

Repossession in Secured (Council) Tenancies

Introduction

This factsheet is designed for secure (council) tenants facing eviction from their properties. Housing association tenants may also be secure tenants if the tenancy began before 15th January 1989.

If a tenant receives any notification that their home may be repossessed it is essential that they seek legal advice immediately. The local Citizens Advice Bureau, a local law centre and many **Trade Unions** have a free advice service, contact details are provided at the end of this document.

The landlord must have a 'ground' (a reason) for possession. The landlord must follow the correct procedure:

1. Follow the pre-action protocol (if there are rent arrears), then;
2. Give legal notice of his/her intention to seek possession then;
3. Apply to the County Court for a possession order then;
4. Apply for a warrant of execution to have bailiffs remove the tenant from the property.

If the landlord tries to remove the tenant without following this procedure or harasses them, they will be breaking the law.

Secured Tenants

Most council tenants will be secure tenants unless they have an introductory tenancy or demoted tenancy. The landlord of secured tenancies must be a public body, so either the Local Authority, a Housing Association (if the tenancy began before 15th January 1989), the Housings and Communities Agency or a Housing Co-operative.

Secured tenants have the right to live in their home for the rest of their lives as long as they do not breach a term within their tenancy agreement. If the landlord wants to evict the tenant on the grounds of rent arrears they must follow a 'pre-action protocol' before giving the tenant 'notice' that they should leave.

Pre-Action Protocol for Rent Arrears

If a tenant is failing to pay the rent, it is likely that they are struggling to pay other bills too. If the landlord is seeking possession of a property the only way the tenant will be able to stop this is to prove that they can pay the rent and start to pay off the arrears. In order to do this the tenant must contact a debt counselling service who will help them to deal with their debts. Contact details

for the National Debt Line, Payplan and the Consumer Credit Counselling Service are provided at the end of this document. Thompsons Solicitors also have a factsheet on how to get out of debt

www.thompsons.law.co.uk/lttext/debt.htm

This section will only apply to landlords who are seeking possession on the basis of rent arrears. Before serving notice the landlord must;

1. Try to come to an agreed amount of payments toward the rent arrears along with the regular rent, based on the tenants income and expenditure.
2. Provide a simple rent statement every four months.
3. Take reasonable steps to ensure the tenant understands the information being given to him/her.
4. Offer to help the tenant claim for housing benefit (if the tenant qualifies).
5. Direct the tenant to an advice centre such as the Citizens Advice Bureau or local Law Centre for further advice.

The landlord cannot start possession proceedings if the tenant;

1. has applied for housing benefits and can produce evidence of the application, or;
2. is likely to receive housing benefits, or;
3. has paid other sums which would not be covered by the housing benefit.

If the landlord has followed the above steps and rent arrears are still not paid s/he can serve a notice on the tenant.

Notice

If a landlord wishes to evict a secured tenant they must serve a 'notice seeking possession' on the tenant. The Landlord must have good reason to evict a secure tenant. The 'reasons' given are called grounds and are listed in Schedule 2 to the Housing Act 1988, (as amended by the Housing Act 1996). The grounds that can be used are:

Ground Number	Ground / Reason
1	There are rent arrears or a term of the tenancy has been breached.
2	Anti-social behaviour caused by the tenant, someone else living in or visiting the property.
2a	There has been domestic violence by a resident partner causing the victim to leave.
3	Waste, neglect or damage has been caused to the property or

	the common parts of the building, by the tenant or person living in the property.
4	Furniture in the property has been mistreated by the tenants or person residing in the property.
5	False statement made in order to obtain the secure tenancy.
6	Money was paid in order to exchange properties with another tenant under section 92 of the Housing Act 1985
7	The conduct of the tenant in an employment linked dwelling makes the occupation inappropriate.
8	Major repairs are needed to the property which cannot be done whilst the tenant lives in the property.

The landlord can also use 9 other grounds but to do so they must provide alternative suitable accommodation before seeking possession;

Ground Number	Ground / Reason
9	The property is overcrowded.
10	The property is due to be demolished or reconstructed.
10a	The property is in an area highlighted for a redevelopment scheme.
11	The landlord is a charity and the occupation of the property will conflict with the charities objectives.
12	The tenancy is linked with employment and it is now required for a new employee.
13	The property is modified for a disabled person and the present tenant does not need the modifications.
14	The property is reserved for a special needs occupant, the current tenant does not have those special needs.
15	The property is reserved for a special needs occupant where a social service or facility is provided in close proximity. The current tenant does not have those special needs and the landlord requires the property for someone who does.

16	The tenant has succeeded the property from the original tenant and the property is considered too large for the current household.
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The tenant is usually given 4 weeks notice to leave the property unless the landlord is seeking possession on ground 2 (anti-social behaviour). In cases of anti-social behaviour the landlord can take the matter to Court as soon as the notice is served.

The notice is valid for 12 months which means the landlord can take the tenant to Court for possession even if the original notice period has expired.

Does The Tenant Have to Leave?

The notice is the first step to removing a tenant from a property. The tenant cannot be removed without a court order. The tenant does not have to leave but once the notice expires the landlord will apply to the court for possession. If the tenant wishes to leave, they should contact the landlord and say when they are able to leave.

The tenant will receive a copy of the completed claim form (N5), and particulars of claim form (N119) along with notes for the defendant (form N7A) and the defence form (N11R) from the County Court. The claim form will state the time, date, place of the hearing along with the landlord's grounds for possession.

The tenant has three options:

1. Talk to the landlord to resolve the problem (for example rent arrears) or;
2. Agree to the possession order or;
3. Defend the claim (the tenant must fill in the N11R form).

If the tenant wishes to defend the possession the tenant should be able to prove the landlord's grounds for possession are not true. For example, if possession is being sought under Ground 3: that damage has been caused to the property, the landlord must prove the property is in disrepair and the tenant will need to show that the damage was not caused by them or anyone living at/visiting the property.

The only way a tenant can stop repossession for rent arrears is to prove that they can pay the regular rent as well as the outstanding arrears. To do this the tenant will need to go through debt counselling.

Orders That The Courts Can Make

If the Court decides in the landlords favour, the Court will grant either;

1. A possession order – that the landlord has possession of the property and the tenant must leave.
2. A suspended possession order – that the landlord will have possession of the property if the tenant does not follow the Courts instructions.

If the tenant has received an order for outright possession the tenant can ask the Court to make a suspended possession order by making an application on County Court form N245 (a fee is payable).

A suspended possession order would most likely be that the tenant must continue to pay the regular rent plus instalments of the existing arrears. If the tenant does not follow the court's instructions, the suspended possession order will be cancelled and the possession order will continue.

If the tenant does not leave the property after a possession order is granted, bailiffs will be instructed to evict the tenant. It is important that the tenant leaves the property before the bailiffs come as the tenant runs the risk of being homeless and not having access to their personal belongings left in the property.

Other sources of help and information

Shelter

Shelter is a charity that offers help with housing, mortgage debt or problems with welfare benefits.

Tel: 0808 800 4444

england.shelter.org.uk

Citizens Advice Bureau

Citizens Advice Bureau can offer free independent and confidential advice on a range of problems including housing.

Tel: 020 7833 2181

www.citizensadvice.org.uk

Direct Gov

The Government's own website provides useful information on a whole range of issues.

www.direct.gov.uk

National Debt Line

National Debt Line is an independent charity that helps you to deal with debt problems.

Tel: 0808 808 4000

www.nationaldebtline.co.uk

Payplan

Payplan offer free and confidential advice on how to manage your debts.

Tel: 0800 716 239

www.payplan.com

Consumer Credit Counselling Service

The CCCS is a registered charity providing free, confidential advice and support in relation to debt issues.

Tel: 0800 138 1111

www.cccs.co.uk

THIS FACT SHEET IS INTENDED AS A GENERAL STATEMENT OF THE PROCEDURE AND DOES NOT PURPORT TO RENDER SPECIFIC ADVICE, LEGAL OR OTHERWISE. SPECIFIC ADVICE ON A PARTICULAR PROBLEM SHOULD ALWAYS BE SOUGHT.

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