LAWPACK

THE COMPLETE GUIDE TO

Residential Letting

The smart landlord's guide to renting out property

Tessa Shepperson

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The Complete Guide to Residential Letting
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For convenience (and for no other reason) 'him', 'he' and 'his' have been used throughout and should be read to include 'her', 'she' and 'her'.

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CHAPTER 9

Problem tenants

Take action quickly

It is essential that all problems with tenants are dealt with quickly. If you ignore them, they will just get worse. It is also wise to avoid a confrontation with tenants. If they have a complaint, try to put it right immediately. If the complaint is unreasonable, negotiate with them.

A landlord says …

'If a tenant is always complaining, he is usually working up to non-payment of rent.'

Landlord's duty to other tenants

A landlord is not generally liable for the acts of his tenants. But he may be held responsible if he introduces tenants he knows will be bad tenants into, say, a shared house. He may also be responsible to tenants for damage caused by disrepair in one of his other tenanted properties (e.g. from leaking pipes), for which he is responsible.

However, although a landlord cannot be held responsible for the acts of his bad tenants, he may feel that he owes a moral duty to his other tenants to take steps to evict the troublesome tenant, if only to prevent the other, good, tenants from leaving the property.

Tip

If you believe a tenant is going to visit his local Housing Advice Officer to complain, go down there yourself first and ask for advice about how to deal with your problems with the tenant. If you get your story in first and the Housing Officer sees that you are a reasonable person, he is less likely to write threatening letters to you.

Gas safety

Problems may occur when a tenant refuses access to a landlord to enable him to carry out the annual gas inspection. In the event of an incident, it will be for the landlord (or his managing agent) to show that he has taken all reasonable steps to meet his legal duties (and to avoid being prosecuted and fined). A suggested procedure is as follows:

- Tell the tenant when the inspection test will take place and give a telephone number to contact if this time is inconvenient, so another appointment can be arranged.
- If no communication is received from the tenant and the inspector is not able to gain access, write a letter to the tenant explaining that a gas safety check is a legal requirement and that it is for the tenant's own safety. Give the tenant an opportunity to make another appointment or suggest a further appointment.
- If after, say, 21 days the tenant still fails to contact you or allow access, send a further letter, reiterating the importance of the test and asking that the tenant contact you urgently to arrange an appointment within a specified period (say 14 days).
- You should not use force to gain access to the property.
- If, after three attempts, you are still unable to gain access in order to have the safety check done, contact your local Health & Safety Executive.
- Threats of violence from the tenant will justify cutting short this process.

Records (giving the date and time and any other details) should be kept of all visits to the property and copies should be kept of all correspondence sent to the tenant.

Tip

If a landlord thinks that any gas appliances are faulty and/or there is a gas escape, he should contact National Grid on 0800 111 999; it has statutory rights of entry and powers of disconnection.

Harassment legislation

It is beyond the scope of this book to consider harassment legislation in detail. Essentially, the legislation provides that harassment can be both a criminal offence and entitles the tenant to bring civil proceedings for an injunction (or interdict in Scotland) and/or damages.

- **Criminal prosecutions** are normally brought by local authorities after tenants have been to them to complain. They will always write to the landlord first, however, so any correspondence received from them should be treated seriously.
- **Civil proceedings** will be brought by the tenants themselves, usually with Legal Aid. They can prove extremely expensive for landlords, because if the tenant wins, the landlord will have to pay not only damages but also the tenant's legal costs.

The following are examples of actions which will entitle tenants and/or local authorities to invoke the legislation:

- Actual physical eviction of tenants from residential property by landlords. **Eviction of tenants should only ever be done by a court bailiff (or Sheriff Officer in Scotland) pursuant to a court order.**
- Threats of, or actual, violence and/or verbal abuse.
- Removal of doors, windows and other items from the property.
- Disconnection of services, such as gas and electricity.
- Entering the property without the tenant's consent.
- Any act which is likely to cause the tenant to give up his occupancy of the property (even if this is not the landlord's intention).

Many landlords feel extremely frustrated by this legislation, when they see the tenants living in their property without paying rent, perhaps causing damage to the property, and using it for illegal purposes. However horrendous the tenant's conduct, though, the landlord must always follow the correct procedures and should **never** resort to self-help measures. There are legal remedies available to deal with tenants who behave badly, although unfortunately they do take some time. If a landlord does not follow the proper procedure, he can find it an extremely expensive exercise.

An example

A landlord lets a flat to a young lady. She only pays the first month's rent. She then starts behaving badly, she has loud parties and the neighbours complain. Her boyfriend causes a disturbance at the property on several occasions and kicks one of the doors in. The police are called in several times. The landlord goes round several times to ask for the rent. He tells her that unless she pays the rent and behaves properly she will have to go. On at least one occasion he loses his temper and shouts at her. One week he finds that she is not at the property. He continues to visit the property but she is never there. After about three weeks he suspects that she has left and uses his keys to gain entry. The house is in a dirty condition and it is obvious that no-one has been there for some time. It is full of rubbish and there is mouldy food in the kitchen. He finds some of her personal things, such as a purse with £5 in it, clothes in the wardrobe and in the chest of drawers in the bedroom, and some DVDs in the lounge. However, he decides that she has left, bags up all the items left in the property, and changes the locks. None of the items left being saleable, he dumps them (apart from the money in the purse which he takes against the rent arrears), redecorates the flat, and then relets it to another tenant.

Two months later he learns of a scene at the flat when the young lady tries to gain entry and is refused by the new tenant. He is subsequently served with a County court summons for damages for harassment and unlawful eviction together with a claim for compensation for her property, and a notice stating that she has been awarded Legal Aid. He loses the case and is ordered to pay compensation to the tenant, although the sum is reduced to take

account of her unpaid rent and damage to the flat. He also has to pay her legal costs, which run into several thousand pounds, as well as his own solicitor's bill.

This landlord would also have been vulnerable to a prosecution for unlawful eviction.

Had the landlord followed the correct procedure and obtained a possession order, the tenant would not have been able to make any claim against him. He would have been out of pocket but the sums involved would have been far less.

Every landlord who lets property for any period of time is bound to have at least one bad tenant. All you can do is be careful in your choice of tenant, act swiftly to resolve any problems, and if the problem cannot be resolved, follow the correct legal procedures for evicting the tenant. Unfortunately, having the occasional bad tenant is just part of the job of being a landlord and when it happens to you, you just have to accept this and deal with it in a professional way.

A landlord says …

'A tenant who is trouble at the beginning of a tenancy will continue to be trouble to the end.'

Evicting tenants

When evicting tenants, you need to have a 'ground' for eviction and to have served the proper notice on the tenant before legal proceedings are started.

Note

Unless specifically stated, this part of the book deals only with assured tenancies (ATs) under the Housing Act 1988 (this includes ASTs) and the Housing (Scotland) Act 1988. Any references to section numbers refer to sections in those Acts, as appropriate.

Grounds for possession

These are divided into mandatory grounds and discretionary grounds. It is strongly recommended that landlords only ever evict if they have mandatory grounds for possession, as this means that the judge has no alternative but to grant an order for possession. If only discretionary grounds are claimed, the tenant may be able to get Legal Aid to defend the proceedings and you will be faced with a large legal bill if you lose.

Also, if a possession order is granted under a discretionary ground the tenant has the right to ask the court to delay the actual possession date if he agrees to pay off any rent arrears by instalments, and the court will usually agree to this (even if you do not). However, under a mandatory ground, once the order is made, possession is normally ordered to be given up within 14 days, and the judge can only delay the date for possession for up to six weeks if the tenant can prove exceptional hardship.

There are several mandatory grounds for possession, but two that are most commonly used are:

- **The shorthold ground.** If a tenancy is an assured shorthold tenancy (AST) (or a short assured tenancy (SAT) in Scotland), the landlord is entitled to a possession order as of right, after the fixed term has expired, provided the proper form of notice (called a Section 21 notice) is served. In Scotland, a Section 33 notice is served along with a notice to quit, which must be in the correct statutory form.
- **Serious rent arrears (Ground 8).** Provided that both at the time of service of the notice (a Section 8 notice) and at the time of the court hearing, the tenant is in arrears of rent of more than eight weeks or two months, the landlord will be entitled to possession as of right. In Scotland, the landlord needs to serve a notice to quit and an AT6 notice specifying Ground 8 and the tenant must be in arrears of more than three months.

Tip

When claiming under Ground 8, it is normal to also quote Grounds 10 and 11 (any rent arrears and persistent late payment of rent). These are discretionary grounds relating to rent, but they will not normally be sufficient to obtain a possession order on their own. You can also use

them when claiming under another ground (e.g. Ground 1) so you can get a money judgment for any rent arrears.

The owner-occupier ground, which allows owner-occupiers to recover possession of their homes, and which is another mandatory ground, is far less common now. This is because the shorthold ground is now generally used, and because the accelerated procedure (see below) cannot now be used for this ground.

There are other mandatory grounds, but these are rarely used and are not discussed in this book.

Most tenancies are shorthold nowadays, and if a tenant proves unsatisfactory, it is best simply to serve the Section 21 notice (or a Section 33 notice and a notice to quit in Scotland) and then issue proceedings under the shorthold ground at the end of the term. If the tenant's behaviour is so serious that you cannot wait, inform the police (if appropriate) and take legal advice immediately.

Notices

Service of the correct notice (in writing) is a prerequisite for obtaining a possession order. If you cannot prove that this was done, you will not (other than in exceptional circumstances) obtain your possession order.

The correct notice to be served will depend upon the ground you are using and whether the fixed term has expired or not.

- **Shorthold ground where the fixed term has not yet ended.** Here, the notice must be for a period of at least two months and must end at or after the end of the fixed term. So, for example, for a fixed term of six months starting on 1 January, if the notice is served on 2 January, the notice period must end on or after 30 June (which means that you cannot issue proceedings until after that date). If it is served on 1 May, it must end on or after 1 July. This form of notice can be served up to and including 30 June (when it would end on or after 31 August).

  In Scotland, the notice must be for at least two months prior to the end of the fixed term and a notice to quit in the prescribed statutory form must also be served at the same time.

- **Shorthold ground after the fixed term has ended.** Here, the period of the notice must be at least two months and it must end on the last day of a 'period of the tenancy'. To continue with the example above, the periodic tenancy will start on 1 July and, presuming that rent is payable monthly, the period will be from month to month and will end on the last day in the month. So if the notice is served on 5 July, it must end on 30 September.

  It is very easy to get the date wrong in this situation and this can be fatal as a recent legal case has held that if the date on the possession notice is even one day wrong, the landlord will not succeed in his claim for possession. Professionally drafted section 21 notices will always include some 'saving wording', the purpose of which is to provide that the notice will not be rendered invalid by the landlord putting the wrong date on the notice by mistake. For example, all section 21 notices sold by Lawpack have this wording, as do those provided by the author on her website www.landlordlaw.co.uk. Landlords are advised never to use a notice which does not include some form of saving wording (the precise wording used varies – the wording used by Lawpack is regularly reviewed).

  In Scotland, if no notices are served the tenancy continues by 'tacit relocation' for the term of the tenancy; for example, if the tenancy agreement is for six months, the tenancy will continue for a further period of six months and notices must be served at least two months before the end of the further six-month period.

Tip

It is important when using a printed Section 21 form that a recently published version is used. Some of the older forms, although they were considered valid at the time they were published, may be problematic now due to legal cases which have been decided since they were printed. Always check the date of publication and do not use a form which was printed more than a year ago.

- **All other grounds.** Here the notice must be issued in the form prescribed by Section 8 of the Act, and if parts of it are missing or crossed out in error, it may be invalid. If you are serving the notice under Ground 1, it will need to be a two-month notice, if you are serving notice under Ground 8, it is a two-week notice.

> In Scotland, Form AT6 is served for the period prescribed by the Housing (Scotland) Act 1988. To terminate the tenancy you must also serve a notice to quit, which has a notice period of at least 40 days; for example, even if you serve an AT6 under Ground 8, which is a two-week notice, you still need to serve a notice to quit with 40 days' notice.

If you are not sure what you are doing, you should get a solicitor to draft the notice for you. It is essential that the notice is correct as otherwise you may not be granted a possession order at court. Sometimes what appear to be quite minor inaccuracies can prove fatal at court.

Be aware also of the effect of the tenancy deposit regulations. As discussed in chapter 7, no valid section 21 notice can be served if the regulations have not been complied with. So if you find you have forgotten to protect your deposit, you will need to deal with this first.

If you are intending to bring proceedings for possession based on rent arrears, the deposit regulations will also be important. If you have failed to protect or serve the prescribed information, you will have no defence to a claim for the penalty payment. The effect of this will be to offset and therefore effectively reduce the rent due to you and could cancel it out altogether.

Always keep a copy of the notice served and a record of the date and time of service of the notice, the method of service (by post, personally, or through the letter box) and the name of the person who served it. It is recommended that notices are served either by handing them to the tenant personally (the best method of service) or by putting them (in an envelope addressed to the tenant) through the letter box of the property yourself. In Scotland the notices are required to be served either by recorded delivery or sheriff officer. If time is short it might be better to have the notices served by sheriff officer as the tenant may refuse to sign for the recorded delivery letter.

Tip

If you think that your tenant will lie and say that you did not serve the notice, have an independent witness with you.

Do not send them by post, as it is all too easy for the tenant to say that they got lost in the post. If this happens after you have issued proceedings, there

is no way that you can prove delivery by the post office, so you will have to cancel those proceedings and start again. However, if you have written proof of receipt from the tenants (e.g. if they have referred to the notice in a letter) you should be safe. I prefer not to use recorded delivery as the tenant can refuse to accept delivery, which can cause problems.

Tip

If it is inconvenient or difficult for you to visit the property personally or if you are worried about a confrontation with the tenant, use a professional process server. His fees are modest (on average between £50-100), he will provide you with a certificate of service you can use at court, and the judge will almost always accept his evidence of service as conclusive. You can find suitable firms on the internet, for example through the UK Process Servers Association website, www.uk-psa.org or Davis Coleman (process servers)) run a nationwide service , www.daviscoleman.com/p/process.

Possession proceedings

For ATs and ASTs, there are two types of possession proceedings you can use, the 'normal' proceedings and the (so called) 'accelerated' proceedings.

- **Accelerated proceedings.** These can only be used if your ground for possession is the shorthold ground. It cannot be used to claim rent arrears. It is quicker because the evidence is given by way of a written statement to the court and there is no court hearing. If successful, you will get an order for possession (normally enforceable 14 days after the order was made) and an order that the tenant pay 'fixed costs' (if you are acting in person, this will just be the court fee). 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.
- **Normal 'fixed date' proceedings.** These involve a court hearing where you will have to attend and present your case to the judge. However, you will also normally be entitled to a money judgment for any rent arrears due at the date of the hearing, and an order that the tenant pays future rent until he vacates the property. If the rent arrears remain unpaid, you can enforce this judgment through the courts.

You will also be entitled to an order for costs (if you are acting in person, this will normally be limited to the court fee and your costs of attending the hearing). In Scotland, all proceedings for possession are under the 'summary cause procedure' at the Sheriff Court, unless in addition you are seeking payment of rent arrears in excess of £5000, in which case an ordinary action should be raised. In all cases under the summary cause procedure, a hearing is fixed.

Unless you are very certain of what you are doing, it is really best to instruct a solicitor should it become necessary to evict your tenant. Judges do not like making possession orders and will usually refuse to do so, unless a landlord has got his paperwork right. If you make a mistake, a tenant will be able to defend (often with Legal Aid) and you may end up with no possession order and an order to pay the tenant's legal costs.

Acting in person

If you do not want to use a solicitor, you will have to act in person and bring the proceedings yourself. Note that the court papers can only be signed by either the landlord himself or his solicitor. A letting agent cannot sign on behalf of a landlord. The court will also need to have an address for service for the claimant (i.e. the person bringing the proceedings) in England & Wales, so landlords living abroad will need to instruct solicitors to act for them.

If you decide to act in person, you will find all the necessary forms and some helpful leaflets on the Court Service website at http://hmctsformfinder.justice.gov.uk (or www.scotcourts.gov.uk for Scotland). They are also available from the Court Office of your local County court in England & Wales or the Sheriff Clerk's Office or local Sheriff Court in Scotland. Fill in the forms as indicated, and make sure that when you issue the proceedings you send a cheque for the court fee (currently £175) made payable to HM Courts and Tribunals Service or HMCTS and an extra copy of the form and any attached documents, for each defendant. In Scotland, the current fee under the summary cause procedure is £65 and cheques should be made payable to the Scottish Courts Administration.

Note that you can now issue most types of possession proceedings online via the court service website at www.possessionclaim.gov.uk/pcol. If you use this service there is a lower court fee.

Tip

Make sure that you do not issue proceedings until after your possession notice has expired, or the claim will be invalid.

The court will issue the proceedings and serve a copy on each defendant. At the same time you will be informed of this by notice. If you are issuing normal proceedings, you will be told the date of the court hearing (in Scotland, a hearing is always fixed in summary cause proceedings); if you are using the accelerated procedure, you will be told when you can apply to the court for a possession order. If the defendant files a defence or response to your proceedings, you should be sent a copy by the court (although it is sometimes rather slow in doing this). In Scotland, you require to serve the action on the defender. The court will fix two dates, the return date which is the latest date when the defender can advise the court he is defending the proceedings and also a hearing date when the landlord or his solicitor is required to attend to ask the sheriff to grant the decree of eviction (and a decree for rent arrears if applicable). Once the action has been raised against the tenant, the landlord or his solicitor has to serve a notice on the local authority. If the action is defended a full hearing called a 'proof' will be fixed at which both sides will be required to call witnesses and produce documentary evidence. In Scotland, the defender has to lodge his written defence with the court and at the same time provide his landlord with a copy.

Make sure that you read carefully all communications you receive from the court and follow any instructions given to you. If you need to contact the court about the case, it is essential that you quote the case number, as otherwise the court staff will not be able to locate the proper file or deal with your enquiry. Remember that it takes the court some time to deal with the issue of proceedings and enquiries; do not expect a response too soon. Some courts are slower than others and some London courts, being very busy, can be particularly slow to deal with things.

If you are using the normal proceedings or if a hearing is listed for any other type of claim (e.g. if a defence is filed in a claim brought by the accelerated procedure), make sure that you arrive at court in good time (if you are late, the case may be heard without you and your claim dismissed). If you are unavoidably detained, for example if you get stuck in traffic or have an accident, try to contact the court and let it know when you will be

arriving. It may then be able to delay hearing the case until you arrive. When you arrive at court you should look at the lists for that day, which you will find pinned to a notice board, usually near the entrance. This will tell you in which court your case is being heard and the name of the judge. You should then go to the court room and (this is most important) tell the usher you have arrived. He will then make sure that you are told when the case is being heard. If you do not contact the usher, no-one will know that you are there and, again, there is a possibility that the case may be heard without you.

Standard proceedings are normally listed at half-hour intervals and several cases will be listed together. However, if you are near the end of the list, it may be some time before your case is called, so do not expect to be called immediately (in the author's experience the only times a case is called on at the time listed is when you are late). If you are in a car park where you have to pay in advance, do make sure that you pay enough to cover any delays. Note that if several of the cases in the list take longer than expected, cases further down may find that they are being called up to an hour or even two hours late.

Most possession proceedings and applications are now heard 'in chambers', which means that they are heard in the judge's private room and not in an open court (in Scotland where they are heard in open court). The judges are District Judges and you should address them as 'Sir' or 'Ma'am' (not 'Your Honour'). In Scotland, the proceedings are held in open court and the judge is the Sheriff and should be addressed as 'Your Lordship' or 'M'Lord' or 'Your Ladyship' or 'M'Lady'.

The claimant is heard first and will have to state his case and give evidence to support his claim. For example, for a rent arrears claim, you will have to tell the court the current rent arrears. The judge will then ask the defendant (if he attends the hearing) some questions and give him an opportunity to give his case. The judge will then make his decision. He sometimes makes a little speech when doing this and if so, it is important that you make a note of what he says (in case you disagree with it and want to take legal advice later). If the judge finds in your favour, you can then ask for your costs which, if you are acting in person, will just be the court fee and your expenses for attending the hearing. If the defendant does not attend (and defendants frequently fail to attend), you will still have to give your evidence, but it is more likely that you will succeed in getting the order that you want.

After the hearing you will be sent a court order confirming what was decided by the judge. Do check this carefully as occasionally there are mistakes. If there is an error, write to the court and ask it to amend the errors.

Note – there is a series of posts on the author's website www.landlordlawblog.co.uk called the 'Notice Guide to Court Hearings', which will be helpful if you are representing yourself.

Instructing a solicitor

If you decide to instruct a solicitor, make sure he is one who is experienced in this type of work (many are not), and that you get a firm quotation for his costs before he does any work. Make sure that this quotation is confirmed in writing. For straightforward possession claims the solicitor should be able to quote you a fixed fee. The solicitor will need:

- The tenancy agreement.
- Copies of all notices served on the tenant.
- Details of how, when, and by whom the notices were served.
- Any correspondence with the tenant, and any other notes and paperwork.
- Confirmation that the tenancy deposit (if you took one) has been protected with a government-authorised tenancy deposit scheme, been properly registered and the notice served on the tenant.
- A schedule of the rent arrears (if you are claiming unpaid rent).
- A payment on account of costs.

Tip

Make sure that the property is in good repair before issuing proceedings for serious rent arrears. If it is not, the tenant will be able to bring a counterclaim against you (often with the benefit of Legal Aid) which may prevent you from getting possession and also make you liable for an award of damages and an order to pay his legal costs.

Evicting Rent Act tenants

It is beyond the scope of this book to deal with the eviction of Rent Act tenants. If you wish to evict a Rent Act tenant, you should seek specialist legal advice. Generally, however, you are only likely to succeed if the tenant is in serious arrears of rent, or if you are able to offer him suitable alternative accommodation.

Common law tenancies

There are some tenancies which are not covered by either the Rent Act 1997 or the Housing Act 1988. These are generally tenancies of self-contained accommodation in the property where the owner himself lives, properties let at a high rent (currently more than £100,000 per annum) or at a low rent (£1,000 per annum in Greater London or £250 per annum elsewhere), and company lets. For these tenancies you will need to serve an old-style notice to quit and then issue the standard proceedings (with a court hearing). As this type of procedure is non-standard, it is probably best to take advice from a housing solicitor before taking any action. However, if these claims are drafted and issued correctly, they can be less problematic than claims for possession for AT and AST tenancies.

Squatters and licensees

If the person occupying the property does not have a tenancy, then you will be able to use another form of possession proceedings. These proceedings are much quicker than those used for tenancies and you can sometimes obtain a possession order in less than two weeks. In Scotland, you do not need to serve notices, but the court procedure can still take about two months.

However, it is not advisable for a landlord to bring this type of proceeding on his own unless he really knows what he is doing. It would be much better to instruct a reliable firm of solicitors, experienced in eviction work.

Note that if a squatter has entered a property by breaking in, or if there is someone living at the property (known as a 'displaced occupier') the police should help you gain possession of the property and it should not

be necessary for you to go to court. The police were given new powers to deal with squatters in residential premises under section 144 of the Legal Aid, Sentencing and Punishing of Offenders Act 2012. However, it remains to be seen how often these powers will actually be used in practice.

Note

A tenant cannot become a squatter simply by staying on in the property after the end of his fixed term. He will still be a tenant.

Enforcement of possession orders

Even if you have a possession order, you cannot enforce this other than through the court bailiff (or Sheriff Officer in Scotland). Do not physically evict the tenant (or occupiers) yourself! If you do, this will be a criminal offence.

The possession order (or Court Decree in Scotland) will give a date for possession. Unless specifically authorised by the court, you will have to wait until after this date before instructing the bailiffs (or Sheriff Officer in Scotland). If the tenant is still in the property at that time, you will have to complete a request form and send this, together with the court fee, to court (or you may be able to issue via the court online procedure). It will normally take some weeks for an appointment to be arranged (unless you are evicting squatters, when the bailiffs usually act quickly). The bailiff usually visits the property before fixing the appointment to discuss the eviction with the occupiers.

In Scotland, once you have the Court Decree you can instruct the Sheriff Officer to serve it on the tenant and if he has not vacated by the date given by the Sheriff Officer the Sheriff Officer can evict him. There is no need to go back to court.

When an appointment is made, you must always arrange for someone to attend with the bailiff and formally take possession from him. You should also arrange for a locksmith to be present to change the locks. In Scotland, a Sheriff Officer will attend to this as long as you instruct him to do so.

For evictions in England and Wales which need to be done quickly or where you anticipate problems from the tenants, there is a quicker (although more expensive) service available via the High Court Sheriffs. You need to get leave of the court first however before using this. For more information see www.sherbond.net.

Excluded tenancies or licences

If the letting is one of the following:

1. to a lodger in your own home where you share living accommodation with the lodger;
2. a holiday let;

there is no duty on you, in most cases, to obtain an order for possession for the purposes of criminal law.

You must, however, tell the occupier in writing that you want him to leave and give the occupier a reasonable period of time to vacate.

However, if it is clear that the tenant is not going to vacate voluntarily, you should consult a solicitor. You may still have to issue possession proceedings, for example of the type discussed above for squatters and licensees.

Money claims

There may be times when landlords wish to claim for rent, but do not want or need to claim for possession, for example if the tenant has already left the property, or if the tenant (or Housing Benefit) is paying rent but there are a few weeks' rent outstanding, perhaps relating to the period before Housing Benefit started. Also, the landlord will have a claim against the tenant if he has vacated the property leaving it in a poor condition, and the damage deposit is insufficient to cover the landlord's costs of putting things right. This type of claim is known as a claim for 'dilapidations'.

Many landlords are also defendants in proceedings brought by tenants for the return of their damage deposit where there is a dispute about the landlords' entitlement to retain them or will be involved in arbitration under the new tenancy deposit protection schemes if there is a dispute regarding the payment of the deposit. However, for information about damage deposits please see chapter 7.

Money claims should be brought in the County court and, if (as is usual) they are for sums of less than £5,000, they will be dealt with by the small

claims procedure. It is also possible to issue proceedings online at Money Claim Online via the court website at www.moneyclaim.gov.uk.

In Scotland, claims should be brought to the Sheriff Court; sums of up to £3,000 are dealt with under the small claims procedure. Sums of £3,000 to £5,000 can be dealt with by summary cause procedure. Sums above £5,000 are dealt with under ordinary procedure.

When bringing proceedings against tenants, landlords should ensure that they have evidence to support each and every element of their claim. For claiming rent arrears they will need a detailed rent statement showing how the rent arrears accrued. Claims for interest should be kept entirely separate and should not be included in this schedule. For claims for damages, landlords will need either an estimate or an invoice for the cost of all items/work claimed. If witnesses are to be used, you will need to have a written statement of what they are going to say, which should be signed and dated. They will, however, usually still need to attend the hearing. You will also need to prepare a written statement of your own evidence.

If the claim is defended and goes to a hearing, both sides will be ordered by the judge to produce (so far as is possible) and serve on each other, all relevant documents. These will probably include:

- the tenancy agreement;
- the inventory;
- evidence of rent payments (e.g. the rent book)
- any witness statements;
- invoices or estimates for work and goods; and
- a schedule setting out the items that are being claimed giving details of the sums claimed.

You will need to take the original documents with you to the hearing.

Notes on dilapidations claims

Claims for rent arrears should be fairly straightforward – the tenant has either paid the rent or not. However, claims for dilapidations can be more complex. Below are some points for landlords to bear in mind when bringing this type of claim:

- If the damage done by the tenant exceeds the amount of the damage deposit, then, if the deposit is protected under one of the tenancy deposit protection schemes, you will have to bring a separate claim in the County court for the additional amount.
- This is really only worth doing if there is a realistic chance of the tenants actually being able to pay any judgment made in your favour; for example, it is seldom worth the effort of bringing a claim against housing benefit tenants (unless they subsequently get a job) and you may prefer just to look to your insurance to cover your loss.
- If you decide to bring a claim, you will have to prove that the damage was actually done by the tenant; for example, the tenant may seek to claim that the damage was already done before he moved in or was done after he vacated.
- If there is a detailed signed inventory, the tenant will find it difficult to prove that the damage was done before he moved in. However, you should take care to do your final inventory check at the time or immediately after the tenant vacates, so your tenant cannot claim that the damage was done after he left.
- Note that you cannot claim for damage occasioned by 'fair wear and tear.'
- One advantage of having the inventory, and the check-in and check-out meetings done by an independent inventory company is that they will be seen by the court as an impartial witness.
- There is a technical rule (in Section 18(1) of the Landlord and Tenant Act 1927) which says that a landlord cannot claim more than the diminution caused to his reversion (i.e. the value of the property when he regains possession) by the state of the premises at the end of the tenancy. So, if the property should have been worth £100,000 when you got it back, but due to the damage to the property done by the tenants it is actually worth £70,000, you will not be entitled to claim more than £30,000 from the tenants. Note that the rule does not include damage to the property contents, just to the property itself.
- If the landlord has had repair work done, the court will normally accept the invoices as being evidence of the value of the damage to the landlord's reversion, provided it was reasonable for him to do the work and the sums charged were reasonable.

- However, if you have not had any repair work done, you may have difficulty proving your case. If you have no invoices or estimates for the proposed work, the court may dismiss your claim. Make sure therefore that you have paperwork to prove every item you are claiming.
- Sometimes you may also want to claim for rent lost as a result of having to carry out the repair work. However, to claim this you will have to establish how long it would reasonably have taken you to let the property if it had been in a proper condition, and then show that the works done extended this period.
- The tenant may be entitled to ask the court to reduce any sum awarded to you reflect 'betterment' i.e. the fact that after the works are done you will be getting back a property in a better condition than you were entitled to expect.