

POSSESSION PROCEEDINGS

The below guidance is applicable in England only.

NOTE: Due to substantial changes to Welsh landlord and tenant law introduced on 1st December 2022 by the Renting Homes (Wales) Act 2016, this guidance is only applicable to rental properties in England. Guidance for rental properties in Wales is being produced but in the interim, please call the legal advice helpline for assistance relating to properties within Wales.

If the tenant has not vacated the property at the end of the time specified in either the section 21 or section 8 notice, you will need to start possession proceedings to recover the premises. If you attempt to get the tenant to leave without following the correct process, you could be guilty of harassment and/or illegal eviction which is a criminal matter.

If you have served a section 21 notice, you must apply for possession within six months of serving the tenant with the section 21 notice.

If you have served a section 8 notice, you must apply for possession within twelve months of serving the tenant with the section 8 notice.

There are two options for obtaining possession; accelerated possession or standard possession orders. Which type of order is relevant will depend upon the notice issued and whether there are any additional claims e.g. rent arrears. If the claim is not issued correctly, the claim could be struck out by the court or there may be further fees payable to rectify the mistake.

Accelerated Possession Proceedings

Accelerated possession proceedings should be used if you have served a section 21 notice and the tenant has not left the property. If you want to claim rent arrears as well, you can use either the:

- Standard possession procedure (see below), or
- Accelerated procedure to get your property back, then make a separate court claim (generally the small claims court) for the rent arrears

The accelerated possession application is intended to be a quick process and can proceed without a court hearing if all the criteria are met. However, if you have not met the requirements for a valid section 21 the tenant can apply to defend or stop the claim.

To apply for an accelerated possession order, download and complete the [form N5B](#) in triplicate. The court will send a copy of the application to the tenant who has 14 days from receiving the application to defend/challenge the proceedings. If the tenant does not respond, the matter may proceed without a court hearing.

A judge will look at all the evidence and decide either to:

- Issue a possession order meaning your tenant must leave the property within a stated time, between 14 and 42 days, (this is usually what happens), or,
- Have a court hearing. This may happen if the paperwork is incorrect or your tenant has raised a matter which requires further consideration.

If the tenants do not leave by the date specified, you can apply to the courts for enforcement of the order by a bailiff.

Standard Possession Proceedings – for rent arrears

If you have served the tenant with a section 8 notice, then you will need to start proceedings for a standard possession order. As above, you can also use this option if you have served a section 21 and are looking to claim rent arrears at the same time as obtaining the possession order. For this type of action, you can apply online to start the process or use the [form N5](#). You can find more information about this [here](#).

Once you have applied for the order, the tenant will receive notice of the proceedings. It is possible (as with a section 21) for the tenant to defend the application, and the tenant will need to submit the necessary form to do this. The court will aim to list your possession claim for a hearing within eight weeks of you making the claim, although this is not guaranteed and you may have to wait longer.

The courts have several options available to them:

- Dismiss the claim. This would be used if the ground for possession was not established or they do not feel it is reasonable to grant possession for the discretionary ground used.

- If an application is made for a fault eviction on a discretionary ground, the court may choose to adjourn the application for a timeframe they think appropriate. The courts would normally impose conditions to meet during this timeframe such as repayment of rent arrears.
- The courts could suspend/postpone an order for possession, where a ground has been established and it is reasonable to evict. Possession is postponed or suspended on the condition that moving forwards the tenant will meet the terms of the tenancy and any conditions imposed by the court.
- Grant the possession order, providing a date the tenant needs to leave the property by; this will normally be a date between 14 and 42 days.

If the tenants do not leave by the date specified, you can apply to the courts for enforcement. If you attempt to remove the tenant from the property without a Bailiff/High court Enforcement Officer, you can be guilty of illegal eviction.

Arranging for a bailiff to evict the tenant

You can enforce a possession order either through the County Court or High Court by appointing a bailiff. If you want a High Court bailiff (known as a High Court Enforcement Officer) you will require permission from the courts. The best way to approach this would be to ask for enforcement to be transferred to the High Court during any hearing. If you are looking for information on how to enforce the order please call us.

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