

Frequently Asked Questions about Assured Shorthold Tenancies

1. My tenant is in rent arrears, can I commence possession proceedings before the fixed period of the assured shorthold tenancy has come to an end?

You should ask the tenant if he or she has some reason for not paying rent, i.e. your failure to carry out repair works. If the tenant does not have a valid reason or fails to communicate and there are at least two months rent owing then a prescribed form of notice should be served on the tenant giving a minimum of two weeks' notice that possession proceedings will be issued at court if the tenant does not pay the arrears. Where there are at least two months' rent owing at the time the notice was served and also at the court hearing, assuming the notice was validly served, the court usually has to order possession of the property.

If a tenant of residential premises will not vacate voluntarily, a landlord must obtain a court order. Not to do so is a criminal offence.

2. The assured shorthold tenant says he is not paying the rent because there has been a mix up with the Housing Benefits. Can I still get possession in the same way as above?

If you are a private landlord, yes you can (special additional procedures apply if you are a social landlord). Although the court has to order possession of the property where there are at least two months rent owing at the time the notice was served and also at the court hearing, the court may postpone the date on which the order for possession can be enforced for up to six weeks in cases where the tenant can show exceptional hardship (and this could include a housing benefit problem if it is not the fault of the tenant). It would help your case if you can show the court that you communicated with the tenant and took steps to help by, for example, requesting that he or she contact the Council and explain that the landlord is trying to obtain possession of the property as a result of rent arrears.

3. My assured shorthold tenant is upsetting the neighbours with loud noise, and all night parties. What can I do?

Firstly, you should communicate with the neighbours to find out more about the complaints. Are the neighbours being oversensitive? Have they complained before? You should also communicate with the tenants. This could help to establish whether or not the complaints relate to a one-off incident. If it is apparent from the evidence that the tenants are likely to continue causing nuisance, you should consider the courses of action set out below.

If the fixed term of the tenancy agreement is to expire in the coming months or has already expired, you could serve a notice giving no less than two months to vacate the property. There is no prescribed form of notice, which (because the notice must contain certain information) means that it can be difficult to get the notice right. A solicitor should be able to advise you about this. If the tenant fails to leave on the expiry of the notice, then the landlord can bring a

claim for possession, known as accelerated possession proceedings. This is a relatively straightforward procedure but, in relation to timing, see question 4 below.

If the tenant's behaviour is such that you need to get possession more quickly, such as where serious criminal offences have been committed, another procedure may be available to seek possession, which you can discuss with your solicitor. This may involve serving a prescribed form of notice on the tenant of your intention to commence possession proceedings. However, a great deal of evidence will need to be brought to the court's attention and there is no guarantee that the court will order possession. Alternatively, a quicker route may be to apply to the court for an injunction to stop the tenant from continuing the nuisance behaviour, although this will be more costly.

To assist your solicitor, you should gather together as much evidence as possible about the nuisance and ask those who have complained to keep a record of the times and dates from the outset. They must also be prepared to give their evidence in court.

4. I have tried the accelerated possession procedure, but there was nothing "accelerated" about it. Why is that?

Whilst it is called "accelerated", it is not necessarily speedy. Proceedings can only be commenced after giving between two and three months' notice. All in all, the procedure can take up to six months from service of the notice of termination to enforcement by the court bailiff. Advantages of this procedure are that, if the court forms are completed correctly, the court will usually make a possession order without the need for a hearing, making it cheaper to use than the standard procedure, and there is usually very little that a tenant can say to defend the proceedings.

5. I have recently discovered that my assured shorthold tenant, a married couple, have let their extended family move into the property, what can I do?

First of all you should read the tenancy agreement to see whether or not there is a clause placing a restriction on the tenant's ability to let others move in with them. You should also communicate your concerns to the tenant. Personal visits would also enable you to establish whether or not there is a breach of the tenancy agreement, if there is such a clause in the tenancy agreement.

You should consider whether the additional occupants are actually an inconvenience to you. It may be that the inconvenience would be compensated by an increase in the rent so you could consider serving a rent increase notice or, if the current tenancy has expired, offering a new tenancy at a higher rent.

If you would prefer to seek possession of the property, you could check whether you are in a position to follow the accelerated procedure discussed in answer to question 3 above.

If the accelerated procedure is not available, you will probably need to take advice as to whether the tenancy gives you other rights to claim possession.

6. My tenants have moved out of my property, and squatters have since broken in. What action can I take?

You should seek immediate legal advice. Special rights and restrictions apply to recovery of residential property depending upon, for example, if the landlord shares the property, and how quickly the landlord/owner acts.

More often than not it will not be appropriate or legal simply to throw the squatters out without a court order. There are at least two relevant court procedures (interim possession orders, and summary possession proceedings), and you will need advice as to which is best for you. Whichever procedure is used, papers will need to be issued at court, proceedings will need to be served on the squatters, and there will then be one or possibly two hearings. You should also ensure that you act promptly as soon as you are aware that your property is being squatted.

7. I would like to instruct a solicitor to issue court proceedings to recover possession of my property. Can I claim my legal costs from the tenant?

You will usually only be entitled to recover “fixed costs” which will be only a fraction of the full costs of the proceedings. Whatever costs order you obtain, there is no guarantee that the tenant will pay it and you may have to take further enforcement action. You should always ask your solicitor when you first instruct them how much proceedings might cost you.

For more information please contact:

Ed Cracknell
Solicitor
020 7440 4818
Ed.Cracknell@russell-cooke.co.uk

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