

Residential Property: Landlord & Tenant

Repossession of Property let under an Assured Shorthold Tenancy

Assured Shorthold Tenancy ("AST")

Most tenancies of residential properties entered into on or after 28th February 1997 will be assured shorthold tenancies. If you are unsure whether your tenancy is an assured shorthold tenancy or your tenancy pre dates 28th February 1997 we can help determine what type of tenancy you have.

Notice

The tenant must be given notice before possession can be sought. The Housing Act 1988 ("the HA") sets out the relevant notice requirements. There are essentially two types of notice which are not exclusive and can be used together.

1. Section 8 Notice
2. Section 21 Notice

It is vital that the notices are validly served and that you know when they are deemed served. We can help in that regard.

Section 8 Notice

A section 8 Notice can be used during and after the expiry of the AST agreement. Notice is served on the basis that one of the grounds in Schedule 2 of the HA applies. In total there are 17 grounds. There is not room to consider all of the grounds in this Guide Note but we can help determine whether you have grounds to serve a section 8 notice. Depending upon the ground(s) that apply the minimum notice required before

possession proceedings can be commenced is 2 weeks. In most grounds it is 2 months but can be even longer. The most frequently used ground(s) for serving a section 8 Notice is rent arrears.

Section 21 Notice

A landlord cannot seek possession simply on the basis that the fixed term of the AST has expired. At least two months notice must be given in accordance of section 21 of the HA. If a section 21 notice is served during the fixed term it cannot specify a date for possession earlier than the end of the fixed term. If notice is served after the expiry of the fixed term it must specify a date for possession at the end of a relevant term of the tenancy e.g. if rent is paid monthly on the 10th day of each month the notice must specify that possession is required after the 9th day of the relevant calendar month.

The most common reason why claims for possession are unsuccessful is that the date for possession in the section 21 notice is incorrect. With our experience we can help you get this right first time.

Possession proceedings

It is not enough to validly serve a valid notice, wait for the notice to expire then retake possession. If the tenant has not voluntarily vacated the premises an order for possession is required from the county court. If you evict a

tenant without a court order the tenant has good grounds to claim unlawful eviction and harassment. There are two types of possession proceeding:

1. Standard procedure

The standard procedure can be used for claims relying upon both section 8 and section 21 notices. A judgment for rent or other arrears can also be obtained but a hearing is necessary. This is a longer court process but avoids any need for separate proceedings to recover arrears.

2. Accelerated Procedure

The accelerated procedure can only be used in reliance upon a section 21 notice. A judgment for rent or other arrears cannot be obtained but, unless the tenant pleads hardship, there is no need for a hearing. This is a shorter court process but it does mean if you want to recover arrears you will have to issue separate debt recovery proceedings.

We can help you decide which option is best for you.

Our Property Litigation department regularly advise Landlords, Managing Agents and Tenants on potential residential repossessions, draft the appropriate notices and provide full representation in county court claims for possession.

Please call Darren Thorneycroft or Marcus Self on 01233 625711 for more information, or email him on dct@hallettandco.co.uk.