

HOW TO LEGALLY EVICT YOUR **TENANT**

The following advice only applies to shorthold tenancies. The two types of assured shorthold tenancies are:

- 'periodic' tenancies – these run week by week or month by month with no fixed end date. They can also arise following the expiry of the fixed-term tenancy if it is not renewed for another fixed term.
- fixed-term tenancies – these run for a set amount of time.

SECTION 21 OR SECTION 8 NOTICE?

If you're looking to notify your tenant that you'd like them to leave your property, it will be necessary to serve either a Section 21 or Section 8 notice under the Housing Act 1988.

A Section 21 notice of possession is served to give 'notice of possession' to the tenant. This means you can take back possession of your property at the end of a fixed-term tenancy agreement, or trigger an agreed break clause. Importantly, you don't have to provide any reason to claim possession when you serve a valid Section 21 notice.

A Section 8 eviction notice is served when you have grounds for eviction. For example, the tenant has not paid the rent, damaged the property or is causing a nuisance. In such cases, you can terminate the tenancy during its fixed term if the tenant has breached the tenancy agreement. But your tenant may dispute it, and it could go to court where you'll need to evidence the reason for the eviction.

Even if you have good grounds for eviction, it might be much more cost-effective to serve a section 21 notice if the fixed-term tenancy is coming to an end or the tenancy agreement includes a break clause which can be triggered to bring the tenancy to an early end.

EVICTING YOUR **TENANT**

You can, however, serve both a Section 21 and a Section 8 notice at the same time, and issue court proceedings based on one or both of the notices.

SERVE A SECTION 21 NOTICE OF POSSESSION

A Section 21 notice isn't technically an eviction notice, but a notice to inform the tenant that you, as the landlord, wish to recover possession of the property once they've left.

The first step is to give the tenant no less than two months' notice that you need them to vacate the premises at the end of the tenancy. If a fixed term of the tenancy has come to an end or there is a break clause that can be triggered, you can serve a Section 21 notice of possession.

You can serve it even if the tenant hasn't done anything wrong and you don't have to provide a reason for recovering vacant possession of the property, but a Section 21 notice must be served correctly if you want to be able to enforce it in court.

The Deregulation Act 2015 introduced changes to the way in which tenancies can be brought to an end using the Section 21 procedure.

The most important rules are:

A Section 21 notice can't be served during the first four months of the tenancy however, if the tenancy has been renewed following the end of a fixed term, you can serve a Section 21 notice at any point during the renewed tenancy.

The Section 21 notice will only be valid for six months from the date it was issued if possession proceedings are not issued during the six-month period, another notice will have to be served.

Complaints about the property. If your tenant makes a legitimate complaint about the condition of your property and you fail to deal with it, the tenant may then refer the matter to the local housing authority. A section 21 notice issued after the initial complaint will be invalid once the local housing authority notice is served.

EVICTING YOUR **TENANT**

Use the right form. You must use [form 6A](#) to make a section 21 notice.

The tenant must also be given the following information when they start renting for a Section 21 to be valid:

- A Gas Safety Certificate
- An Energy Performance Certificate (EPC)
- The [‘How to Rent’](#) guide, this guide must be given to a tenant at the start of any new tenancy.

SERVE A SECTION 8 EVICTION NOTICE

If you have grounds to evict a tenant, you can start the eviction process by serving a Section 8 notice seeking possession.

The most common reasons for evicting a tenant are:

- rent arrears
- damage or disrepair to the property
- nuisance.

You must give your tenant a postal address in England or Wales that they can use for correspondence before rent can be treated as due.

To give your tenants notice using a Section 8, you must fill in a [‘Notice seeking possession of a property let on an assured tenancy or an assured agricultural occupancy’](#).

You must specify on the notice what terms of the tenancy have been breached and have to give between two weeks’ and two months’ notice depending on which terms you are relying on.

You’ll then need to apply to the court for a possession order if your tenants do not leave by the specified date.

EVICTING YOUR **TENANT**

MAKING A POSSESSION ORDER

If your tenant refuses to leave after being served an eviction notice you can take action.

You can use an accelerated possession order if you served a Section 21 notice, there is a written tenancy agreement and you are not claiming any unpaid rent.

You can use the standard possession claim if you served either a section 8 or 21 notice, or want to get your property back and at the same time claim rent arrears from the tenant.

If the tenant fails to vacate after the order for possession has expired, it will be necessary to instruct the County Court Bailiff to evict – this may take a further four to six weeks or more depending on the County Court.

STANDARD POSSESSION CLAIMS

For standard possession claims you need to find the County Court for the area where the property is situated, then fill in a [Form N5](#) claim for possession and [Form N119](#) particulars of claim for possession:

You will not be able to use the online service for some kinds of standard possession claim, for example where you are making a claim against a squatter or trespasser.

THE ACCELERATED POSSESSION PROCEDURE

You can opt for an accelerated possession order if your tenants haven't left by the date specified in your Section 21 notice, there is a written tenancy agreement and you aren't claiming rent arrears.

The accelerated possession procedure is sometimes a quicker way to gain possession as there is usually no court hearing, but you will need to pay the court fee before the action can commence.



EVICTING YOUR **TENANT**

For accelerated possession you need to find the County Court for the area where the property is situated, then fill in a [Form N5B](#) claim for possession (accelerated procedure):

The court will then send a copy of the application to the tenant, together with a form of reply allowing the tenant to lodge an objection within 14 days, if they wish to.

If successful, you will get an order for possession without a hearing (normally enforceable 14 days after the order is made) and an order that the tenant pays the court fee.

If the paperwork is not in order or if your tenant raises an important issue in their objection, there might be a court hearing.

From the issue of proceedings to receipt of the order for possession, these proceedings normally take between six and ten weeks assuming nothing goes wrong.

At Stephen Rimmer, our dedicated team of landlord and tenant solicitors can provide expert advice about the best way of evicting a tenant and you can be assured that we will always have your best interests in mind.

Follow this link for a [free initial 30-minute consultation](#) or call us on 01323 434416 to see how we can help you.