



LE Law Services Ltd
127 High Road
Loughton
Essex IG10 4LT

Telephone: 020 8508 4691
www.lelaw.co.uk

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GUIDE FOR LANDLORDS TO OBTAINING POSSESSION OF RESIDENTIAL PROPERTY

We have experience of handling cases for landlords who wish to obtain possession of residential property. Whether you are seeking to recover possession from a tenant or from a squatter, we can guide you through the process from start to finish.

This guide is divided into two parts; part one concerns possession from tenants, part two concerns possession from squatters.

Part 1 – Tenants

1. Introduction

This Guide is intended to give general advice to landlords wishing to obtain possession of their properties from tenants. The Guide assumes that the property has been let on an Assured Shorthold Tenancy (AST) and different considerations apply to other forms of Tenancy Agreement.

The Guide will hopefully answer some of the questions which are most frequently asked by landlords but is not a substitute for taking professional advice on the circumstances of a particular case from a qualified solicitor or other professional.

2. Choice of Procedures

There are two different Court procedures available which each have their advantages and disadvantages. Namely:-

- a) The accelerated possession procedure.

- b) The normal possession procedure.

3. The Accelerated Possession Procedure

This is only available if the following conditions can be met:-

- a) The fixed term of the tenancy has expired.
- b) A valid Section 21 Notice has been served.
- c) The landlord does not seek at the same time a money judgment in respect of rent arrears.

A section 21 Notice is a Notice giving the tenant at least 2 months Notice that the landlord will be seeking possession. The timing of service of the notice is more complex since the reforms introduced in October 2015. It used to be the case that the notice could be served at any time, including right at the commencement of the tenancy. Following the October 2015 reforms, the notice cannot be served during the first four months of the tenancy, and proceedings MUST then be issued within the next six months, otherwise a further section 21 notice will be needed. The form MUST be in the new prescribed form.

The Notice is technical and if it is not absolutely correct the possession proceedings may be dismissed and the landlord will have to start all over again.

The earliest time a Section 21 Notice can expire is the last day of the fixed term of the tenancy. If the landlord wants to bring the tenancy to an end early (eg because of rent arrears) then he MUST use the normal possession procedure(see below).

The main advantages of the accelerated procedure are:-

- a) Speed and
- b) Cost.

Once the necessary papers are lodged with the Court, the Court will send copies of the papers to the Tenant who has 2 weeks to respond. After that, the landlord may apply for a Possession Order and matters will usually be dealt with on paper by the Court and in all but exceptional circumstances the Court will grant a 14 days Possession Order on paper without the need for a Court hearing.

If the Tenant submits a Defence challenging for example the validity of the Section 21 Notice, then a hearing will be fixed and matters will inevitably take longer.

Assuming that no hearing is necessary however, LE Law offer a fixed fee service of £500 plus VAT to prepare the necessary Court papers to commence the claim and to apply for the Possession Order. There is in addition a Court Fee payable, currently £355.

Landlords should be aware that the reforms introduced in October 2015 mean that there are additional conditions that have to be met before a valid section 21 notice can be served, and possession proceedings commenced.

The main requirements (in relation to new tenancies commencing after October 2015) are :

1. Any deposit taken must be properly protected in one of the statutory deposit protection schemes.
2. The section 21 notice cannot now be served until at least 4 months after commencement of the tenancy, and proceedings must then be commenced within the following 6 months.
3. A section 21 notice cannot be validly served if :
 - (a) The Landlord has not given the tenant a valid energy performance certificate and an up to date gas safety record.
 - (b) The tenant has not been given a copy of the “How to Rent” booklet.
 - (c) The tenant has made a written complaint regarding the condition of the property and the landlord has failed to provide an adequate response.
 - (d) The local authority has served a remedial notice within the previous 6 months.
 - (e) Any deposit has not been properly protected under the Tenancy Deposit Scheme, or repaid in full to the tenant.
 - (f) Any prohibited fees have been taken by the landlord or his agent and have not subsequently been repaid to the tenant. This currently applies to tenancies granted from 1 June 2019 and will apply to all tenancies from 1 June 2020.
 - (g) The relevant Scheme documentation has not been served on the tenant.
 - (h) The property is classed as a Home in Multiple Occupancy (“HMO”) and the Landlord does not hold a mandatory licence.
 - (i) The property falls within a local authority’s selective licencing regime and the Landlord does not hold a licence under that regime.

Recent experience suggests that judges can be pernickety when applying requirement 3 (a) (above). On a strict application of the law, a copy of the Gas Safety Record must have been given to the tenant **before** the tenant first occupied the property and if the judge is not satisfied that this was done, the action brought via s.21 may fail.

As a result, unless Landlords are confident that they have all their paperwork in order, we are currently recommending use of the Normal Possession Procedure as a general rule.

We can review whether a landlord has complied with these rules and serve any necessary documents as a preliminary step to serving a s.21 notice. Please note this work is not covered in the fixed fee of £100 plus VAT for serving the notice itself.

4. The Normal Possession Procedure

This is the procedure used whenever the landlord wants to end the Tenancy Agreement and obtain possession early, e.g. because of rent arrears or other breaches of the Tenancy Agreement.

By using the normal possession procedure the landlord can apply not only for an Order for possession, but for a money judgment in respect of rent arrears and in respect of damage to the property or contents.

Before normal possession proceedings can begin the landlord must first serve a valid Section 8 Notice. This is a Notice setting out the grounds for seeking possession and will include brief details of the arrears and/or other breaches of Tenancy Agreement.

Once the Notice has been served, the landlord must then wait a certain period before proceedings can be issued. The period will vary according to the grounds on which possession is sought, but for rent arrears the relevant period is 14 days.

Once the proceedings have been issued, the Court will fix a preliminary hearing date allowing for a hearing of about 10 minutes. How soon the hearing takes place will depend upon listing delays which vary from Court to Court but typically the first hearing is approximately 2 months after proceedings have been commenced.

What happens at the first hearing will depend upon whether the Tenant tries to defend the claim or not. If they do not, then if the Court is satisfied that the grounds for possession are proved a Possession Order will normally be made at the first hearing.

If the case is defended, then the Court will give directions for further evidence to be exchanged and a final hearing may not take place for several months.

5. Which procedure should I use?

Given the current state of the law, we would only recommend using the s.21 route – which is likely to be quicker and cheaper – if you are fully confident that you have all of the relevant documents needed to proceed under this route and have complied with all relevant statutory requirements. Otherwise you will want to use the normal possession procedure.

And in any event, if the tenancy will not expire for several months and/or if it is important to you to obtain a money judgment against the tenant then you will want to use the normal possession procedure.

6. Will I recover rent arrears and costs from the tenant?

If you use the normal procedure you can ask the Court for a money judgment in respect of rent arrears. If you can prove the arrears, and the tenant does not have a counterclaim, then the Court will enter judgment for any rent arrears and other valid money claims.

In relation to costs, the Court will only award nominal fixed costs whether using the accelerated or normal procedure, unless the claim is defended. If it is defended, then the Court has a wide discretion whether to award costs and how much.

Please bear in mind that it is one thing getting a money judgment and Costs Order against the tenant and quite another thing enforcing it. If you were holding a deposit you may be able to use that towards any rent arrears. Apart from that however you will have to use one of the various Court processes for enforcing a judgment. Once you have obtained possession of the property it is possible that you will not know where the tenant has moved to and will then need to incur further costs trying to trace the tenant. The tenant may or may not have assets available against which a judgment can be enforced.

If you have taken a guarantee (eg from a friend or family member of the tenant) then you may be able to recover arrears and other costs from the guarantor.

7. Enforcement

Once you have obtained the possession order, unless the tenant leaves, you will have to take enforcement action (i.e. instructing bailiffs) to evict the tenant. This process involves applying to the Court for a bailiff's appointment and paying a further fee of £110. An appointment for a bailiff to attend the property usually takes several weeks but depends on the workload at the local court.

8. How much will it cost me?

LE Law offer fixed fees for the following services:-

Preparation and service of Section 8 Notice £100 plus VAT.

Preparation and service of Section 21 Notice £100 plus VAT.

Preparation and issue of accelerated proceedings £500 plus VAT.

Preparation and issue of normal possession proceedings £500 plus VAT.

In relation to normal proceedings, it is impossible to offer fixed fees once the proceedings have been issued. At the very least there will be a need for evidence in support of the claim and an attendance for at least one Court hearing and these two steps can typically cost £300 to £500 plus VAT for our charges, and approximately £300 plus VAT for a barrister to attend the first hearing. If the proceedings are defended and become prolonged, further costs estimates will be given as the case proceeds.

Part 2 – Squatters

1. Introduction

Squatters, or trespassers as they are legally known, can vary from the innocent, to the opportunistic, to the highly organised. The difficulty and expense of removing them will often depend on which category the particular squatters fall into.

This guide outlines some of the procedural mechanisms for removing squatters but specific legal advice on each particular case is always advisable.

2. Procedure

Interim Possession Orders

Depending on the exact circumstances, it may be possible to obtain an Interim Possession Order, which requires the squatters to leave the property within 24 hours of service of the order. A further hearing will then be listed within 7 days. Interim Possession Orders are only available in limited circumstances, however, and will require a minimum of two court hearings.

It is possible in theory that the court on the second hearing can order the landlord to allow the squatters back into the property if all the necessary requirements were not met.

Claim for Possession

If it is not possible to obtain an Interim Possession Order, a claim for possession against trespassers will be necessary. These claims are usually listed quite quickly, often within 2 or three weeks, but this will depend of the efficiency and workload of the local court.

Hearings

Many orders against squatters are made at the first hearing, however it is increasingly common that squatters appear at hearings and put forward arguments that require further investigation. In such circumstances, the court will often adjourn the claim to a second hearing to allow evidence to be filed. Highly organised squatters in particular are known to make claims such as having been granted a tenancy or permission from an agent of the landlord to reside in the property.

Costs

Costs of proceedings to evict squatters are not usually recoverable because the identity of squatters is usually unknown and the court will not make an order to pay money against an unknown person.

How much does it cost?

Because of the uncertainties highlighted above, it is impossible to give a fixed indicator of the costs of evicting squatters. However, it would not be unusual for the process to cost around £2,000.

7. Enforcement

As with eviction of tenants, you may have to take enforcement action (i.e. instructing bailiffs) to evict. In practice, this will almost always be necessary to evict squatters. This process involves applying to the Court for a bailiff's appointment and paying a further fee of £100. An appointment for a bailiff to attend the property usually takes two to three weeks but depends on the workload at the local court.

Disclaimer

This information sheet is for guidance only and does not remove the need to take professional legal advice relevant to the specific facts of any individual case. No responsibility will be accepted for any losses occasioned as a result of any action taken in reliance on the contents of this document.

Contact Details

For further help please contact:-

Neil Lloyd-Evans

**L.E. Law
Solicitors
127 High Road
Loughton
Essex IG10 4LT**

**Tele: 0208 508 4691
Email: neil@lelaw.co.uk**