



Property possession – 9/10ths of the law?

What to do when tenants fall behind with rent payments, or stop paying rent altogether

In today's world it is becoming ever more common for Tenants to fall behind with rent payments and in some cases stop paying rent altogether. Landlords will often find that when Tenants fail to pay rent they also fail to leave. It does not help that local councils are refusing to re-home individuals until they have been served with an eviction order. Therefore Landlord's find themselves in the situation of not being able to remove a tenant until they have been through the formal court process of obtaining a Possession Order losing months of rental income.

In order to obtain an Order for Possession the Landlord must first serve on the Tenant a Section 8 or Section 21 notice. The notice must be addressed to and served on the tenant(s) against whom possession is sought.

A Section 21 notice is used by Landlords to obtain possession of a property when there are no rent arrears and the tenancy has come to an end. A Section 8 notice is used to obtain possession of a property when the tenant is behind with rent or in breach of the tenancy agreement. If the tenant does not vacate the property at the end of the notice period then possession proceedings will need to be issued.

Accelerated Possession Procedure

To be used when the Landlord is seeking recovery of the Property under Section 21 of the Housing Act:

- Issue Claim Form within the County Court for the district in which the property is situated.
- Court serves the Claim Form
- Defendant has 14 days to file a defence
- The judge will consider the claim and if satisfied grant the Order for Possession without a court hearing
- If the judge is not satisfied with the Landlord's claim then a hearing date will be given
- The process should not take longer than 12 weeks, however it is dependent on how quickly the courts process the claim.

Normal Possession Proceedings

In all other cases the Landlord will need to follow the normal Possession Proceedings:

- Issue Claim Form
- Court serves Claim Form
- Defendant has 14 days to file a defence
- Matter allocated to court track and directions given
- Witness Statements filed
- Hearing
- This process could take up to six months to reach the final hearing but if the proceedings are not being defended then the process will be much quicker.

Gaining Possession

If possession is granted:

- The judge will order that the Tenant vacates the property (usually within 14 days)
- If the Tenant fails to vacate the property then the Landlord will have to apply for the court bailiff to remove the Tenant
- There could be a 10 -12 week waiting list for a bailiff to attend and evict the Tenant
- When the Tenant vacates the Landlord is advised to change the locks immediately

Landlord and Tenant Litigation is a highly technical field. The procedure is complicated and mistakes can prevent eviction. If you are a Landlord looking to instruct a solicitor to obtain a Possession Order against a Tenant then we would be happy to assist.

We have recently launched a fixed-fee service to help landlords regain possession of their properties and removing the worry of open ended legal fees.

Should you require any further information concerning this or any other Commercial or Civil litigation matters, please contact **Leanne Philp** on **01279 638888** or by email **leanne.philp@attwaters.co.uk**

The information contained in this article is intended for guidance only and is not intended to provide specific legal advice to you or your business. Expert advice on any issue should always be obtained. Attwaters Solicitors do not accept liability for any loss that may arise from relying on or using the information contained in this article.

Profile

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Leanne qualified as a Fellow Legal Executive in 2005 and has 10 years experience in the legal profession. Having previously worked for an international law firm in the City, since joining Attwaters Leanne advises clients on all aspects of commercial and civil litigation. Experience has given her a sure grasp of the technicalities of contested court work. With such experience, Leanne is able to provide effective solutions to complex issues.

Leanne specialises in most areas of commercial and civil litigation. They include, but are not limited to, contract disputes, building disputes, boundary disputes, contested wills, Landlord and Tenant disputes and debt recovery.



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