

Evicting a tenant

Property Disputes

No residential landlord wants to go through the frustration and cost of evicting a tenant, but sometimes it seems the only route left. Modern tenancies make this easier than it was historically.

Know where you stand

Nowadays most residential short term tenancies automatically have the status of an Assured Shorthold Tenancy (ASTs). This is a modern tenancy which is designed to allow landlords to recover their properties more simply than in the past. Despite that, there are still many layers of protection given to residential tenants meaning lots of hoops to jump through to evict a difficult tenant.

It is almost never legal to evict a tenant without 'due process', which means if they refuse to leave, a landlord must obtain a court order in the County Court ordering them to leave. If the tenant still refuses to go the court bailiff must be instructed to carry out the eviction.

You may want to act immediately, but don't get caught out. Failing to follow an appropriate process is potentially a criminal offence and can also result in the landlord having a liability to pay compensation to the tenant, if found to be unlawfully evicted. There are some exceptions, but we would advise any wary landlord to get sound legal advice before taking any hasty action that might be regretted later and at their cost.

Your options to regain possession.

There are two routes to regaining possession if your tenant refuses to leave your property.

- The 'No Fault' Route – (under s21 Housing Act 1988)

A landlord does not need to prove their tenant has done anything wrong to use this option. The landlord serves a notice giving the tenant at least 2 months to leave (a 'section 21 Notice'), and if the tenant has not left after expiry of the notice, the landlord can apply to court under the 'Accelerated Possession Procedure'. Usually the court will not hold a hearing and will deal with the application on the papers.

If you take this route, a tenancy cannot be brought to an end before expiry of the initial fixed term. So for example, if the tenancy was granted for 12 months the s21 Notice cannot end the tenancy before the last day of the 12 month term.

It's also essential that you check that any deposit has been protected in an accredited tenancy deposit scheme. A landlord must do this before being entitled to serve a valid s21 Notice.

Finally, it's important to realise that a landlord can only claim possession under this route. You can't include a claim for payment of rent arrears or dilapidations.

To help you manage and minimise your legal costs, we offer a fixed fee service to obtain possession where the Tenant doesn't defend the proceedings. This suits most clients as the tenant rarely can raise anything other than technical arguments.

- The 'Tenant in Breach' route (under section 8 of the Housing Act 1988)

Under this route the landlord needs to prove the tenant has breached one of the terms of the tenancy, and/or satisfies one of the grounds for possession in the relevant legislation.

The most common of these is rent arrears, but there are other grounds such as deterioration of the property, antisocial behaviour, or breach of a particular term of the tenancy agreement.

If the tenant is in two months' arrears (assuming rent is payable monthly in advance) then the court must make the order for possession. If the rent owing dips below this during the process then the judge can exercise his/her discretion whether or not to make the possession order.

We offer a fixed fee service for this route providing your tenant is not filing a Defence. If the tenant decides to raise a Defence we will assess your chances of success and give you a straightforward answer. We'll aim to minimise any additional costs and keep you fully in touch with each stage of the process.

Which route is best for you?

Arguments in favour of the 'Tenant in Breach' route include:

- It's available at any time during the tenancy
- Claims for payment of rent arrears or other monies owing can be included
- The process can be quicker as notice is 14 days, rather than 2 months
- It's often the best approach for dealing with disruptive tenants or those with significant rent arrears.

The 'Tenant in Breach' route is often the preferred route where landlords need to take action quickly, particularly against disruptive tenants or those with large rent arrears. Obviously where a judge is making the decision there is a risk that it may not entirely reflect the landlords aims. For example, where the tenant has paid some arrears they may allow more time to pay. Or if the tenant has a complaint against the landlord they could be allowed to make a claim against the landlord. This could complicate the possession claim and add unnecessary time, cost and delay.

The best advice is to be forewarned and seek early guidance from an experienced property disputes team to clarify your position and the best tactical routes to achieve the outcomes you're trying to achieve. You can have a no obligation discussion with a member of the property disputes team by calling 0800 923 2064