

This manual is a guide for landlords and agents with some experience. Although it will also be useful for the inexperienced, every reader should be aware that the laws and procedures applicable to housing are complex and this guide is not a substitute for taking professional advice from a suitably experienced person before making important decisions.

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Acknowledgements

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5. Ending a Tenancy

This section covers what happens when an assured or an assured shorthold tenancy ends, how the landlord or a tenant can terminate such a tenancy and how to gain lawful possession of the premises. There are some tenancies that are neither assured nor assured shorthold tenancies (for example holiday lets, tenancies where the annual rent is over £25,000, or student tenancies in university accommodation). These are a minority and are dealt with briefly at the end of this chapter.

Ending a Rent Act tenancy is a complicated matter, and specialist legal advice should be taken before making any decision or taking any action. Bringing a Rent Act tenancy to an end and evicting the tenant can be a very complex process, and is beyond the scope of this manual. If an application fails or is struck out, the court may order a landlord to pay the tenant's legal costs in addition to their own. Some guidance is given at the end of this chapter, but this chapter mainly concerns assured and assured shorthold tenancies, governed by the Housing Act 1988.

For Housing Act 1988 tenancies, i.e. most tenancies in the private rented sector, there are different methods of bringing possession proceedings depending on whether the contract is an assured or an assured shorthold tenancy. Every case is unique and the following can therefore only be a rough guide.

The information in this chapter about terminating tenancies and eviction is, inevitably, legalistic, but it is worth emphasising that at the end of their agreements most tenants leave their property voluntarily and many landlords experience no problems either moving into a new agreement or getting possession of their property back. This chapter deals with:

- practical tips for a pain-free handover at the end of the tenancy;
- what to do at the end of a tenancy if landlord and tenant want it to continue;
- what landlords can do if the tenant wants to leave;
- what landlords can do if they want the tenant to leave;
- procedures when applying to the court for possession;
- applying to the court for arrears of rent.

5.1 Practical Tips For a Pain-Free End of Tenancy Handover

The golden rule is, be prepared. If the tenancy is for a fixed term, make a diary note straightaway of when the tenancy is due to end, and another date around two months before that. Where appropriate, contact the tenant to see whether they would be interested in renewing their tenancy, or whether they plan to leave. If the tenant is going to leave, there are a number of practical matters that the landlord can help trigger which make for a smooth ending to a tenancy:

- arranging a joint inspection of the property to agree on any damage that needs rectifying or decoration that might need undertaking. Landlords should take a check-list with them;
- providing information about the cleaning required to return the property in an acceptable condition (it is often worth reminding the tenant of their obligations);

- advising on the tenant taking final readings of their utility bills and liaising with suppliers about issuing and paying final bills;
- making arrangements for the handover of any keys.

The more attention that is paid to ending the tenancy in an orderly manner the less likely it is that there will be any problems or misunderstanding about how the tenancy can best come to an end. It is usually a good idea to confirm anything that is agreed with the tenant in writing. Follow up any problems as quickly as possible – and record them in writing.

If the tenant does not hand the property back in the condition required by the tenancy agreement, the landlord may be entitled to make a charge against the deposit. Chapter 3 of this manual deals with returning tenants' deposits and claiming deductions. The adjudication services operated by the tenancy deposit protection schemes rely heavily on comparisons of check-in and check-out reports, so the better the quality of any check-in and check-out reports, the more likely it is that the proposed deposit deduction will be awarded to the landlord. Make sure that all photographs are clearly labelled and dated.

If the accounts for gas, electricity, water and telephone are in the name of the tenant, then the payment of these bills is a matter between the tenant and the supplier, and the supplier cannot require the landlord to pay. Landlords can then contact the utility provider easily at the end of the tenancy. As there are so many different suppliers, it is helpful to notify the new tenant of the name of the existing suppliers if known.

If the gas or electricity company is trying to charge the landlord when they have been notified of the name of the new consumer (tenant), information about how to proceed can be obtained from www.consumerfocus.org.uk which also gives information on how to make an energy-related complaint. Landlords can also call Consumer Direct on 0845 04 05 06 for consumer advice.

5.2 What To Do If The Tenancy Is To Continue

A **periodic** tenancy will continue until either the landlord or the tenant brings it to an end – usually by serving a Notice Requiring Possession.

A **fixed term assured** tenancy (i.e. non-shorthold) will continue after its expiry date, and the landlord can only bring it to an end on certain grounds. Most tenancies in the private rented sector start life as fixed term assured shorthold tenancies. When the fixed term of an assured shorthold tenancy ends the Landlord has the following options if he wants the tenancy to continue:

- to agree a replacement fixed term shorthold tenancy with the tenant;
- to agree to a replacement assured shorthold tenancy on a periodic basis called a contractual periodic tenancy;
- do nothing and allow the assured shorthold tenancy to run on with the same terms, under a statutory periodic tenancy.

5.2.1 Agreeing a Replacement Fixed Term AST

This is not something that the landlord *has to do* but a replacement fixed term tenancy is advantageous for landlords who want to know that the tenant's obligations are going to continue for at least the duration of the replacement tenancy.

Check whether the tenancy deposit protection scheme being used requires re-registration of the deposit if the tenancy is renewed because the scheme requirements vary.

5.2.2 Agreeing a Contractual Periodic AST

This is also not compulsory but it can be a good option for landlords who need to be flexible about when they can have their property back. Landlord and tenant can agree that the tenancy agreement will terminate by either of them giving notice. Take advice about the tenancy agreement and the legal requirements of a any notice, if there are any doubts about this. Again, check whether the chosen tenancy deposit protection scheme requires re-registration of the deposit.

5.2.3 Statutory Periodic Tenancy

If the landlord does nothing and the tenant stays on in the property, the tenancy will automatically run on from one rent period to the next on the same terms as the preceding fixed term assured shorthold tenancy. This is called a statutory periodic tenancy. The tenancy will continue to run on this basis until a new fixed term, or periodic tenancy, is agreed or the tenant leaves or the court awards the landlord possession. The terms of the existing tenancy agreement remain in force, a notice to gain possession of the premises can be served at any time. The period of notice is linked to the period for which rent was last payable under the tenancy. Take advice if there are doubts about which notice to serve.

5.3 What To Do If The Tenant Wants To Leave

5.3.1 Tenant Termination of a Periodic Tenancy

A periodic tenant must provide notice in writing of their intention to leave. The minimum notice period is 4 weeks (specified in section 5 of the Protection from Eviction Act 1977). In most cases, the contract will specify at least a month for a monthly rental and that notice should always expire at the end of a rental payment period. The contract may also specify the terms on which notice may be given, and if the terms are standard terms, they will only be enforceable if they are fair.

In practice, tenants sometimes choose to ignore notice requirements and will leave when convenient to them. It is often not worth the landlord's time or cost in attempting to chase the tenants to enforce those requirements. Concentrate on getting the property re-let.

5.3.2 Tenant Termination of a Fixed-Term Tenancy when it Expires

There is no statutory requirement for a tenant to serve notice to end a fixed-term tenancy at the end of that fixed term. The tenant is generally entitled to leave without giving any notice. Any standard clause in the tenancy agreement requiring the tenant to give formal notice to leave at the end of the fixed term (and making the tenant liable for rent in lieu of notice if they fail to do this) may contravene the Unfair Terms in Consumer Contract Regulations 1999 and could be unenforceable. Only a court can decide if any given clause is fair or not. A clause asking the tenant to inform the landlord whether or not they will be leaving, so that arrangements can be made for the property to be checked and the damage deposit returned to them should not cause problems.

5.3.3 Tenant Termination of a Fixed-Term Tenancy before it Expires

If the tenant has a fixed-term tenancy but wants to terminate it before the term expires, they can only do so legally:

- with the agreement of the landlord; or
- if early termination is allowed for by a break clause in the tenancy agreement and the tenant has followed any

requirements for giving notice specified in the tenancy agreement; or

- in a few rare cases, if the landlord is in **very** serious breach of his obligations (but the breach must be “fundamental” to the tenancy).

If the agreement does not allow the tenant to terminate early and the landlord has not agreed that he or she can break the agreement, the tenant will be contractually obliged to pay the rent for the entire length of the fixed term. If the landlord accepts the return of the tenancy, it is possible that the tenancy comes to an end due to “surrender by operation of law”. This occurs where the landlord and the tenant behave in a way that is inconsistent with the continuation of the tenancy. If the tenant offers to hand back the keys, make sure that at that stage any conditions connected with that return are agreed, and record them in writing. For example, are the keys only being accepted on the basis that the tenancy continues until a new tenant signs up at the same or a higher rent? Once a landlord accepts a surrender of the tenancy, the tenant’s liability for future rent ends unless it has been agreed otherwise. Unlike a claim for compensation for damage, the landlord is not under a duty to mitigate his loss if the tenant is liable for rent. Payment of rent is a debt, and the rent is due for as long as the tenancy continues. However, once the tenancy comes to an end (e.g. if the landlord agrees to accept the property back) the tenant’s liability to continue paying rent stops (but they remain liable for any arrears that accrued up to that point).

If a tenant wants to end their fixed term tenancy early, landlords should explain to tenants that the fixed term tenancy requires the tenant to pay rent for the duration of the agreement. Some tenants will wish to change their plans at that point and stay at the property until a new tenant is found.

Landlords may then agree with the tenant that both of them will try to find a new tenant. Landlords should ask the tenant to agree to pay reasonable additional costs arising from the tenant’s proposed departure, such as re-letting fees. Landlords should also inform tenants that any early termination of the tenancy is conditional on the property being handed back in good order, with rent paid up to the date when the new tenancy starts. Write to the tenant setting out the conditions and ask them to write back confirming acceptance of the conditions. In the meantime, to avoid any inference of a surrender occurring “by operation of law”, do not do anything that would be “inconsistent with the continuance of the tenancy”. Do not treat the tenancy as over until the new tenancy starts.

If an agreement is not reached, a tenant may decide to abandon a property and a landlord will have to decide if it is feasible to take any enforcement action against the tenant. This would be by way of a small claim in the county court.

5.4 What Landlords Can Do If They Want a Tenant To Leave

A tenancy of someone’s home, starting on or after 28th February 1997, will in most cases be an assured shorthold tenancy. Take advice at an early stage if there are any doubts about what type of tenancy is being terminated. The procedures for ending a tenancy are different, depending on the type of tenancy.

In most cases, the procedure will involve serving some kind of notice. The type and format of notice may vary depending on the circumstances

of the case. Information about specific notices is given below, but as an introduction here are some general points about service of notice:

- the tenancy agreement may specify the method and manner by which notices may be served and, if the landlord does not follow the required method, the landlord's claim for possession could be struck out by the court. Any specified method in the agreement should therefore be followed;
- in the absence of a specified method of service, service by hand, preferably with a witness, should be followed and this should be backed up by an alternative method. The alternative could be by post, with either a certificate of posting or recorded delivery. At the time of making the application to court a landlord will be required to supply the court with information about the service of the notice;
- if the notice is in the wrong form, or incorrectly served, it could mean that the landlord will lose the case. Take advice if unsure what to do.

5.4.1 At the End of a Fixed Term Assured Shorthold Tenancy

At the end of a fixed term AST, if the landlord does nothing and the tenant stays on in the property, the tenancy will automatically run on from one rent period to the next on the same terms as the preceding fixed term assured shorthold tenancy. This is called a statutory periodic tenancy. The tenancy will continue to run on this basis until a new fixed term or periodic tenancy is agreed or the tenant leaves or the court awards the landlord possession. Some landlords think that if assured or assured shorthold tenants stay on after the end of the fixed term they are unauthorised 'squatters'. This is not the case, the tenancy continues by operation of law, and they are still tenants and are legally entitled to be there.

If the landlord does not want the tenancy to continue as a statutory periodic tenancy the landlord will need to serve a section 21 notice to commence proceedings for possession. The notice is known as a section 21 notice, as the landlord's right to recover possession and the notice procedure is set out in section 21 of the Housing Act 1988. The notice must be served on the tenant at least two months before the landlord wants the tenancy to end.

The section 21 procedure is considered to be a "no fault" procedure as it is not necessary for the landlord to establish that there has been any wrong doing by the tenant. The landlord only has to prove that the tenancy is an assured shorthold, that the appropriate notice has been validly served and that either six months, or the fixed period, has expired, whichever is the longer.

Notices to end an AST, if served during the fixed term, do not need to be on a prescribed form and may be issued by letter providing that they comply with the following rules;

- the duration of the notice must be at least two months; and
- the notice must not expire earlier than the fixed term of the agreement (it may expire on any given date after the end of the term).

If a landlord is likely to require the property to be returned to them

immediately after the fixed term expires, the section 21 notice can be served at the beginning of the tenancy provided that the notice expires on or after the tenancy has come to an end.

The requirements for an order for possession under section 21 are:

- that the tenancy is an assured shorthold tenancy;
- that any fixed term of the tenancy has expired;
- that a notice properly drafted in accordance with the provisions of section 21 has been served on the tenant and has expired;
- that any deposit paid was duly protected under the appropriate regulations for tenancies created on or after 6 April 2007;
- that any licence required under the Housing Act 2004 (for example a mandatory House of Multiple Occupation licence) has been applied for or obtained.

If it is necessary to regain possession of the property quickly it may be possible to use the accelerated possession procedure. If the above requirements are met, and the section 21 notice and tenancy agreement are available in writing, the accelerated possession procedure may be used. Otherwise, the standard procedure must be followed, which will involve a court hearing. The accelerated possession procedure may take up to six - eight weeks after submitting the application to court, depending on the case load of the court at the time.

The court cannot grant an order for possession during the first six months of the tenancy using the section 21 procedure. It follows that the accelerated possession procedure cannot be used during that time either. For example, if a tenancy has been granted to a new tenant for a period of two months from 1st January and issue a section 21 notice on the second day of the tenancy, it is possible to issue proceedings for possession shortly after the fixed term has expired, i.e. in early March. However, when making the order for possession the judge cannot order that possession be given any earlier than 1st July. Realistically, this is not normally a problem as by the time the court papers have been drafted and issued and gone through the court system, the six month period will be nearing its end anyway.

This six month 'moratorium' only counts from the first tenancy agreement with that particular tenant for a particular property, not any subsequent agreements. But if a tenant is renting a room in a shared house and moves to another room, this will count as a new tenancy and the six month moratorium will apply, even though s/he may have lived in another room in the house for some time.

It is not uncommon for landlords to think that they cannot issue an Assured Shorthold Tenancy for less than 6 months. This is not true, it is just that, it is not possible to get a Court to order repossession during the first six months of the tenancy.

Different rules apply for fixed term [*see section 5.5.7.1*] or periodic tenancies [*see section 5.5.7.2*] but any notice must be in writing and cannot be backdated.

5.4.2 At the End of a Fixed Term Assured Tenancy

The section 21 procedure does not apply, and the landlord can only bring the tenancy to an end on certain grounds. Most landlords will need to take legal advice before proceeding.

5.4.3 To End a Periodic Tenancy

Most landlords will need to take legal advice if the tenancy is an assured periodic tenancy.

If the tenancy is a contractual periodic assured shorthold tenancy, the landlord should follow any notice stipulations set out in the tenancy agreement. The landlord may need to take legal advice before proceeding.

In the majority of cases in the private rented sector, a periodic tenancy will be a "statutory periodic tenancy", i.e. an assured shorthold tenancy that has run on past its expiry date. In these cases, notices must be given in writing and must:

- state that possession is required under section 21 of the Housing Act 1988;
- have a notice period of at least two months; and
- expire on the last day of a period of the tenancy.

For example, if the rent period is from the 11th of the month to the 10th of the next month, the end of tenancy date in the notice must be the 10th of the month. If the tenancy is paid weekly the proper notice periods end in the same way at the end of a period for which rent is paid. For example, if the rent is paid every Monday for the period through to the following Sunday, the notice must expire on a Sunday.

Periodic notices may also contain a "savings clause", referring to the last day of a period of the tenancy as well as, or instead of, a specific date. Such a clause may correct an incorrectly dated notice, provided that the savings clause is clear and precise. A savings clause cannot, however, correct all faults in the notice.

5.4.4 To End a Fixed Term Tenancy Before it is Due to Expire

There will be cases when a landlord has agreed a fixed term, but needs to end the tenancy early. This might be because of a change in the landlord's circumstances, or because things are not working out with the tenant. If a landlord wishes to obtain possession of the property during the fixed term of an assured or assured shorthold tenancy, they can only seek possession if:

- one of the grounds for possession in Schedule 2 of the Housing Act 1988 (as amended) applies (see below); and
- the tenancy agreement has a clause in it providing for this (this is sometimes known as a re-entry or forfeiture clause, even though forfeiture cannot be used for assured/assured shorthold tenancies); or
- by activating a properly drafted break clause and then using the section 21 procedure (assured shorthold tenancies only). For break clauses, to be valid they must be available for use by both the landlord and the tenant, not just the landlord alone.

Although a landlord can re-take possession if it is obvious that the tenant has abandoned the property, in most cases the landlord will need to obtain

an order from the court. Evicting a tenant without a court order is a criminal offence (with a very few exceptions).

The grounds for possession are divided into mandatory grounds (upon which the court must order possession if the landlord proves the allegation) and discretionary grounds (upon which the court may order possession if the allegations are proved and if the court considers it reasonable to make the order). The grounds must be specified in the notice, which must be a "section 8 notice". The notice is in a prescribed form. Section 8 Housing Act 1988 also specifies what minimum notice period must be given – and this depends on the ground(s) being used. Many landlords will need to take advice about service of notices and termination using section 8, until they become familiar with the procedure.

A landlord will have to consider what it is that they wish to achieve by commencing legal proceedings to end the tenancy. They will have to take into account the time, effort and cost involved and also if they have used all other methods of resolving a problem.

It may be beneficial to obtain a possession order, even on discretionary grounds, as the terms of any order may assist the landlord to influence a tenant to change their behaviour or to pay the rent arrears by instalments or maintain the garden or whatever has been the problem.

MANDATORY GROUNDS

Grounds 1-5 of the Housing Act 1988 require the landlord to serve notice prior to the commencement of the tenancy, warning the tenant that possession might be sought for the reason stated in that ground. In some circumstances the court may decide to waive the requirement of notice if it is just and equitable to do so. Grounds 1-5 are:

Ground 1 can be used if the property to be repossessed was, or after the let is intended to be, returned to the landlord as their own home. For this ground to be successful the landlord must have notified the tenant in writing before the tenancy started, that he intended one day to ask for the property back on this ground.

Ground 2 relates to a lender's right to possession. If the property is subject to a mortgage the landlord will often be required to serve this notice on the tenants.

Ground 3 requires that the fixed term is less than eight months and the property has been let as a holiday home within the preceding 12 months.

Ground 4 is only for further and higher education providers.

Ground 5 is where the dwelling is owned for the purposes of a minister of religion to better carry out their duties and the residence is needed for such a purpose.

The remaining mandatory grounds, Grounds 6 to 8, do not require notice to be given in advance of the start of the tenancy.

Ground 6 relates to recovery of possession when the landlord needs to carry out substantial building works. It cannot be used by a landlord against a tenant who was already in the property when the landlord bought it. This is particularly important as a tenant may in fact be a regulated

tenant and be protected by the provisions of the Rent Act 1977 rather than the Housing Act 1988. A landlord who purchases a property should check the date that the person moved into the property and not just accept that a shorthold contract supplied by the seller is in fact a shorthold.

Ground 7 can be used to recover possession after the death of the tenant where the tenancy has devolved under their will or intestacy and the tenancy was periodic.

Ground 8 relates to serious rent arrears and is the main ground used by landlords of Housing Act 1988 tenancies seeking possession for rent arrears. Both at the date of the service of the notice under section 8 of this Act and at the date of the hearing:

- if rent is payable weekly or fortnightly, at least eight weeks' rent is unpaid;
- if rent is payable monthly, at least two months' rent is unpaid;
- if rent is payable quarterly, at least one quarters' rent is more than three months in arrears; and
- if rent is payable yearly, at least three months' rent is more than three months in arrears.

If a tenant is able to reduce the rent arrears to below the relevant figure by the date of the hearing the application will be dismissed. A landlord may wish to consider using Ground 10 and 11 at the same time. Therefore if an application on Ground 8 fails it will still be possible to seek the order on the other grounds

DISCRETIONARY GROUNDS

The court must consider the landlord's claim and, if proved, the judge has the power to make an absolute order or a suspended order, which is usually with conditions. In some cases the court may decide to adjourn the proceedings on terms that the tenant is directed to comply with conditions. The terms of the adjournment may allow the landlord to bring the matter back to court within a given period. To gain possession the landlord will have to prove the facts and that it is reasonable for the court to award possession on the facts of the case.

Grounds 9 to 17 are all discretionary grounds. They refer to "dwelling-house" but this expression would include a flat.

Ground 9 can be used where suitable alternative accommodation is available for the tenant or will be available for him when the order for possession takes effect.

Ground 10 can be used where some rent that is lawfully due from the tenant:-

- is unpaid on the date on which the proceedings for possession are begun; and
- except where subsection (1)(b) of section 8 of the Housing Act 1988 applies, was in arrears at the date of the service of the notice under that section relating to those proceedings.

Ground 11 can be used in cases where the tenant has persistently delayed paying rent which has become lawfully due whether or not any rent is in arrears on the date on which proceedings for possession are begun.

Ground 12 can be used where any obligation of the tenancy (other than one related to the payment of rent) has been broken or not performed.

Ground 13 is for use where the condition of the dwelling-house (or any of the common parts if the dwelling is part of a larger building) has deteriorated owing to acts of waste by, or the neglect or default of, the tenant or any other person residing in the dwelling-house. In the case of an act of waste by, or the neglect or default of, a person lodging with the tenant or a sub-tenant of his, the ground can also be used if the tenant has not taken such steps as he ought reasonably to have taken for the removal of the lodger or sub-tenant.

Ground 14 can be used in cases of anti-social behaviour committed by the tenant or any other person living with the tenant or visiting the property if that person

- has been guilty of conduct causing or likely to cause a nuisance or annoyance to a person residing, visiting or otherwise engaging in a lawful activity in the locality; or
- has been convicted of :-
- using the dwelling-house or allowing it to be used for immoral or illegal purposes; or
- an indictable (Crown Court) offence committed in, or in the locality of, the dwelling-house.

Ground 15 can be used where the condition of any furniture provided for use under the tenancy has, in the opinion of the court, deteriorated owing to ill-treatment by the tenant or any other person residing in the dwelling-house. In the case of ill-treatment by a person lodging with the tenant or by the tenant's sub-tenant, the tenant has not taken reasonable steps for the removal of the lodger or sub-tenant.

Ground 16 relates to where the dwelling-house was let to the tenant in consequence of his employment by the landlord seeking possession or a previous landlord under the tenancy and the tenant has ceased to be in that employment.

Ground 17 can be used where the tenant is the person, or one of the persons, to whom the tenancy was granted and the landlord was induced to grant the tenancy by a false statement made knowingly or recklessly by either the tenant or a person acting on the tenant's instigation.

A landlord may use several grounds on an application for possession if several grounds apply to the facts of a case. For example, it is possible to use grounds 8, 10, and 11 at the same time. There is a good reason for specifying all grounds that apply. If a tenant reduces the rent arrears to below the specified sum at the date of the hearing, and the landlord has only pleaded ground 8, the claim could be dismissed. However, if the alternative grounds also apply, the court can still make an order for possession, which may be absolute or suspended.

If one of the mandatory grounds is used and proven then the judge must make an order for possession. The date of possession should normally be 14 days from the date of the hearing but the judge has discretion for it to be postponed to a period not longer than six weeks after the making of the order.

A landlord will not necessarily know if a tenant will be represented at court, as they may not seek advice until shortly before the hearing. Therefore, any landlord who is contemplating taking legal proceedings should seek advice before doing so. The Legal Services Commission, in conjunction with the Court Service, now provides emergency legal advice and representation at most courts for unrepresented tenants facing possession proceedings based upon rent arrears. Therefore a landlord may find that they are at a disadvantage if the tenant is represented and the landlord is not.

5.5 Powers and Duties of District Judges

Judges are directed by the terms of the legislation on which the application is made, and also by the Civil Procedure Rules (www.justice.gov.uk/civil/procrules_fin/) and other regulations.

This means that there are some things that the Judge must do and some things that they may do. Judges must act fairly and impartially, and their decisions will be based upon the facts that are proven, the rules that apply to the case and/or the wider social consequences of any decision that they make. Although a judge may strike out a claim if it is defective due to an error, they may also allow some errors to be corrected and allow a case to proceed.

5.6 Absolute Orders or Suspended (Postponed) Orders

A possession order granted by the court may be made as an absolute order or suspended on terms. For example, a landlord's allegations of anti-social behaviour (Ground 14) may be found to be proven and the tenant may have produced no evidence to suggest that their conduct has or will change. In that situation the court may decide to make an absolute order. By contrast, an application made due to breach of contract on the basis of the tenant failing pay rent (say Ground 10) may be granted as a suspended order, if the tenant has shown that since the application was made, they have commenced making regular payments towards the arrears.

5.7 Applying to Court for Possession – Standard Procedure

As soon as the relevant notice period expires it is possible for the landlord to either apply to the court in person or instruct a solicitor to do so.

Only the landlord personally, or their solicitor, can sign the court papers. A common reason for possession claims being rejected by the court is that they are signed by a letting agent. A letting agent can help the landlord draft the paperwork, but they cannot sign on the landlord's behalf and they do not have a right to represent the landlord at court in the landlord's absence. A landlord who is likely to be absent from the UK will need to instruct a solicitor to commence legal action if they wish to be represented in their absence.

After proceedings have been issued at court there is normally a waiting period of at least a month for a court hearing. The tenant is not required to vacate the property until there is a court order requiring them to do so (although they will sometimes simply leave during this period). If a landlord attempts to evict a tenant before the court order is made, they are likely to commit a criminal – and imprisonable – offence.

If the court orders possession, the tenant will have to leave on the date specified in the court order. This is called an absolute possession order.

If the court makes a suspended possession order and the tenant breaches the conditions of it, the landlord may apply to the court for an absolute possession order or a warrant for possession, depending on the terms of the suspended order. Frequently the tenant will then apply to the court for a 'stay of execution' which may be granted by the judge if the tenant is able to present sufficient evidence of their willingness and capability to comply with the original or revised terms of the order or that something has occurred that has led to the tenant being unable to comply with the original terms. This may have been caused because the tenant had been unable to obtain advice before the previous hearing.

5.8 Applying to Court for Possession – Accelerated Procedure

An application for possession by the accelerated procedure is normally processed using the N5B claim form.

The claim is dealt with through an exchange of papers without a court hearing. The court will issue the claim to the tenant who is then given 14 days to provide a response. The 14 days is from a designated date of service which may be slightly later than the date the papers are received. The tenant is given the opportunity to respond to the facts given in the claim. If there is any dispute about the facts the court may decide to hold an oral hearing at short notice to make a finding of fact. If, however, the facts are not disputed and the claim is in order the judge will make a decision to award possession, normally 14 days after the date of the decision. The date may be later if the tenant has been able to establish that they will suffer undue hardship. The date can not be later than 42 days after the decision was made.

A Landlords' Association may be able to recommend solicitors who specialise in housing law and who can undertake this type of work for a fixed fee. Alternatively, the various landlords' websites may provide guidance on the procedure. The forms issued by the court are reasonably easy to follow and perhaps after one application has been drafted professionally, a landlord should be able to follow the guidance.

5.9 After the Court Order – And Eviction

The court will normally award the costs of the application for possession against the tenant but they may allow them time to pay if they are on a limited income. A landlord may feel that it is not worth seeking to claim the costs once the property has been recovered, if it is going to be difficult to administer the instalments.

The landlord can continue to accept money from a tenant at any time during the possession process, from service of the notice to eviction. Indeed, the landlord must accept rent if it is offered to them.

If a possession order is made the court will normally order that the landlord is entitled to receive "damages for use and occupation" until the tenant actually vacates the property, calculated on a daily basis. If possession is ordered on the grounds of rent arrears, the court will normally order the tenant to pay back the rent owed at a rate appropriate to their circumstances. If asked to consider it, the court may also award a sum to cover interest on the outstanding rent and the court costs associated with obtaining the order.

If a tenant is in receipt of Income Support and Housing Benefit the court will normally award the minimum expected deduction from benefit (and such an award against the Income Support will also entitle the landlord to direct payments, even under Local Housing Allowance). After the end of the tenancy the debt will merge with any other debts that the tenant has and

it will cease to be a priority. This is also relevant to whether a landlord may feel it is viable to chase a debt after the end of the tenancy. It is common advice to landlords that they may be throwing good money after bad by pursuing the debt if the tenant is unlikely to be able to pay it.

The tenant should leave the property on or before the date of possession but if they do not do so, a landlord must apply to the county court for a Warrant for Possession. A landlord cannot evict a tenant themselves, even if they have a court order. If the tenant refuses to leave after the date specified in the order, a warrant for eviction must be obtained from the court, using Form N325: "Request for Warrant of Possession of land". The form, and details of the fee payable, is available from www.hmcourts-service.gov.uk (look in the county court section of the site).

The warrant is normally served on the property or the tenant by hand, and a time is booked by the court for the bailiff to return and carry out the eviction. The landlord should attend at the same time so that the bailiff can formally hand over the property and, if necessary, arrange for the locks to be changed. If the tenant still does not have anywhere to move to it may be necessary for the tenant's possessions to be retained for a reasonable time until they can be collected or disposed of.

If the tenant has not already done so, the landlord may wish to advise the tenant to apply to the local council's homelessness services who may assist with the provision of storage of the possessions and or temporary and permanent accommodation. That will then mean that the landlord can make arrangements for the property to be re-let.

5.10 Applying to the Court for Rent Arrears Only

If it is not necessary to obtain possession a landlord may wish to make a claim under the terms of the tenancy agreement for debt using the small claims procedure of the county court. The amount awarded by the court will be determined at the date of trial. If a claim is being made for interest to be paid on the arrears this must be stated on the claim form because interest will not be added to the debt automatically. If the sum is cleared and then further arrears arise it will be necessary to submit a further claim. The court service has a simple form (N1) that can be completed at the local court or using moneyclaim on-line. The claim fees are based upon the amount of debt due at the date of the claim. Following an application to the court a claimant and defendant may be invited to reach an agreement to settle by negotiation or using a free telephone mediation service.

It is always worth making an effort to establish any reason for non-payment of rent before taking action. Sometimes this can be because of delays by the local authority in processing a housing allowance claim and liaison with the tenant and local authority may well be sufficient to resolve any problem.

If the amount of the arrears (and any other charges) is less than the tenancy deposit, it may be worth applying for the case to be adjudicated in accordance with the tenancy deposit protection scheme. Make sure that good paperwork is submitted to support the claim to the adjudicator. Simply declaring on the application form that the tenant did not make a payment will not usually be sufficient.

5.11 Rent Act Tenancies

Some types of tenancy do not fall within the statutory code set up by the Housing Act 1988 and different rules for possession apply in these cases. These are mainly tenancies which are protected under the Rent Act 1977 and contractual tenancies (for example residential lettings to companies

or where the annual rent exceeds £25,000). These can be complex and a landlord should obtain specialist legal help.

Rent Act tenants are very difficult to evict, as they have long term security of tenure. Generally they can only be evicted if they are in arrears of rent or if suitable alternative accommodation is provided for them.

If a Rent Act Tenant is in Arrears of Rent

It is possible to bring proceedings for possession on the basis of non-payment of rent. If bringing these proceedings there is no need to serve any form of notice on the tenant first (although it is advisable to warn the tenant that possession proceedings are imminent if they do not pay). However, the judge has unlimited powers to suspend or stay the order as they think fit.

If a Rent Act Tenant is not in Arrears of Rent

The only other eviction ground which has any chance of success is that suitable alternative accommodation is available to the tenant. Note that the accommodation must be on a protected tenancy (which it will be if the suggested accommodation is to be provided by the same landlord) or equivalent (if provided by another landlord). Offering a tenancy on an assured shorthold basis will not be sufficient.

There is a lot of case law on the question of "suitable alternative accommodation" and a landlord considering using this ground is advised to seek legal advice, certainly before buying any replacement property.

5.12 Contractual or Common Law Tenancies

Provided the proper procedure is followed, evicting contractual/common law tenants should not be difficult. However, as the rules are different for this type of landlord from others mentioned here, legal advice may need to be sought.

Contractual tenancies include:

- lets of residential properties to companies (but not business premises);
- lettings at a rent of over £25,000; or
- lettings by some resident landlords.

Holiday lets, and university lettings to students also fall in this category. Note that some resident landlords may set up contractual tenancies and other will only give a licence to the occupier. Although these occupiers are "excluded occupiers" for the purposes of the Protection from Eviction Act 1977, and no court order is required to evict them, the Criminal Law Act 1977 still applies. This states that nobody should use or threaten violence to gain entry to someone's room if there is someone present and who is opposed to the forced entry – they risk criminal proceedings if they do.

If the Common Law Tenant is in Arrears of Rent

It is possible to bring proceedings for possession on the basis of non-payment of rent and in this event there is no need to serve any specific form of notice on the tenant first (although it is advisable to warn them that possession proceedings are imminent if they do not pay). However,

the judge has unlimited powers to suspend or stay the order as he thinks fit. Many larger student-type HMOs in the private rented sector are likely to be exempt from Housing Act 1988 status due to the annual rental income (assuming the letting is all on a single contract it is the total rent payable under the contract that counts not the individual contributions). The terms of the contract should specify when and how the tenancy can be terminated.

If the Common Law Tenant is not in Arrears of Rent

It is not normally possible to evict a tenant during the fixed term unless there is a break clause in the tenancy agreement or the tenant breaches the terms of that tenancy agreement and the agreement states it can be terminated for breach. It is technically possible to seek possession for breaches of the tenancy agreement other than non-payment of rent, but this is not often successful. Usually, a notice under section 146 of the Law of Property Act 1925 is required, giving the tenant notice that they are in breach of the tenancy conditions and an opportunity to put things right, if possible. Legal advice should be sought from a solicitor experienced in eviction work to do this properly.

Contractual/common law tenancies do not have the same 'statutory periodic' run-on that the Housing Act 1988 assured and assured shorthold tenancies do. At the end of a fixed term, the landlord will be entitled to apply for a possession order. If possession is not required, a specific renewal should be agreed. If it is a periodic tenancy the landlord can end the tenancy at any time by serving a 'Notice to Quit' (a section 21 notice is often referred to as a notice to quit but this is not correct and not the document referred to here). This must give a notice period of no less than four weeks (but longer if the rent is payable monthly or more). The notice must expire on the last day or the first day of a period of the tenancy and must be in writing and must contain prescribed information. Once this has expired, if the tenant has not vacated, the landlord can apply to the court for an order for possession which they are entitled to as of right. A landlord does not need to give any reason for asking for possession.

5.13 Unlawful Eviction

The Protection from Eviction Act 1977 makes it a criminal offence for any person to unlawfully deprive a 'residential occupier' of their occupation of the premises. This means that, unless the tenant agrees to vacate, the only legal way a landlord can evict a tenant is by obtaining a court order. Any term in the tenancy agreement that says otherwise will be void.

'Residential occupier' is defined in the Protection from Eviction Act 1977. It covers virtually everyone living in residential accommodation including tenants who rent from a private landlord, and any of their friends or visitors who have gained lawful access to the property. It is a common belief that this Act does not apply to licences. In almost all cases, it does.

The Act does specify certain limited classes of occupier, in particular lodgers who share living accommodation with their landlords, but even here eviction must not involve any force. If considering evicting a lodger the landlord should still seek legal advice before evicting because getting it wrong could be a criminal offence.

The procedures for lawful eviction of tenants are laid out in the various Housing and Rent Acts as detailed above.

5.14 Unlawful Harassment

Harassment is a criminal offence under the Protection from Harassment Act 1977. There is also a special type of harassment relevant to residential premises. It is a criminal offence under the Protection from Eviction Act 1977 for any person to harass a residential occupier, or any of their friends or visitors who have gained lawful access to the property, in such a way that as a result they could be expected to give up their accommodation.

The key elements of harassment are defined as:

Acts likely to interfere with the peace and comfort of the residential occupier or the persistent withdrawal of essential services and either is committed by any person with the intention of causing the residential occupier to leave or is committed by any person with intent to stop the residential occupier pursuing their legal rights (for example, complaining about disrepair) or is committed by a landlord or agent who knows or has reasonable cause to believe that a likely result of their acts is that the residential occupier will leave, or will not pursue their legal rights.

Common acts of harassment can include:

- threats of violence or unlawful eviction;
- disconnecting gas, electricity or water;
- breaking off the key in the lock;
- deliberately disruptive repair works;
- frequent visits, at unreasonable hours;
- entering the property without the tenant's permission.

Local authorities may prosecute landlords who harass tenants. If a landlord receives a letter from their local authority regarding alleged harassment against the tenant or any of their friends or visitors who have gained lawful access to the property this should be taken very seriously. Be very careful in any dealings with that tenant and keep a detailed record of all meetings and telephone conversations. A landlord should follow any advice given to them by the council officer and they should also seek immediate advice from a solicitor experienced in landlord and tenant law.

A landlord or agent can be prosecuted in the magistrate's court or in very serious cases a case may be transferred to the crown court. A penalty on conviction may include a fine of up to £5,000 and/or a term of imprisonment.

Tenants may also make a claim to the county court for an injunction to reinstate them to the property and can claim special and general damages which can amount to tens of thousands of pounds. In addition the landlord may have to take action to terminate a new tenancy and likewise pay further compensation if they have given the tenancy to a new tenant. If an injunction is granted to reinstate a tenant and the landlord fails to abide by the order, the court may commit the landlord to prison for contempt.