

Grounds for possession - assured shorthold tenancies

The Housing Act 1988 as amended by the Housing Act 1996 lays down certain circumstances (grounds) under which a landlord may successfully apply to court for possession.

The grounds for possession fall into two categories: mandatory, where the tenant will definitely be ordered to leave if the landlord can prove breach of contract, and discretionary, where the court can decide one way or the other.

These grounds for possession apply to tenancies entered into after 15 January 1989. The terms of your tenancy agreement must make provision for termination on these grounds.

To rely on any of the grounds a Section 8 Notice must first be served.

MANDATORY GROUNDS

Grounds 1-5 of the Housing Act 1988 require the landlord to serve notice prior to the commencement of the tenancy, warning the tenant that possession might be sought for the reason stated in that ground. In some circumstances the court may decide to waive the requirement of notice if it is just and equitable to do so. Grounds 1-5 are:

Ground 1 can be used if the property to be repossessed was, or after the let is intended to be, returned to the landlord as their own home. For this ground to be successful the landlord must have notified the tenant, in writing before the tenancy started, that he intended one day to ask for the property back on this ground.

Ground 2 relates to a lender's right to possession. If the property is subject to a mortgage the landlord will often be required to serve this notice on the tenants.

Ground 3 requires that the fixed term is less than eight months and the property has been let as a holiday home within the preceding 12 months.

Ground 4 is only for further and higher education providers.

Ground 5 is where the dwelling is owned for the purposes of a minister of religion to better carry out their duties and the residence is needed for such a purpose.

The remaining mandatory grounds, Grounds 6 to 8, do not require notice to be given in advance of the start of the tenancy.

Ground 6 relates to recovery of possession when the landlord needs to carry out substantial building works. It cannot be used by a landlord against a tenant who was already in the property when the landlord bought it. This is particularly important as a tenant may in fact be a regulated tenant and be protected by the provisions of the Rent Act 1977 rather than the Housing Act 1988. A landlord who purchases a property should check the date that the person moved into the property and not just accept that a shorthold contract supplied by the seller is in fact a shorthold.

Ground 7 can be used to recover possession after the death of the tenant where the tenancy has devolved under their will or intestacy and the tenancy was periodic.

Ground 7A Relates to anti-social behaviour committed by the tenant or any other person living with the tenant or visiting the property, after October 20th 2014, if that person has

- i) committed and been convicted of a serious crime***
- ii) breached an Anti-Social Behaviour Injunction obtained under the Anti-Social Behaviour Crime and Policing Act 2014***

- iii) breached a Criminal Behaviour Order obtained under the Anti-Social Behaviour Crime and Policing Act 2014
- iv) Convicted of a breach of a notice or order to reduce their noise in relation to the tenant's property under the Environmental Protection Act 1990
- v) The tenant's property has been closed under a closure order obtained under the Anti-Social Behaviour Crime and Policing Act 2014 and closure is continuous for at least 48 hours.

Ground 7B relates to the tenant's right to rent status in the UK.

A landlord may receive a notice from the Home Secretary. This notice should inform them that there are one or more occupiers, aged 18 or over, in the property with no right to rent in the UK at this time.

Ground 8 relates to serious rent arrears and is the main ground used by landlords of Housing Act 1988 tenancies seeking possession for rent arrears. Both at the date of the service of the notice under section 8 of this Act and at the date of the hearing:

- if rent is payable weekly or fortnightly, at least eight weeks' rent is unpaid;
- if rent is payable monthly, at least two months' rent is unpaid;
- if rent is payable quarterly, at least one quarters' rent is more than three months in arrears; and
- if rent is payable yearly, at least three months' rent is more than three months in arrears.

If a tenant is able to reduce the rent arrears to below the relevant figure by the date of the hearing the application will be dismissed. A landlord may wish to consider using Ground 10 and 11 at the same time. Therefore if an application on Ground 8 fails it will still be possible to seek the order on the other grounds.

DISCRETIONARY GROUNDS

The court must consider the landlord's claim and, if proved, the judge has the power to make an absolute order or a suspended order, which is usually with conditions. In some cases the court may decide to adjourn the proceedings on terms that the tenant is directed to comply with conditions. The terms of the adjournment may allow the landlord to bring the matter back to court within a given period. To gain possession the landlord will have to prove the facts and that it is reasonable for the court to award possession on the facts of the case.

Grounds 9 to 17 are all discretionary grounds. They refer to "dwellinghouse" but this expression would include a flat.

Ground 9 can be used where suitable alternative accommodation is available for the tenant or will be available for him when the order for possession takes effect.

Ground 10 can be used where some rent that is lawfully due from the tenant:-

- is unpaid on the date on which the proceedings for possession are begun; and
- except where subsection (1)(b) of section 8 of the Housing Act 1988 applies, was in arrears at the date of the service of the notice under that section relating to those proceedings.

Ground 11 can be used in cases where the tenant has persistently delayed paying rent which has become lawfully due whether or not any rent is in arrears on the date on which proceedings for possession are begun.

Ground 12 can be used where any obligation of the tenancy (other than one related to the payment of rent) has been broken or not performed.

Ground 13 is for use where the condition of the dwelling-house (or any of the common parts if the dwelling is part of a larger building) has deteriorated owing to acts of waste by, or the neglect or default of, the tenant or any other person residing in the dwelling-house. In the case of an act of waste by, or the neglect or default of, a person lodging with the tenant or a sub-tenant of his, the ground can also be used if the tenant has not taken such steps as he ought reasonably to have taken for the removal of the lodger or sub-tenant.

Ground 14 can be used in cases of anti-social behaviour committed by the tenant or any other person living with the tenant or visiting the property if that person:

- **has been guilty of conduct causing or likely to cause a nuisance or annoyance to a person residing, visiting or otherwise engaging in a lawful activity in the locality; or**
- **has been convicted of :-**
- **using the dwelling-house or allowing it to be used for immoral or illegal purposes; or**
- **an arrestable (Crown Court) offence committed in, or in the locality of, the dwelling-house.**

Ground 15 can be used where the condition of any furniture provided for use under the tenancy has, in the opinion of the court, deteriorated owing to ill-treatment by the tenant or any other person residing in the dwellinghouse. In the case of ill-treatment by a person lodging with the tenant or by the tenant's sub-tenant, the tenant has not taken reasonable steps for the removal of the lodger or sub-tenant.

Ground 16 relates to where the dwelling-house was let to the tenant in consequence of his employment by the landlord seeking possession or a previous landlord under the tenancy and the tenant has ceased to be in that employment.

Ground 17 can be used where the tenant is the person, or one of the persons, to whom the tenancy was granted and the landlord was induced to grant the tenancy by a false statement made knowingly or recklessly by either the tenant or a person acting on the tenant's instigation.

A landlord may use several grounds on an application for possession if several grounds apply to the facts of a case. For example, it is possible to use grounds 8, 10, and 11 at the same time. There is a good reason for specifying all grounds that apply. If a tenant reduces the rent arrears to below the specified sum at the date of the hearing, and the landlord has only pleaded ground 8, the claim could be dismissed. However, if the alternative grounds also apply, the court can still make an order for possession, which may be absolute or suspended.

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If one of the mandatory grounds is used and proven then the judge must make an order for possession. The date of possession should normally be 14 days from the date of the hearing but the judge has discretion for it to be postponed to a period not longer than six weeks after the making of the order.

A landlord will not necessarily know if a tenant will be represented at court, as they may not seek advice until shortly before the hearing. Therefore, any landlord who is contemplating taking legal proceedings should seek advice before doing so. The Legal Aid Agency, in conjunction with the Court Service, now provides emergency legal advice and representation at most courts for unrepresented tenants facing possession proceedings based upon rent arrears. Therefore a landlord may find that they are at a disadvantage if the tenant is represented and the landlord is not.

SHORTHOLDS

Additionally, where a tenancy is an assured shorthold tenancy, there is a mandatory right to regain possession under Section 21 of the Housing Act 1988. A Section 21 Notice must be served (rather than a Section 8 Notice). No possession order can be made in the first six months after the tenant first occupied the property under Section 21.