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# Tenancy Agreements & Possessions in the Private Residential Sector

## Getting them Right and Avoiding Common Pitfalls

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This presentation is intended to provide Private Residential Landlords with simple and practical advice in relation to Residential Letting Agreements, Possession Notices and issuing Court Actions for Possession

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## **Section One: Introduction**

### **1. About Legalhelpers Limited**

Legalhelpers Limited was formed in 2000, and was one of the first online document drafting companies. Legalhelpers specialises in drafting several types of legal documents for the general public at significantly lower prices than high street Solicitors. One particular area in which Legalhelpers specialises, is documents for Landlords and Tenants.

All of our documents and services referred to in this presentation are available from our website at [www.legalhelpers.co.uk](http://www.legalhelpers.co.uk). They are clearly priced and come in two formats:

#### **DIY Documents**

Template documents in Word format are available for immediate download. These are easy to complete and use yourself, and come with comprehensive guidance notes. Not all of our documents are currently available in this format, but we are increasing our range and most of the Landlord & Tenant documents are available.

#### **Personalised Documents**

With online self-completion forms, we use the information provided by you to prepare your document. All documents are individually created and professionally checked for legal validity. This service can be especially useful for Possession Notices, which are notorious for customers to get wrong or more complicated Letting Agreements. We have professional indemnity insurance in place for all documents up to a value of £2,000,000.00.

Most of the DIY documents are £10 and personalized documents £30.

In addition to the standard documents, we also offer a fixed fee Possession Service.

- Stage One (Possession Notice): £30.00
- Stage Two (Court Papers): £175.00
- Stage Three (Court Representation): £175.00
- Stage Four (Eviction): £125.00

#### **Stage One - Preparing Possession Notices - £30.00 each**

Legalhelpers will complete the relevant Possession Notices, based upon the information you supply. Should you wish to order two Notices, we offer a reduced rate of £50. Many landlords will serve both Section 8 & Section 21 Notices, please see the Notices section of this handout.

## **Stage Two - Preparing the Court Papers - £175.00**

If the tenant(s) do not leave the property, Legalhelpers can have the Court Papers prepared ready for a possession hearing in the County Court.

Please note there is also a fixed Court Fee payable to the County Court where the claim is issued and this is currently £150.

## **Stage Three - Court Representation - £175.00**

Legalhelpers will ensure you have full legal representation for the first Court hearing. Matters are usually resolved at this hearing and no other hearing is required. However, should there be complications requiring a further hearing, Legalhelpers will ensure this work is undertaken at competitive rates.

## **Stage Four - Forceful Eviction (Should the tenant not leave). - £125.00**

Should the tenant not leave the property, Legalhelpers will arrange for the Court Bailiffs to forcefully remove the tenant(s).

## **Areas of Law for Landlords:**

There are numerous areas of law which affect Residential Letting Agreements and Possession Proceedings. Ideally, landlords should have a basic understanding of the following, especially those highlighted in bold:

- **Housing Act 1988 as amended by the Housing Act 1996**
- **Housing Act 2004 (HMO's Tenancy Deposit)**
- Data Protection Act 1998
- Defective Premises Act 1972
- **Landlord & Tenant Act 1985, (especially Section 11)**
- **Gas Safety (Installation & Use Regulations) 1998**
- Protection from Eviction Act 1977
- Notice to Quit (Prescribed Information) Regulations 1988
- Unfair Terms in Consumer Contract Regulations 1999
- Human Rights Act 1998
- **Civil Procedure Rules, 1998, especially Part 55, 'Possession Claims'**
- **Housing (Tenancy Deposit Prescribed Information Order 2007**

Nowadays a lot of this information is available through the internet or your local library. Good websites include:

[www.legalhelpers.co.uk](http://www.legalhelpers.co.uk)  
[www.landlordzone.co.uk](http://www.landlordzone.co.uk)  
[www.direct.gov.uk](http://www.direct.gov.uk)  
[www.opsi.gov.uk](http://www.opsi.gov.uk)  
[www.hmcourtservice.gov.uk](http://www.hmcourtservice.gov.uk)

### **3. Overview of Residential Letting Agreements**

#### **Why have one?**

Secure legally binding undertakings from the tenants.

For the tenant, the tenancy agreement gives peace of mind that their occupation of the premises will be without interruption, so long as they act within their agreement.

Additionally, a good tenancy agreement will make clear all obligations of both parties. This will hopefully resolve any potential disputes before they occur.

### **4. Tenancy Agreements - Leases & Licences**

Essentially, Residential Letting Agreements will fall into one of two broad categories, commonly referred to as Leases & Licenses.

A tenancy requires 'exclusive possession'. Exclusive possession enables the tenant to exclude strangers and to exclude also the landlord unless the landlord is exercising rights to enter the land granted to him under the tenancy agreement.

Where the owner of land enters into separate agreements with a number of persons for them to share residential accommodation, there is a grant of a joint right to exclusive possession and thus a joint tenancy where the agreements are identical and interdependent. Where, however, there are separate agreements entered into at different times and on different terms, there is no grant of a joint right of exclusive possession.

The leading case is Street v Mountford [1985] 2 All ER 289.

For the landlord (technically the licensor) a licence has significant advantages when you wish to obtain vacant possession. You sometimes need give no notice and even if you do, it is usually four weeks. You can then issue proceedings against them as a Trespasser, which will usually get you a Court hearing date much quicker than if they are a tenant. Essentially, you can remove them in a matter of weeks rather than months.

Common Licence situations are:

- Holiday letting
- Hotel rooms
- House and Flat Share Residential Landlord (Lodgers)
- House and Flat Share non residential landlord (Students)
- Family & Friends

### **5. Houses in Multiple Occupation**

Since the introduction of the Housing Act 2004, there are new definitions as to what is a House in Multiple Occupation or HMO, which may require a licence.

In simple terms:

A house which is occupied by three or more unrelated persons who do not form a single household will be a HMO. This would therefore cover a lot of student letting situations.

However, not all HMOs require a licence but a 'mandatory licence' is required if there are 3-storeys or more with 5 or more occupants. Also note that Local Authorities have power to impose Additional HMO Licensing on other types of HMOs and therefore if your property has 3 or more people who do not form a single household, you should check the situation carefully.

## **6. Tenancy Deposit Schemes**

The Tenancy Deposit Scheme (TDS) came into force for all new assured shorthold tenancies created on or after the 6<sup>th</sup> April 2007. It is *extremely* important that Landlords and Tenants are aware of the implications. Additionally, a possession claim may be thrown out of Court for non-compliance with the TDS.

### **The Scheme**

If you have not protected a tenant's deposit you could be ordered to repay three times the amount to the tenant. So it is important to find out how you can protect deposits and resolve disputes.

Within 14 days of taking the deposit, you must provide your tenant with details of how the deposit is being protected.

## **7. Other Notices - Buy to Let Agreements & Landlord's Previous Home Notice**

These are simply Notices to be put into the Letting Agreement and are not actually separate Agreements in themselves.

In relation to Buy to Let properties, most mortgage providers will require the landlord to insert a clause into the Agreement making reference to the mortgage providers right to take repossession of the property as per Schedule 2 of the Housing Act 1988, specifically Ground 2, which provides a ground for possession.

In relation to property which was previously the home of the Landlord, the landlord may wish to insert a clause about the possibility of the landlord wishing to regain possession themselves if necessary. This is under Ground 1 of Schedule 2 of the Housing Act 1988.

Legalhelpers can insert both of these Notices into the Agreement for you. You would simply need to check the boxes on the self-completion forms.

## **Section Two: Particular Residential Letting Agreements**

### **1. Assured Tenancy Agreements**

Assured Tenancy Agreements and Assured Shorthold Tenancy Agreements are in themselves very similar documents. As a result of the similarity of their content as well as their names, they can often cause unnecessary confusion to many people.

If you wish to create an Assured Tenancy Agreement, this will have to be clearly stated at the top of the tenancy agreement. If such a tenancy is created, the tenant will have more security of tenure. In other words the procedure and amount of time required to end the tenancy agreement is more complicated and lengthy than for an Assured Shorthold Tenancy.

To take repossession of an Assured Tenancy, the landlord will have to state very specific grounds contained within the Housing Act 1988, Schedule 2, in a Section 8 Notice. You can not use the Section 21 procedure.

### **2. Assured Shorthold Tenancy Agreement**

Today, the Assured Shorthold Tenancy Agreement is the most commonly used tenancy agreement for private residential landlords and generally the default agreement if the parties do not state what type of tenancy agreement they wish to create.

Importantly, an Assured Shorthold Tenancy Agreement allows either the landlord or tenant to end the tenancy after an initial six month period, (so long as the initial tenancy has not been fixed for a longer period, in which case, this will be the amount of time required to end the agreement), by simply serving upon the other party a valid Possession Notice, Section 21.

### **3) House and Flat Share Agreements (Lodgers) – Licence Agreement**

**(Technically these should be referred to as Licensor and Licensee, but we refer to them as landlord and tenant for ease in this presentation. In the Agreement they would be Licensor and Licensee).**

As mentioned, this is a Licence Agreement, which allows both the tenant and the landlord the opportunity of ending the agreement quickly should they wish, if stated in the agreement.

With regard to a non-resident landlord in a house or flat share agreement, the tenant must be given at least four weeks notice after the date when a notice to quit is given to them, as required by the Protection from Eviction Act 1977. With regard to resident landlords, although there is no prescribed period for giving notice in a house or flat share agreement, it is advisable to provide four weeks. Furthermore, in both instances if there is a written condition in the tenancy agreement that is longer than this, this should be used.

## **4) Common Law Tenancy Agreements High Rent**

A tenancy with a rent above £25,000 per annum can not be Assured and by its definition an Assured Shorthold tenancy agreement, such tenancy agreements are generally referred to as 'Common Law Tenancies'.

It is to be noted that the £25,000 figure is annualised and, therefore, if the proportional monthly rent is more than £2083.33 per month for a shorter term (e.g. only six months), the letting is still outside the Housing Act 1988.

Generally, these tenancies operate primarily under the common law rules and have little statutory security of tenure. The tenancy will simply be of a contractual nature between landlord and tenant with few statutory provisions.

## **Section Three: Possession Notices**

### **1. Introduction**

Possession Notices are an extremely important, but often neglected area of landlord and tenant law. Unfortunately, all too often disputes will end up in Court because there was no possession notice served, or the notice served was incorrect or invalid.

### **2. Section 8 Notice**

There are 17 separate grounds on which a landlord can seek possession. All the grounds are listed and all you have to do is choose which you would wish to rely upon.

The first 8 grounds are mandatory, which means if the landlord can show the court that one of these grounds applies, the court must give possession.

The remaining grounds are discretionary, which means that the court will not necessarily give possession, but will examine the situation as a whole and give a judgment which it considers to be just.

The most common grounds are for rent arrears, and you will see that rent arrears are covered in three grounds, 8, 10, and 11. Usually, it is best to choose all three. If the tenant is in sufficient arrears choose ground 8 (being mandatory). Please read the grounds carefully and decide which ones you wish to include in your Notice.



## **2. Section 21 Notices**

Section 21 Notices are by far the most common type of possession notice. A landlord does not have to give any grounds or reasons for ending the tenancy agreement, but simply serves the notice and possession is mandatory.

Statutorily there are two situations when a Section 21 Notice can be served. These are the 'fixed term notice' (section 21(1)(b)), and the 'periodic notice', (section 21(4)(a)). The difference between the two is actually quite straightforward.

Fixed Terms Notices: if the Section 21 Notice is served during the 'fixed term' of the tenancy, that is before the Tenancy Agreement has come to an end, two conditions must be full filled; **firstly two full months must always be given and secondly it can not take effect before the end of the fixed term.**

For instance if you created a six month tenancy agreement on the 5<sup>th</sup> March 2009, you could not rely on a Section 21 Notice until after the 4<sup>th</sup> September 2009, when the Tenancy Agreement came to an end.

Periodic Notices: unless either the landlord or tenant ends a Tenancy Agreement it will continue indefinitely and becomes a 'periodic tenancy' after any relevant fixed term. The period is determined by the payment of rent. Frequently, rent is paid monthly or weekly and this is how the period is determined and thus the relevant date will be worked out.

To be valid, the Section 21 Notice must provide two full months notice and end at the end of a period. This can sometimes be an area of difficulty.

To assist, the following examples are useful. They assume the Tenancy Agreement was commenced on Thursday the 5<sup>th</sup> March 2009, for six months and was not ended by either the landlord or the tenant before the end of the Agreement on the 4<sup>th</sup> September.

If rent was payable weekly, the week would run Thursday through to Wednesday (seven days). Thus to be valid if the landlord served a Section 21 Notice on Tuesday the 13<sup>th</sup> October, you first need to go forward two full months, i.e. to the 13<sup>th</sup> December 2009 and then to the next Wednesday, which would be the 16<sup>th</sup> December 2009.

If the rent was payable on a calendar monthly basis, in the above example on the 5<sup>th</sup> of the month, the tenancy agreement runs from the 5<sup>th</sup> of each month to the 4<sup>th</sup> of the following month. Therefore, if a landlord was to give notice on the 13<sup>th</sup> October, you would need to go forward two full calendar months, to the 13<sup>th</sup> December and then forward to the next end of a period - the 4<sup>th</sup> January 2010.

## **Section Four: Court Action**

### **1.Introduction**

Residential possession proceedings are dealt with under Civil Procedure Rules Part 55.

This section is intended as a guide to gaining possession through the County Court, *after* the service of a valid notice, whether it is a Notice to Quit, Section 8 Notice, or a Section 21 Notice and the tenant has not left the premises.

If the tenant has left the premises, then there is no need for Court action in relation to possession. However, the landlord should ensure he can demonstrate this to the court if necessary. It is always best to get something in writing or many photos of the property to show the tenant has left, to avoid any concerns about unlawful and illegal eviction.

Furthermore, it is vitally important to remember that should the tenant remain in the property even after you have obtained a possession order and the time for possession has elapsed, you should return to Court and fill in another form, (N325 – Request for Warrant of Possession of Land), instructing bailiffs to re-gain the possession of the property.

There are three options:

1. Trespassers – Licence Agreements
2. Standard Procedure – Section 8 and / or Section 21 combined with a money judgment
3. Accelerated Procedure – only Section 21 Notices, without a money claim. (You can always issue a separate money claim, but may prefer to use the standard route in any event).

### **2. Trespassers (generally Licence Situations)**

When someone is in the property, who does not have a right to be there, either because their licence has expired or they are squatters they are deemed as trespassers and the owner of the property can apply to the court for a possession order.

If the name of the trespasser is known then copies of the court papers must be personally served on the trespasser together with details of the hearing date. If the names are not known then it is okay to;

- a) Fix a copy of the court documents to the main door; or
- b) Fix them in a position where they will be seen; or
- c) Insert them through the letterbox in a sealed transparent envelope addressed to "the occupiers"; or
- d) Fix a stake into the ground of the property and attach the documents in a sealed transparent envelope addressed to the occupier.

Unless the trespassers have a defence the court will usually make an order for possession to take place immediately. Once an order for possession has been made it can be enforced by a County Court bailiff (on a warrant of execution form) or High Court sheriff (on a writ of possession form). A possession order made against trespassers in the High Court can be enforced either in the High Court or in the County Court.

It is also possible to apply for an "Interim Possession Order", (although this cannot be used against former licensees, tenants or sub-tenants). This procedure also cannot be used if the landowner is claiming another remedy on top of possession (e.g. damages).

If the trespasser fails to comply with the interim possession order, it then becomes a criminal offence for which they can be arrested.

Application is made in the County Court using a Form N130, which includes an affidavit and Form N131. Service of the application should take place in the same way as described above, but must be served within 48 hours of the order being made, or the order will lapse.

The court will then fix a "return date" when any trespassers can come to court to object to a final possession order being made.

### **3. Standard Procedure: Section 8 and / or Section 21 with a Money Claim:**

This is for use for either the Assured or the Assured Shorthold Tenancy Agreement.

The landlord needs to fill in the Section 8 Notice, informing the tenant that they have breached the tenancy agreement. Within the Section 8 Notice, the landlord will have stated which ground or grounds of Schedule 2 of the Housing Act 1988, as amended by the Housing Act 1996, he is intending to rely on.

The Section 8 Notice will have been served on the tenant and the period of time necessary for the tenant to remedy the fault (if applicable) will have passed and the landlord will have a right to bring the Section 8 Notice to the Court, with the intention of obtaining possession of the property. It is extremely important to note that there are various different times for the particular ground or grounds upon which the landlord is seeking possession. Therefore, the landlord should have a look at section five of the Section 8 Notice itself for this information.

- 1) Claim Form - N5
- 2) Particulars of Claim for Residential Property - N119
- 3) Original Tenancy Agreement, and any subsequent tenancy agreements
- 4) Section 8 Notice (If possible get the tenant to sign that he/she has received this)
- 5) Schedule of Rent Arrears and / or any other supporting evidence for an ground(s) relied upon.
- 6) Certificate of Service – (N215 although not technically required always useful to include)
- 7) Any other information you believe is relevant, such as letters, or a log of phone calls made in relation to the rent.

The information filled in is relatively straightforward, detailing the property and the rent, relevant times and so forth. With the Particulars of Claim, the Form N119, you will need to give sufficient information, to show your claim to its full, and state what steps you have already taken in an attempt to regain possession.

Once the forms have been completed make multiple copies. One for yourself, one for each tenant and one for the court.

The landlord should retain the original documents. Without wanting to sound too cynical the Courts can and do lose papers and documents, so make sure you have a complete spare set in case the judge asks you for something 'for the court file'.

The current issue fee is £150, but if this alters the Court Staff will inform you of this. Cheques should be made payable to Her Majesty's Court Service, frequently abbreviated to HMCS.

A date will then be arranged for a hearing, under CPR Part 55 this should be between four weeks and eight weeks, but some County Courts are taking longer than this.

After hearing the evidence, the judge will then make one of several orders, principally;

- **Outright Possession order**
- **Suspended possession order**
- **Dismissal**
- **Adjournment & further directions**

#### **4. Accelerated Possession Procedure - (Assured Shorthold)**

As long as the landlord has given the tenant the correct notice, and complied with the relevant Court procedure, possession should be straightforward and automatic.

Quite frequently, a landlord will give the tenant the notice to quit immediately after the tenancy agreement has been signed. In this situation, the landlord will usually give the tenant a notice to quit under the fixed term of the tenancy, stating that the tenancy agreement will end, and possession will be required when the tenancy agreement comes to an end.

If the tenant does not give possession of the property, the landlord can proceed straight to County Court proceedings without having to issue any other notices.

#### **Bringing the Court Proceedings**

**Accelerated Procedure** – Please note that you **cannot recover rent arrears** under this procedure, and as a result it is only recommended where the landlord is seeking quick possession and no claim for monies. You can issue separate proceedings for the rent arrears and any other costs.

The landlord needs to fill in the N5B – Claim for possession of property (accelerated procedure). This replaces the N5 and N119 for Standard Possession.

The landlord should then attach:

- A copy of the Tenancy Agreement Marked as Exhibit A
- Demotion, if necessary, Marked as Exhibit B (not usual)
- Section 21 Notice, Marked as Exhibit C
- Certificate of Services (N215) for Section 21 Notice, Marked as Exhibit C1
- Licence if HMO, Exhibit D
- Evidence of Tenancy Deposit Taken

The boxes are relatively self explanatory as can be seen from the form. However, there are some areas where the form can be a little confusing.

The landlord then needs to complete a copy for themselves, one for the court and one for each tenant. After they have been issued the Tenant will have 14 days to state whether they are going to oppose the possession claim.

If the tenant has not responded the landlord may write to the Court asking the matter to be referred to a Judge requesting a possession order. Should everything be in order, the Judge will make the possession order. However, if there is an irregularity or a defence then the Judge may list the matter for a hearing.

For more information or assistance, please visit the Legalhelpers website at [www.legalhelpers.co.uk](http://www.legalhelpers.co.uk) or contact us by any of the following means:

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