

Most residential tenancies are assured shorthold tenancies. The tenancy will specify a fixed term, generally six months. After the fixed term comes to an end, the tenancy continues as a statutory periodic tenancy. This may be on a month by month or week by week basis depending on how the rent is paid.

There are certain restrictions on obtaining possession. Section 8 and Section 21 of the Housing Act 1988 set out the procedures that must be followed in order to gain possession. This leaflet considers accelerated possession proceedings under section 21 only.

Checklist

As a landlord, it is important to check that you have the following details correct before issuing a section 21 notice and subsequently possession proceedings:

- Names of parties
- Rent
- Notice period
- Fixed term
- How notices are to be served

The Section 21 Notice

In order to obtain possession, notice must be served and there are very specific rules which must be followed when dealing with the notice.

The notice must give not less than two months' notice that possession is required. If the notice is served within the fixed term of the tenancy the notice must be given under section 21(1)(b). A notice can be issued more than two months before the end of the fixed term but this must be dated to expire on or after the last day of the tenancy.

If the fixed term has expired and there is a statutory periodic tenancy the notice must be given under section 21(4). In these cases, a minimum of two months' (or 8 weeks', depending on how often the rent was paid) notice is required and the day on which the notice expires must be the last day of a period of the tenancy.

Care must therefore be taken to ensure that the dates set out in the notice are correct. Legal advice on the preparation of the section 21 notice is recommended. A landlord will not be able to rely upon a notice which has not been served in accordance with the provisions of section 21.

Care must also be taken to serve a notice in accordance with any provisions for service contained within the tenancy agreement.

How is an application for possession made?

If the tenant has not left the property after expiry of the section 21 notice, a landlord may issue a claim for possession proceedings. This is done by completing a claim form N5B which must be filed with the court along with a fee. Copies of the tenancy and the section 21 notice must be attached to the claim form.

The claim will then be served on the tenant by the court. The tenant has 14 days in which to respond. If the tenant does not respond, the application is then referred to a judge and can be dealt with on paper, without a hearing. The judge will sometimes require a hearing if the tenant is unrepresented or has defended the claim.

What happens after the application hearing?

If an order for possession is made, the tenant usually has 14 days to vacate the property. This can be extended by up to six weeks if the tenant can show exceptional hardship. If the tenant does not vacate, an application for a warrant of possession can be made asking the county court bailiff to attend the property to force the tenant to vacate.

Accelerated possession proceedings cannot be used to claim arrears of rent and so a separate action would be needed to claim arrears.

THIS LEAFLET HAS BEEN PRODUCED TO PROVIDE GENERAL GUIDANCE ONLY. IF YOU REQUIRE SPECIFIC ADVICE THAT WILL BE TAILORED TO YOUR CASE, PLEASE SPEAK TO A MEMBER OF THE TEAM.