

# A Guide to

# Obtaining Possession of a Rented Residential Property

leonard  
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Always here for you.

■ Understand which type of notice to serve on a tenant.

■ Understand the procedure for making a claim for possession.

■ Understand how to enforce a Possession Order.

*This Guide has been designed to assist you in understanding the basic principles and general issues surrounding obtaining possession of a rented residential property. This Guide is only intended to be a general overview of the law in relation to obtaining possession of a rented residential property. Legal advice should always be obtained from Leonard Gray in application to a particular case.*

## Section

### 1

## Giving Notice to a Tenant

*This Section of the Guide sets out the options available to you for serving notice on a tenant and the procedures for doing so.*

### 1. Which Notice to Serve?

The first step in taking possession of your property is to give formal notice to your tenants that you require them to leave. There are two routes available, commonly referred to as the Section 8 Notice and Section 21 Notice procedures.

The type of notice you are required to serve will depend on different factors such as whether the fixed term of the Tenancy Agreement is still running and whether or not the tenant is in breach of any terms of the Tenancy Agreement.

Essentially:

- If the tenant is in breach of the terms of the tenancy agreement, for example they have not paid the rent, then you can use the Section 8 Notice procedure during the fixed term of the tenancy or thereafter.
- If the tenant is not in breach of the tenancy agreement, but for whatever reason you require them to vacate the property, then you should use the Section 21 Notice procedure. However if the tenant is still within the fixed term of the tenancy it will not be possible to ask them to leave before the end of the fixed term unless there is a breach of the Tenancy Agreement (in which case a Section 8 Notice should be served as referred to above).

### **Section 8 Notice**

As set out above, if your tenants have breached the terms of the Tenancy Agreement, under Section 8 of the Housing Act 1988 there are various grounds on which you can seek possession of the property, be it during the fixed term of the tenancy or thereafter.

For example, the most commonly relied on ground of Section 8 is where tenants are in at least two months' of rent arrears. In this case it is possible to serve a Section 8 Notice, requiring your tenants to "make good" their breach within 2 weeks and warning that failure to do so may result in possession proceedings being issued at Court.

Depending on which particular ground in Section 8 you are relying on the notice period to be given to the tenant varies between two weeks and two months.

### **Section 21 Notice**

As set out above, if you wish for your tenants to leave your property (not necessarily because of any fault on the tenant's part) you may serve a Section 21 Notice upon them.

*Section 21 of the Housing Act 1988* states that you must give your tenants at least two months' notice to leave the property and timing of service of the notice is very important depending on the particular circumstances.

The two scenarios are:

- **Serving notice within the fixed term of the Tenancy Agreement**

Whilst you can serve a Notice during the fixed term of the tenancy the expiry date of your Notice (i.e. the date you want the tenant to leave the property) cannot be before the end of the fixed term.

- **The fixed term of the Tenancy Agreement has expired**

Once the fixed term of the tenancy expires your tenancy is deemed to be a “statutory periodic” tenancy and you must give at least two months’ notice to the tenant to vacate the property , with the expiry date being the last day of the rental period. In most circumstances this would mean the last day of the rental month, at least two months after notice has been served, before the next month’s rent falls due.

However, if your Tenancy Agreement commenced on or after 1 October 2015, then the expiry date on the Section 21 Notice does not need to be the last day of the rental period and can simply be in two months’ time from the date the Notice is served.

## **2. Completing and Serving the Notice**

It is important that the Notice is in the correct form and the contents are accurate. Details of all parties need to be correctly entered and care taken in calculating the correct date that possession of the property is to be requested from.

The Notice must be served on the tenant at the property. Ideally, this should be done by first class post and you should keep a postage receipt as proof that the Notice has been sent since tenants will sometimes deny receiving the Notice.

Timing the service of a Section 21 Notice in particular can be confusing and it’s important to get it right to avoid complications later on if it does become necessary to issue Court proceedings.

Claims for possession have been known to be dismissed or adjourned by the Courts due to invalid Notices and lack of proper service so preparation is crucial.



We would always recommend that you seek legal advice before serving your tenant with a Section 21 (or indeed a Section 8) Notice.

*The next Section of the Guide considers how to make a claim for possession and documents required.*

## Section 2

# Making a Claim for Possession

*This Section of the Guide considers how to make a claim for possession and documents required.*

## 1. Which Route to Take?

This depends on the Notice you have served and whether you are pursuing your tenants for rent arrears. You have two options:

- **Claim for Possession under the Accelerated Procedure**

This method can be used when you have served a Section 21 Notice and are not claiming any rent arrears. It is a paper-based procedure where a Judge will make a Possession Order without holding a Court hearing, presuming the tenant does not file a Defence. This is generally the quickest, easiest and most cost effective way of getting a possession order.

- **Claim for Possession**

This method should be used when you wish to claim possession of the property together with a claim for rent arrears owed by the tenant. This can be used whether you are claiming possession under either Section 21 or Section 8. With this method the Court, upon receipt of your claim, will set a date for a possession hearing at Court which you (or your legal representative) must attend.

## 2. Preparing and sending your possession claim

The next step is to send to the Court the documents required to start your Court proceedings. These documents will be either:

- **Claim for Possession under the Accelerated Procedure**  
A Claim Form (N5B).
- **Claim for Possession**  
A Claim Form (N5) and Particulars of Claim (N119).

You will also need to exhibit the following documents to your Claim Form and, if necessary, the Particulars of Claim:

- A copy of your Section 21 or Section 8 Notice that you sent to your tenants;
- A copy of the Tenancy Agreement; and
- A copy of your proof of postage when you sent the Notice.

In addition, there is a fee payable to the Court, currently £355. You should post your Claim Form and Particulars of Claim to the nearest Court to your property.

### **3. Contents of your Claim Form and Particulars of Claim**

The Court will require you to set out your claim in a clear and concise manner. As with drafting your Notice, care should be taken in preparing your Claim Form and Particulars of Claim. In particular, names of the landlords and tenants should be set out fully and correctly and, in the case of a Section 8 Notice, your specific grounds for possession should be specified in your Particulars of Claim.

### **4. Your Tenant's Defence**

It is possible for the tenant to defend your claim for possession and, under the Accelerated Procedure route; the defence must be entered within 14 days from the tenant receiving the Claim Form. If your tenant fails to enter a defence within this time, then you can make a Request for a Possession Order and the Court will then deal with the case on paper, instead of holding a hearing. If, however, your tenant enters a

defence, the Judge is likely to set a date for a possession hearing, rather than consider your claim on paper.

Under Section 21, the only way your tenant can realistically challenge the making of a Possession Order is to allege there have been procedural irregularities, e.g. your Notice has been defectively served, or if there are extenuating circumstances such as they need more time to find somewhere else to live. The Judge at the possession hearing will consider any defences that have been entered before making an order.

Under Section 8, it is possible for your tenants to defend the claim by alleging that the property is in a state of disrepair which may impact upon the order the Court make and will inevitably mean the proceedings will take longer to conclude.

## **5. Preparing for the Possession Hearing**

Once your claim has been issued (i.e. given a claim number and served on your tenants) the Court will set a date for the possession hearing (unless using the accelerated procedure).

It is usual for the Court to allow you, as landlord, to file a witness statement, explaining your circumstances and why you wish to take possession of your property. The Court will expect that your witness statement is received at Court no later than two clear working days before the possession hearing. As with all claims for possession, preparation is key and a carefully constructed witness statement can greatly assist the Judge when they hear your claim at the possession hearing.

*The next Section of the Guide considers what provisions a potential Possession Order by the Court will contain.*

## Section 3

# The Possession Hearing

*This Section of the Guide considers what provisions a potential Possession Order by the Court will contain.*

The hearing will be conducted at Court before a District Judge in chambers. This means the hearing will be behind closed doors, and not open to members of the public.

The District Judge will consider your paperwork and check if your Notice has been properly served. If the Judge is satisfied that you have made out your claim correctly, then they will make a Possession Order.

The Order the Court is likely to make, in both Section 8 and Section 21 cases, is:

- The tenant is to give up possession of your property within 14 days;
- The tenant is to pay you a sum of money for rent for each day they are at the property until they vacate;
- If there are rent arrears, they are to pay you those arrears plus interest, if claimed; and
- Pay you your reasonable legal costs which will include the Court fees you have paid.

*The next Section of the Guide sets out the process for eviction of the tenant following a Possession Order.*

## Section

## 4

# Eviction

*This Section of the Guide sets out the process for eviction of the tenant following a Possession Order.*

### 1. Eviction

Once the Court makes a Possession Order, whilst in theory the tenant should vacate as ordered, unfortunately, in practice they often don't. For example, if they wish to be re-housed by the Local Authority, they may be advised not to vacate until they are physically removed from the property. In the circumstances, as landlord, you will need to take steps to evict your tenant.

You have two options how to proceed:

- **Instruct County Court bailiffs**

You will need to make a Request for a Warrant of Possession from the County Court. This is done by completing and returning the Request to Court, together with the Court fee of £121 and this is then passed to the Bailiff Section for executing. The bailiffs will contact you and confirm their attendance date, and this will usually be six to eight weeks' after receipt of your Request. The bailiffs will then attend the property on the specified date and evict your tenants. It is advisable for you, as the landlord, to also be present on the eviction date to oversee the process.

- **Instruct High Court Enforcement Officers**

You will need to contact a private company who conduct High Court enforcement and they will discuss their fees with you. Usually, High Court Enforcement Officers can carry out an eviction in around two to three weeks, which is faster than the County Court.

## **2. Secure Your Property**

To ensure your property is secure after your tenant has gone, you will need to arrange for a locksmith for change your locks. This will complete the entire process and ensure your tenant cannot return to the property.

*The next Section of this Guide will look at how to make an appointment.*

## Section 5

# Making an Appointment

If you would like to discuss the issues raised in this Guide further then please contact **Maria Orfanidou** who will be happy to do so.

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We are based in Chelmsford town centre, a two minute walk from Chelmsford Rail Station with car parking and disabled access at the rear of our office for the use of clients.

Open Monday to Friday, 9:00am to 5:30pm. Alternative times by arrangement.

Other available Guides from Leonard Gray:

- **A Guide to Boundary Disputes for Landowners**
- **A Guide to Debt Recovery**
- **A Guide to Shareholders' Agreements**

