

A Short Guide to Possession Proceedings (1)

Most Tenancy Agreements are now Assured Shorthold Tenancy Agreements (AST) and this note provides an overview of the steps required before a Landlord can regain possession of their Property under an AST only. If you are unsure what type of Tenancy you have you must take legal advice.

If a Landlord wishes to re-gain possession of the Property they must serve a Notice on the Tenant unless the Tenant leaves voluntarily. If a Tenant refuses to leave then they can only be forced to leave if the Court makes an order that they must. It is not legal to forcibly evict a Tenant under an AST without a Court Order. Trying to force a Tenant to leave without a court order could result in the Landlord being fined or imprisoned.

There are two ways of re-gaining possession under an AST – the Accelerated Procedure and the Standard Procedure.

THE ACCELERATED PROCEDURE

1. The Landlord must serve a Notice under either s21(1)(b) or s21(4)(a) of the Housing Act 1988 that they intend to issue Court proceedings to re-gain possession of the Property. Which Notice depends on whether the original Tenancy term has finished or not. The Notice must be at least two months long, it must end at a certain time and it must contain specific information. (It is not enough that the original period of the Tenancy has ended – a Notice must be served unless the Tenant agrees to leave).
2. When the Notice has expired the Landlord can issue Court proceedings. To do so they will need to complete the appropriate Court forms and pay a fee.
3. The Court will consider the papers and send a copy to the Tenant who will have 14 days after service of the papers to send a Defence to the Court.
4. 14 days after service of the Claim form on the Tenant the Court will consider the papers. If no Defence has been filed by the Tenant or if the Tenant has filed a Defence which shows no grounds for a Defence then the Court must make an Order that the Tenant leave within 14 days.
5. Generally provided the Notice has been served correctly and the Claim form completed correctly there is no Defence and the Court must order the Tenant to leave. In some circumstances the Tenant may claim exceptional hardship in which case the Court can allow them longer to leave the Property but the most extra time they can give is 6 weeks.
6. This Accelerated Procedure can be quicker and less expensive than the Standard Procedure as the Landlord does not have to prove that the Tenant has done anything wrong and there is no Court hearing. However if the Tenant owes rent the Court can't order the rent to be repaid under these proceedings.

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THE STANDARD PROCEDURE

1. The Landlord must serve a Notice in accordance with s8 of the Housing Act (as amended by s151 of the Housing Act 1996) advising the Tenant that they want possession of the Property and that if the Tenant doesn't leave they will issue Court proceedings.
2. Under s8 the Landlord must have a reason (ground) to want possession. There are 17 grounds which can be relied on. Eight of the grounds are 'mandatory' i.e. if it can be proved to the Court that one of the grounds is right then the Court must order possession. The other grounds are discretionary and the Landlord has to persuade the Court that possession should be given.
3. How much Notice needs to be given to the Tenant depends on the ground. The most common grounds are in relation to unpaid rent – either that there are substantial arrears or that there has been persistent delay in paying rent. If these grounds are used then only two weeks Notice is necessary before proceedings can be issued.
4. Once the Notice has expired the Landlord will send the necessary papers to the Court with a fee. The Court will serve the papers on the Tenant who can serve a Defence e.g. if they wish to argue that they have paid all the rent. It is possible to apply to the court for possession online in some circumstances.
5. At the same time the Court will set a date for a hearing – unlike the Accelerated Procedure there will be a Court Hearing. The date will be at least 28 days after the Court issued the Claim Form and shouldn't be more than eight weeks, although it may depend on how busy the Court is. The Landlord may need to pay a further Court fee.
6. At the hearing the Landlord will need to prove the ground they are relying on. If it is a mandatory ground and it is proved, the Court must give an order for possession. If however it is a discretionary ground then the Court may decide not to give possession even if the Landlord proved what they said was correct. For example, if they relied on ground 11 that there had been a persistent delay in paying rent, if the Tenant gives an explanation and promises to pay in the future the Court may decide to let them stay for longer.

ENFORCEMENT

Even when the Court has granted an Order for Possession under either the Accelerated or Standard Procedure, if the Tenant still does not leave they cannot be forcibly evicted by the Landlord. The Landlord must reapply to the Court (with a Court Fee) for a further Order to enforce the Possession Order and the Court will order the Court Bailiff to attend to evict the Tenant.

It is therefore important to discuss with your legal representative which procedure you wish to use. The Accelerated Procedure is more certain (provided all the paperwork is in order the Court must grant possession) and it is likely to be cheaper as there is no hearing but it is not possible to claim any unpaid rent. The Standard Procedure may be quicker but as there are court hearings it is likely to be more expensive; it is also not certain unless you rely on a mandatory ground. The Court can also order the Tenant to pay unpaid rent under the Standard Procedure which they can't under the Accelerated Procedure.

Warning: This note can only provide an overview of the Procedures and should not be relied on; we recommend that you seek legal advice as your particular circumstances may make the above procedures inappropriate.

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