

Residential Property Possession Claims



To Let



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If you are a landlord or letting agent, you may from time to time be faced with the need to remove a tenant from a property you let or manage.

This could be due to the tenant being in rent arrears, damage to your property or anti-social behaviour.

Or you might simply need vacant possession to sell the property for your own personal reasons.



Residential Property Possession Claims

In the majority of cases you will need to acquire a court order to take possession of the property from your tenant. Indeed, it is a criminal offence to evict a residential occupier without a possession order.

The procedure for evicting tenants is extremely regulated and it is easy to get it wrong. The court could even be prevented from granting a possession order if papers are not completed correctly, leading to substantial delays and additional expenses.

Background to the legislation

In most cases a residential tenant will be occupying a property under an Assured Shorthold Tenancy. This type of tenancy is governed by the Housing Act 1988.

A second piece of legislation, the Protection from Eviction Act 1977, protects tenants from being evicted from their homes by landlords, unless there has been a court order.

Housing Act 1988

A statute governing property in England. It is referenced to multiple times in tenancy agreements and dictates the law regarding the conflicting interests of landlords and tenants.

What is an Assured Shorthold Tenancy?

An Assured Shorthold Tenancy is a tenancy granted by a private landlord, private registered provider or registered social landlord to a tenant who occupies the dwelling as their principle home.

A property let under an Assured Shorthold Tenancy Agreement cannot be easily repossessed as the tenant has security of tenure.

Landlords who have an Assured Shorthold Tenancy Agreement with their tenant will require the tenant to breach the grounds of their tenancy agreement in order to seek possession.



The process

Preparation and service of a notice

There are two types of notice that can be served on the tenant depending on the scenario you are faced with. Either a 'fault' notice (section 8 notice), where the tenants are in breach of the terms of the tenancy, or a 'no fault' notice (section 21 notice).

Under a section 8 notice, the tenant is given 14 days to leave the property, after which time the landlord can issue possession proceedings. If the tenant is in more than 2 months arrears when the notice is served and at the date of the hearing, the court must make a possession order.

The tenant must receive at least two months' notice that possession of the property is required under a section 21 notice. If the tenancy has expired, it is important that the correct date for the tenancy to end is stated. This is not always simple, the notice may be invalid and no possession order will be made if the date is incorrect. The consequences of this will be substantial delays and potentially unnecessary costs for the landlord. A new notice will be required before further possession proceedings are issued.

In some cases, tenants leave the property after being served the notice. At this point the landlord would be able to regain possession of the property if satisfied the tenancy has been surrendered.

Issuing possession proceedings

Should the tenant fail to leave the property before the notice has expired, it will be necessary to issue a claim for possession at court. The claim must be issued in the court which is local to the property.

There are two options for obtaining possession from tenants of a residential property. Either can be issued online.

The accelerated possession procedure

The 'accelerated procedure' can be used if possession is sought on section 21 (no fault) grounds. This procedure can only be used for possession and fixed costs.

After the possession proceedings have been issued the court will consider the case. Provided that the tenant does not file a defence against the claim, a hearing will not be required and the case will be decided upon on paper alone. This should result in a decision being made sooner than the standard procedure. The tenant can, however, apply to be given more time to leave the property. A short court hearing could be required to resolve this.

The standard procedure

When the tenant is in rent arrears or the property is in disrepair the 'standard procedure' can be used to seek an order for possession. The standard procedure can be used for section 8 and section 21 claims. Again, following the issuing of the possession proceedings the court will schedule a hearing date for approximately 4-8 weeks' time. Your solicitors will be able to represent you at the hearing. The court will need to be presented with the tenancy agreement and any relevant evidence.

The first hearing will usually last for around 10 minutes.

If the tenant submits no defence, the court will normally make an order for possession there and then. Where a defence is filed, the court will first consider if the tenant has a tangible argument for defending the claim. If so, the court could adjourn the case in order to schedule a full hearing.

This will often include the need for witness statements and the disclosure of documents. Following the subsequent hearing the court will decide whether to grant possession to the landlord.

Severe penalties

If a landlord fails to follow the correct legal procedure when trying to evict a tenant and regain possession of their property, they can face severe penalties.

Order for possession

If possession is ordered at the initial hearing, the date for possession is regularly 14 days later, unless the tenant claims that this would cause them exceptional hardship. The maximum period the judge can suspend possession for is 42 days, although a period of more than 28 days is rare.

Under the standard procedure, you may be seeking an order for the tenant to pay any unpaid rent. Where there is a tenancy deposit, the court can be asked to make an order that the deposit may be repaid to you from the scheme towards the outstanding rent and legal costs.

Obtaining possession

At this stage the tenant may handover the keys to the landlord or the letting agent. If so, the landlord can take possession of the property.

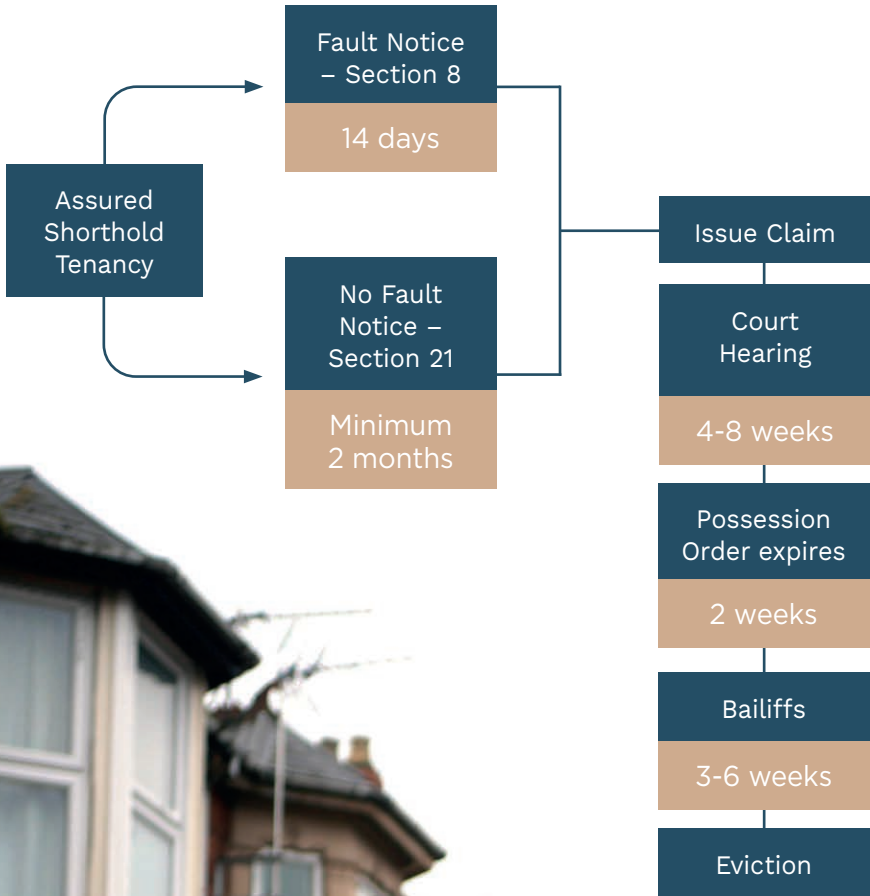
If the tenant has not vacated the property or if it is unclear whether they are still occupying the property, an application for a warrant of possession is often required. Upon a successful application the court bailiff will re-enter the property and evict anyone still at the address. The time and date that the bailiff will attend the property will be specified on the warrant. This can take anywhere between 3 and 6 weeks and will often depend upon the bailiffs' availability. You or your solicitor can arrange for the bailiff to be met at the property and for a locksmith to be present in order to have the locks changed.

Case review

BHW were approached by a landlord requiring the eviction of a tenant. The landlord had a property portfolio and unfortunately faced tenants in one of their properties who were in considerable rent arrears. The landlord required the property vacated as soon as possible in order to re-let and re-establish their income stream.

BHW were able to issue a section 8 notice and successfully obtained a possession order which was enforced by the County Court bailiff.

Possession Proceeding Timeline



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Costs Recovery

Undefended possession claims

In our experience the majority of possession claims are undefended by a tenant. However, the court rules provide for only limited recovery of costs in undefended possession cases.

Disputed/defended claims for possession

On occasion, a tenant may put forward a defence to possession proceedings. There are also tenants who will try to 'play the system'. It is vital that these claims are dealt with in a sensible way and with consideration of the costs involved.

Legal expenses insurance may cover a landlord's legal fees. If you do not have insurance you will need to finance the possession proceedings yourself. Often a tenancy agreement will contain a contractual agreement that the tenant is liable for rent arrears.

A judgment against the tenant for payment of the costs and rent arrears can be made. Realistically however, enforcing the judgment can be difficult and it may be commercially prevalent to cut your losses at this stage, having regained possession of your property.

Contact BHW

Taking care of the details

If done incorrectly, the process for gaining possession of your property can be drawn out and you could find yourself on the wrong side of the law. We will advise you on the quickest possible route to regain possession of your property, ensuring that all requirements are correctly followed.

Saving you time and money

Our solicitors are experienced in spotting and addressing any delaying tactics a tenant may use. We have previously helped private landlords obtain possession of their rented property in cases where:

- the term of the lease has expired
- the rent is not paid
- there is some other breach of the tenancy agreement

Our talent is in evaluating your circumstances and ensuring that you obtain possession as soon as possible with minimum loss.

BHW Solicitors offer landlords a full service in relation to property possession claims. We will be happy to discuss your individual situation and the likely costs involved.

If you are a Letting Agent, we are able to offer beneficial rates to enable us to help you with multiple properties under your management.



**Paul Davis,
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Paul Davis heads the Dispute Resolution department, having joined the Firm upon qualification. He deals with a wide range of property disputes.

Paul has successfully obtained possession for numerous landlords, both in a commercial and residential setting. Paul provides practical advice and prides himself in resolving challenging cases which require a high degree of expertise and specialist knowledge.

BHW Solicitors is a specialist commercial law firm based in Leicester.

BHW is different from other commercial firms because it was set up in 2003 as a “clean sheet” business. Since then it has grown from a staff of 2 to a staff of over 70 and that growth has been entirely organic.

Despite its short history, BHW is already ranked as a UK top 100 firm for its Corporate/Commercial practice in the Legal 500 guide and is also ranked as a top 200 firm for Commercial Property and Agriculture & Estates. Its IT & Telecoms practice is also ranked by the Legal 500.

BHW is one of only two firms in the whole of the East Midlands ranked by Chambers & Partners in the top band for SME Corporate/M&A work, and is the only ranked firm for Agriculture & Rural Affairs in the wider Leicestershire area. Its Real Estate practice is also ranked by the Chambers guide.

BHW differs from the other top commercial firms in that it is genuinely “owner managed”, which guarantees the highest levels of attention and drive in the firm’s development, standards and client care.

BHW’s SME status also allows it to offer a unique value proposition to its clients as the only firm of its size and management structure to have commercial expertise at least equal to the large firms in the region.



BHW's unique "clean sheet" origins allowed it not only to implement its own industry leading client care and risk management systems but also to ensure that these systems are uniformly and universally observed. The firm has achieved Lexcel accreditation. Lexcel is the Law Society's legal practice quality mark promoting excellence in client service. It provides a flexible, supportive management framework to help practices develop consistent operational efficiencies.





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