

## Guide to residential possession proceedings - Assured Shorthold Tenancies

### Assured shorthold tenancies

Most residential tenancies entered into since 1997 are assured shorthold tenancies ("ASTs"). If you let your property to a tenant under an AST, you must comply with certain statutory procedures to be able to end the tenancy and gain possession of the property.

The purpose of this guidance note is to provide an overview of possession procedures for ASTs. These procedures do not apply to tenancies which are not ASTs.

### Overview

When the fixed term of an AST comes to an end, if a tenant remains in occupation paying rent, a statutory periodic tenancy will arise. In practical terms, this means that the AST continues on exactly the same terms until such time as either party brings the tenancy to an end.

A landlord may bring an AST to an end using one of two procedures:

- Section 21 of the Housing Act 1988;
- Section 8 of the Housing Act 1988.

### Recovering possession under section 21 of the Housing Act 1988 for a tenancy entered into before 1 October 2015

Under Section 21, you may simply give your tenant at least two months' notice that you require possession. You do not need to have a reason to end the tenancy.

A Section 21 Notice served concerning a tenancy entered into before 1 October 2015 needs to contain specific information. If it is

not in the required form (which will also depend on whether the notice is served during the fixed term or during the statutory periodic tenancy), it will not be valid so it is important to seek specialist advice. The Section 21 Notice cannot expire during the fixed term of the tenancy.

In certain circumstances, the date on which the notice expires must be the last day of a tenancy period. For example, if your tenant has been paying the rent on the 3rd day of each month, the notice should expire on the 2nd day of the month (two months later).

If your tenant does not vacate upon the expiry of the Section 21 Notice, you cannot evict the tenant without a possession order from the court. It is a criminal offence to evict a tenant without following due process of law. You can issue possession proceedings as soon as the Section 21 Notice has expired.

### Accelerated Possession Procedure

Once the Section 21 Notice has expired, if the tenant has not vacated the property you will need to issue possession proceedings at court. If you are simply seeking to recover possession of the property and no other remedy (such as rent arrears or damage to the property), then you should consider using the accelerated possession procedure. This is a straightforward and relatively inexpensive procedure and is usually dealt with at court on paper i.e. without the need for a hearing.

This procedure can only be used if you have a written tenancy agreement (or, if there is now a statutory periodic tenancy, there was a written agreement for the original tenancy)

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and the deadline specified in a valid Section 21 Notice has expired.

### Standard Possession Procedure

If you are seeking to recover rent arrears as well as to recover possession, then the accelerated procedure cannot be used and standard possession proceedings must be issued.

This involves the court listing the case for a short hearing; usually between 6-8 weeks from when the proceedings were issued.

If the tenant does not dispute the claim, the court will usually make a possession order at that time. If the claim is disputed, then the matter will be re-listed for a later date and the court will order directions regarding the conduct of the case.

### What happens if the tenant still doesn't leave?

If a possession order is granted under either the accelerated or standard procedure, the tenant should leave the property on the date specified in the court order. However, if the tenant does not leave, you must apply for a warrant of possession from the court. This will involve a court appointed bailiff attending the property to evict the tenant.

It is a criminal offence to evict a residential tenant without following due process.

### Section 21 Notices – additional points

A Section 21 Notice will be of no effect if you have taken a deposit from your tenant but have failed to protect it in a tenancy deposit scheme and served notice of this on your tenant. If you have not protected your

tenant's deposit, it is important that you let us know as a matter of urgency. There are financial penalties for failing to protect a deposit.

### Recovering possession under section 21 of the Housing Act 1988 for a tenancy entered into after 1 October 2015

If the tenancy started after 1 October 2015 there are some differences when recovering possession, including the need to use a prescribed Section 21 Notice, which cannot be served in the first 4 months of the new tenancy.

A Section 21 Notice cannot be served if the tenant made a complaint about the condition of the property, the landlord failed to deal with it, the tenant made the same complaint to the local housing authority and the local housing authority then served a "relevant notice". A Section 21 Notice cannot be served until six months' of service or suspension of the relevant notice. There are various scenarios in which this provision will not apply, so it is important to obtain specific advice. This will apply to all tenancies from 1 October 2018.

In addition to ensuring that the relevant deposit obligations have been complied with, before serving a Section 21 Notice, a landlord must make sure that the following documents have been served on the tenant:

- the energy performance certificate for the property
- the gas safety certificate for the property
- a copy of the Department for Communities and Local Government's booklet, "How to rent: the checklist for renting in England".

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### Recovering possession under Section 8 of the Housing Act 1988

Section 8 allows a landlord to recover possession during the fixed term of the tenancy in certain circumstances.

In order to recover possession using the Section 8 process, the landlord must be able to show that certain grounds apply. These grounds are specified in Schedule 2 to the Housing Act 1988. The most frequently used grounds include where the tenant has not paid rent or has broken some other term of the tenancy.

Notice must be given in a particular form ("a Section 8 Notice") and must specify the ground(s) on which you are seeking to rely. You can issue possession proceedings as soon as the notice period expires. The period of notice is usually 2 weeks, although some of the grounds do require 2 months' notice.

### Possession Proceedings under Section 8

If the tenant does not vacate at the end of the notice period, possession proceedings must be issued. The accelerated procedure cannot be used for Section 8 possession proceedings.

Once possession proceedings have been issued, the court will set a date for a hearing where the court will decide whether or not to grant a possession order.

Recovering possession under Section 8 is not always straightforward. For example, a landlord may recover possession if, at the time of the hearing, at least 2 months' rent is unpaid. However, if a landlord issues possession proceedings based on rent

arrears alone and the tenant brings the rent arrears below this level shortly before (or even at) the hearing, then this ground will not succeed. Further, the tenant may argue that rent has been withheld because, for example, there is some defect with the property and the court may take this into account when considering the case.

Any court hearing will be conducted in the same form regardless of whether using the Section 8 or the Section 21 regime (see above). As with the Section 21 process, if the tenant fails to vacate after a court order has been made, the next step is to apply for a bailiff's appointment to formally evict the tenant.

### Legal costs for bringing possession proceedings

The costs involved in bringing possession proceedings will vary depending on the type of proceedings and whether or not the tenant defends the proceedings. If possession proceedings are required, we will discuss the likely costs involved with you.

The courts only allow you to recover certain costs from your tenant for bringing the proceedings, and inevitably this will not cover all the costs involved.

If the accelerated procedure is used, then the costs that you can recover from your tenant will be limited to less than £100 plus the court fee, assuming that no hearing is required.

If the standard procedure is used, the costs that you can recover will depend on whether the hearing is defended or otherwise. If it is not defended, then the costs will usually be fixed at the first hearing, although if, for

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example, the hearing is adjourned through the fault of tenant, then the court has discretion to exceed these fixed fees.

If the matter is disputed but you ultimately recover possession, then the court will assess costs on the standard basis that is to say those costs that have been reasonably incurred and are reasonable in amount. This means that it is unlikely that you would recover 100% of your legal costs and as a rule of thumb successful party tends to recover between 65 - 80% of costs actually incurred on this basis. If you are unsuccessful at any trial, you can be expected to pay the tenant's costs on the same basis.

### Immigration Act 2016

From 1 February 2016, all private landlords in England must check that their new tenants have the right to occupy the premises before renting out their properties.

Landlords of residential properties must also make sure that a tenant's right to occupy the premises does not lapse once the tenancy agreement has been granted. Breaches of the Immigration Act could result in a fine of up to £3,000.

This information sheet has been prepared for general guidance only based on the law as at April 2018 and is not a substitute for specific advice. For further information please contact our Property Litigation Team on 01892 510000 or by email at:

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