



Assured Shorthold Tenancies – Guidance Note 1

How can I end the tenancy?

Note: Law stated here is as at February 2016.

The government is always making changes in this area of law. Please contact us before proceeding to check the current law.

There are two bases upon which the tenancy can be brought to an end, both of which involve legal proceedings. The second procedure applies if there are rent arrears (this note does not cover possession on other grounds). This is a standard guidance note only on the basic procedure applying, the purpose of which is to enable clients to make an informed choice between the two options after discussion with us. Landlord and Tenant law can be complicated and individual guidance must be given in the circumstances of each case.

(1) Assured Shorthold Termination Procedure – ‘section 21’

A Notice may be served which must be in a form provided in the Housing Act. During the fixed term of a tenancy two months notice must be given in the prescribed form to terminate the tenancy at the end of the fixed term. If there is no fixed term, or once the term has expired (‘periodic tenancy’) at least two months notice must be given in the prescribed form terminating on a rental day (although this requirement does not apply to new assured shorthold tenancies granted from 1 October 2015).

We can draft the notice for a charge of £150 plus VAT. If you cannot personally serve the Notice on the tenant, placing through letterbox will be sufficient. Note carefully the time of service. A process server can be instructed to effect service if necessary (see below under (2)).

If the tenant does not vacate, then court proceedings must be taken by us to effect eviction. See our note Assured Shorthold - Possession Proceedings, which sets out the procedure, anticipated timescale and cost of subsequent proceedings. This is not a rent recovery action and therefore there will only be a possession order and no judgment for rent arrears, if there are any.

An important point to note. If you have taken a deposit from your tenant, it must be protected by being placed in an authorised tenancy deposit scheme and you must also provide the tenant with certain required information about the Scheme. If the deposit has not been protected and you have not provided the required information, any two-month ‘Section 21’ Notice which you serve upon the tenant requiring possession will be invalid: see separate guidance note. If possession proceedings are issued following service of a Notice requiring possession which is invalid for this reason, your tenant will have a complete defence to the claim and a possession order will not be made.



continued

It is important therefore that you tell us at the outset whether you took a deposit from your tenant and if so, provide us with evidence that the deposit has been placed in an authorised scheme (i.e. in the form of a copy of the relevant deposit protection certificate) and that you have provided the tenant with the required information.

(2) Rent Arrears Procedure – ‘Ground 8’

The alternative ground is for arrears of rent. However, there has to be eight week’s arrears if rent is paid weekly, or two months arrears if paid monthly at the time of service of notice to quit and at time of court hearing to provide a mandatory ground for possession. Otherwise absolute possession is discretionary only and will rarely be given in our experience. The Notice in this case has a two week expiry period. Again the Notice must be in a prescribed form. You will need to provide us with a clear schedule setting out the arrears of rent with due dates. For service procedures see above.

Our charge for drafting this Notice is £150 plus VAT. If you are unable to serve the Notice yourself there will be a process server’s fee of about £100 plus VAT if service is local, more if further afield.

Court proceedings have to be commenced if the tenant does not vacate after expiry of the Notice and there would need to be a court hearing when the arrears must be proved. Courts vary as to time and dates to hearing - it depends on their efficiency and how busy they are at any given time. However in Ipswich, hearing dates are in our experience typically 6-8 weeks from issue of the proceedings. Although we will conduct the advocacy, you, or your letting agent if applicable, will have to attend the hearing as witness, bringing an up to date schedule of the arrears. If the tenant reduces the arrears below eight weeks then he may be allowed to stay, possibly under a suspended order.

Our costs for the proceedings should not exceed £750 plus VAT together with court fee for issue provided the arrears are not disputed and the case can be dealt with in at one hearing. There will also be an additional charge for our time if we have to instruct the bailiff to enforce the order, and also an

additional court fee in that event. The court will usually order costs against the tenant but on a low court scale, usually for a sum in the region of £250.

Judgment should also be made for rent arrears, irrespective of possession.

Even if the tenant has accrued eight week’s arrears, whether it is worth taking this route may depend on what you know about his reasons for non-payment. If for instance, he has lost his job, then it may be that the cheaper shorthold termination procedure should be used, since the prospects of getting the rent arrears from the tenant may be limited and therefore there is no point in trying to recover rent arrears in addition to possession. Alternatively, the rent arrears procedure is preferable when there are arrears near the start of the tenancy, otherwise you will have to wait up to six months before you can start proceedings. We can advise on the best remedy in your circumstances. Any proceedings for enforcement of a judgment for rent arrears would have to be taken separately once any judgment has been made. If the tenant is in employment then it may be possible to obtain an attachment of his earnings “at source”.

You can, of course, simply sue for the arrears of rent without possession proceedings i.e. by simple debt recovery proceedings, but such proceedings which would only relate to the rent in arrears at the date of the issue of the claim and would not solve the position in the long term i.e. if the tenant gets into arrears again.

Sometimes our clients seek our guidance on other aspects of the tenancy when we are instructed in assured shorthold possession cases e.g. about access to inspect the premises, or repairing obligations, or tenancy deposit issues. We are able to assist in these areas too. Please note that the above estimates of charges only apply to the steps set outlined above. If there is a charge for additional advice we will inform you at the time.



Kerseys Solicitors
32 Lloyds Avenue
Ipswich, Suffolk IP1 3HD

Telephone: 01473 213 311
Fax: 01473 257 739 or 01473 214 874

www.kerseys.co.uk

Email: info@kerseys.co.uk

Kerseys Solicitors
1st Floor, 844 The Crescent
Colchester Business Park
Colchester, Essex CO4 9YQ

Telephone: 01206 584 584

Email: info@colchester@kerseys.co.uk