uk

www.mosshaselhurst.co.uk

enquiries@mosshaselhurst.co.uk

Checklist for Landlords for Possession Proceedings

Paperwork required from you:

- Y/N Assured Shorthold Tenancy Agreement
- Y/N Tenancy Deposit Scheme Certificate
- Y/N Schedule of arrears
- Y/N Correspondence with Local Authority if Tenant is in receipt of Housing Benefit
- Y/N Correspondence with the Tenant
- Y/N Correspondence with the Local Authority
- Y/N Documents listed below

Confirmation that the Tenant has received the following information:

- Y/N Tenancy Deposit Scheme prescribed information
- Y/N "How to rent: the checklist for renting in England"
- Y/N Energy Performance Certificate
- Y/N Gas safety certificate

Current Court Fees for Possession Proceedings are:-

| | |
|--|---------|
| Court Issue Fee – Possession Claims Online | £325.00 |
| Court Issue Fee – Accelerated Possession Proceedings | £355.00 |
| To issue a warrant of possession | £130.00 |

These fees often change so do check online first at www.gov.uk

Please note that you must not rely on the information contained in this guide as an alternative to seeking specific legal advice from an appropriately qualified legal professional including a Solicitor, Legal Executive or other advisor at this firm.

To the maximum extent permitted by applicable law we exclude any liability for any information contained in this briefing note which might be regarded as a representation, warranty, undertaking or guarantee relating to its contents.

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- *That the information in this guide is correct, accurate or complete*
- *That the use of this guide will lead to any particular outcome or result in a particular matter*
- *In particular that by using this guide you will enhance or protect your legal position*

We will not be liable to you in respect of any losses arising out of inappropriate reliance upon this guide.

If you choose to use the Accelerated Procedure you will need to make a separate claim for rent arrears.

If all goes well and a Possession Order is obtained then the date for the Tenant to give up possession will be no less than 14 days after the making of the Order unless the Tenant can prove exceptional hardship in which case the Order for Possession may be postponed for up to 6 weeks.

It is easier to obtain a Possession Order if the Tenant fails either to respond to the Section 8 or Section 21 Notice or to the Court papers, or if the Tenant fails to turn up at Court. If a Tenant does turn up at Court to negotiate then be very careful about agreeing an Order for Possession by consent even with the Court's approval as the Tenant could subsequently change their mind and apply for the Possession Order to be set aside. This will cause significant delay and expense not least with the arrears continuing to accrue whilst the claim is "set back on the rails" and further time has passed before a new hearing date can be set.

Landlord's Expectations

It is important that Landlords understand before the legal process begins that the Courts will look for reasons not to grant possession or to order payment of arrears and may appear to favour the Tenant.

Even the Accelerated Procedure will feel slow and can be expensive.

The Landlord should always assume (particularly where the ground for possession is arrears of rent) that it may not be possible to recover the legal costs or the arrears of rent and that the choice of Tenant in such a case may have been an expensive mistake.

In many cases a Landlord can only obtain an Order for the Tenant to pay fixed costs under CPR 45 (currently around £69.50) and even then it may not be possible to recover those costs from the Tenant if they fail or refuse to pay.

Rather than chasing a Tenant for rent arrears and/or costs it can make more sense to recover possession of the property to re-let it and to get the rent coming in again as quickly as possible.; then consider whether the Tenant can be forced to pay the rent and arrears.

Introduction

Evicting Tenants can be a major problem for Landlords. Tenants with substantial rent arrears can undermine investments and cash flow and one simple mistake during the eviction process can lead to delays in repossessing a property.

Eviction can be a complex and difficult process. Strict procedures must be followed. Failure to follow the correct legal procedure can lead to a Landlord being found guilty of illegally evicting a Tenant. The only way to legally evict a Tenant is by obtaining a Possession Order from the Court.

Procedure

In order to evict a Tenant there are 3 main steps to be taken. You need to:-

- Serve a Notice on the Tenant requiring possession of the property
- (If possession is not given up voluntarily) issue proceedings for possession in the County Court after the time for complying with the Notice has expired.
- Having obtained a Possession Order then (if necessary) take further steps to enforce the Possession Order and recover possession.

Many Landlords will be surprised to learn that having spent a great deal of time and money obtaining a Possession Order there is no right to evict a Tenant who has not vacated without a further Court Order and it may be necessary to engage the services of a Bailiff to then recover possession.

Notice

Most Assured Tenancies entered into after 28 February 1997 will be Assured Shorthold Tenancies (AST). There are two types of Notice required to recover possession of a property let on an AST. These are:

1. Section 8 Notice - Notice Seeking Possession of a Property Let on an Assured Tenancy or an Assured Agricultural Occupancy

This Notice is used in response to breaches of the terms of the tenancy; usually unpaid rent and should specify the earliest date that proceedings can be issued.

Attached to the Notice should be a running schedule showing the rent due, the rent paid and tracking the arrears to show a balance due. The Schedule should demonstrate for example that the Tenant has persistently delayed in paying the rent.

The Tenant must be given not less than 2 weeks notice.

If the claim for possession is based on arrears of rent under Section 8 then you need to prove that: both at the date of service of the Notice and at the date of the hearing of the application for possession:-

- If rent is payable weekly or fortnightly the rent is at least 8 weeks in arrears
- If rent is payable monthly the rent at least 2 months in arrears
- If rent is payable quarterly the rent at least one quarter in arrears

A Witness Statement should be prepared to be served not less than 2 clear working days before the hearing of the application for possession exhibiting the running Schedule of Arrears showing the balance which will be due at the date of the hearing if no further payments are made.

2. Section 21 Notice to Quit

This is the most common form of Notice as it does not require any breach by the Tenant of the terms of the tenancy which may be for a fixed term which has not expired or a tenancy continuing after expiry of the fixed term.

- The Tenant must be given not less than 2 months notice.
- The Notice must correctly identify the date for possession being an actual date being the last day of the period of the tenancy. You must exercise extreme care in calculating this date as the Court may reject the claim for possession if the date is incorrect.
- You must also take extreme care to ensure that the Tenancy Deposit has been properly protected and that the Tenant has been provided with the requisite information about the Deposit before sending a Section 21 Notice as the Notice may otherwise be rendered invalid and the claim for possession may be defeated.

Possession Proceedings

If your Tenant should fail to respond to the Notice under Section 8 or under Section 21 you will have to take the Tenant to Court to obtain an Order for Possession.

Standard Procedure

You need to provide the Court with certain information and documents and you should be aware of the following Civil Procedure Rules (CPR) and forms:-

- CPR Part 55 including the Practice Direction for Possession Claims
- CPR Part 65 Anti-Social Behaviour and Harassment Proceedings
- Form N5 Claim Form
- Form N149 Particulars of Claim Residential Possession Proceedings

Accelerated Possession Procedure

The Accelerated Procedure is quicker and it is usually cheaper to obtain possession of a property but the conditions in CPR 55.12 need to be complied with before this procedure is available, that is where:-

- The AST was entered into on or after 15 January 1989
- The only purpose of the proceedings is to recover possession of the property (this procedure can not be used to recover arrears of rent).
- The tenancy did not immediately follow an Assured Tenancy which is not itself an Assured Shorthold Tenancy.
- An AST has been properly granted in accordance with The Housing Act 1988.
- The Tenancy is subject to a written agreement or follows a Tenancy which was a written Tenancy Agreement.
- A Section 21 Notice has been given

When completing the Claim Form set out in the Practice Direction to CPR 55 you must ensure that all the information is provided and that all the documents referred to are attached.