

Housing Training - for staff and volunteers in advice giving organisations

Tenancies and Possession Proceedings

Tenancies

What is a tenancy agreement?

- A legally binding document defining the obligations and responsibilities between landlord and tenant.
- You can still have a tenancy without a contract.
- If the date for the contract has expired then the contract will continue on the same terms until another is signed

Three types of tenancy agreement:

- **Secure Tenancy** – permanent tenancy
These are usually tenancies with the local authority
- **Assured Tenancy** – permanent tenancy offered to tenants after January 15th 1989
These are usually tenancies with housing associations
- **Assured Shorthold Tenancy** - after 15 January 1989
These are usually tenants in temporary accommodation or with private landlords

Legal status of someone occupying who is not the tenant

- A squatter – defined as someone who occupies the property without obtaining permission from the person legally entitled to be occupying it
- An unauthorised occupant – can be defined as the occupant 'left behind' in a tenancy following the departure of the tenant
- Licensee – someone who is not the tenant i.e. a family member

The Secure Tenancy

- Secure tenants are governed by the Housing Act 1985.
- A secure tenancy is a `dwelling house` let as a separate dwelling (i.e. no sharing of accommodation with another tenant) could be a house or a flat
- The tenant must occupy the dwelling house as his/her only or principle home
- They are council tenants –so locally will be with the London Borough of Hammersmith & Fulham

Grounds for Possession

- Notice period
- At least 4 weeks' notice in writing may be given to end the tenancy

Grounds 1-8

- Require the landlord to prove to the court's reasonable satisfaction that the ground of possession has been broken by the tenant and it is reasonable to grant possession
- The most common is Ground 1 for rent arrears

Grounds 9-11

- Court must grant a possession order if landlord can prove the case and must also prove suitable alternative accommodation is available

Grounds 12-16

- Court may grant possession if suitable alternative accommodation has been made

Assured Tenancy

Two different types:

- **Fixed term:** Limited to a specific period ie; six months or yearly

- **Periodic:** runs from period to period ie; week to week or month to month

Grounds for Possession

- 8 mandatory grounds
- 9 discretionary grounds
- 2 months or weeks' notice required, depending on the ground

Rent Grounds

- Ground 8 - More than two months or 8 weeks arrears - mandatory
- Ground 10 – Any amount of arrears - discretionary
- Ground 11 – Persistent late payment of rent - discretionary

Possession Proceedings

- Necessary to end the tenancy by serving notice informing the occupier of the landlord intention to seek possession
- The notice remains valid for 12 months
- Can serve the notice by visiting the tenant and handing it to him or her personally

Type of Notice

- **Secure tenant** – NOSP by s.85 Housing Act 1985
- **Assured Tenant** – NOSP under s.8 of the Housing Act
- **Assured Shorthold Tenant** – NOSP under s.8 (as for Assured Tenants above) or NRP under s.21 Housing Act 1988
- **Licensees** – NTQ plus notice on tenant
- **Squatters** – Application to the County Court under CPR

Possession

- Once notice has expired landlord will be entitled to apply to court for a possession order – can be done online
- The landlord must complete the claim
- The court will fix a date for the possession hearing and put this date on the claim form.

- A copy of the claim form is sent to the tenant who must file a defence with the court within 14 days of receiving the claim. Most tenants do not file the defence and simply attend court.

Accelerated Possession Procedure

- Allows the landlord to obtain possession speedily **without** a court hearing. These are for Assured Shorthold cases where two months' notice has been given.

Outcomes at court

- Dismiss claim for possession – if the ground has not been made out
- Outright order for possession – the client will then be evicted after the date set.
- Adjourn the claim for possession – fixed or generally on terms. If the terms are breached the landlord will have to apply to the court for another date for hearing. This gives extra protection.
- Postponed Possession Order – on terms
- Suspended Possession Order – on terms
If the suspended possession order is breached the landlord can apply for a bailiffs warrant

Eviction Warrants

Once the date for the possession order has expired the landlord (claimant) will apply to the court for a bailiff's warrant. The bailiffs then send out a notice informing the tenant what date and time they are going to be evicted. Sometimes the warrant date can be many weeks away. Although it is often usual for clients to seek advice very late.

Warrants of eviction in some cases can be stayed or suspended by the court. It is essential that these cases are dealt with urgently as there will be limited time. We prioritise these cases and will usually give an appointment within a very short time. This will depend on when the eviction is taking place.

- An application is made to court on form N244.
- This is supported by a witness statement from the client

- Medical evidence will be obtained if appropriate.

Once the application is made the court will set a date for hearing the case. This is often the next day or within a few days. Again, this will depend on when the eviction is going to take place.

The hearing, the stay or suspension application is sometimes adjourned to obtain more evidence and another date set. This is often because of benefit issues.

Legal Aid

Clients must be eligible for legal aid and provide proof of income on their first visit to the law centre. The government requests that client`s produce all documentary evidence of the money that comes into the household in the previous three months before we can help; this includes income from partners.

We need to see:

Bank Statements - For previous three months

Payslips – For previous three months

Benefits/Tax Credits - Usually the last benefit award letter