

OBTAINING POSSESSION

A court order will nearly always be necessary to obtain back a property if the tenant refuses to deliver possession. It is not permissible for the landlord to simply re-enter the property and change the locks. A landlord may not recover an unlicensed house in multiple occupation or where deposits scheme conditions are outstanding on the landlord's part.

It is possible for the landlord to obtain possession of a property under a shorthold tenancy during the period of the lease on certain grounds where the tenant is at fault. The grounds include non-payment of rent and serious breach of covenants.

Possession claims are dealt with in the County Court for the area in which the property is situated. There are stipulated court forms and protocols to be followed in relation to such claims. England and Wales litigation was reformed very significantly in the late 1990s in order to be more streamlined and efficient.

A court will appoint a date for hearing when it issues a claim form. The standard period for a hearing is not more than 8 weeks from the date of the claim form. When the claim is against trespassers, shorter periods are available.

There are special accelerated procedures for possession of an assured shorthold tenancy. If there are no grounds for the tenant to resist the claim, the judge may make an order for possession without requiring the attendance of the parties. If the court is satisfied the landlord is entitled to the property (e.g. the letting period has ended), the landlord is entitled to a court order of possession.

In case of exceptional hardship, the judge has discretion to postpone the possession order for up to 6 weeks. The normal period for enforcement is two weeks. Once a court order is issued, a warrant for possession can be applied for. This is enforced by court bailiffs who have the power to evict anyone from the property.

Deposit Protection

Since 2007, there has been an obligation on landlords to safeguard tenant deposits in accordance with a Government approved deposit protection scheme. There are two forms of scheme, a “custodial” scheme and an “insurance” scheme.

A custodial scheme is more appropriate to landlords with a smaller number of rental properties. The deposit is paid to a scheme provider who holds it on behalf of the landlord and tenant. Neither the landlord nor tenant pays a fee as it is funded by interest earned on the deposit held by the scheme provider.

At the end of the tenancy, the landlord and tenant jointly ask for the deposit to be repaid. If they agree the proportions of the deposit that should be paid, it is paid out together with surplus interest. If there is a dispute as to who should receive the deposit or part of it, the scheme provider offers an “Alternative Dispute Resolution” mechanism to assist the parties. Alternative Dispute Resolution is a method of dispute resolution that does not involve going to Court. Certain complex disputes can be referred to Court. The scheme provider pays out the deposit in accordance with the decision of the arbitrator or the court.

The insurance based scheme is more appropriate to professional landlords with large numbers of properties. Under this scheme the landlord retains the deposit but pays a fixed premium to the scheme provider. If the landlord fails to return the deposit, the scheme provider will pay an amount found to be owing to the tenant. It is then up to the scheme provider to pursue the landlord for the outstanding deposit money.

Any deposit paid in connection with a shorthold tenancy is to be insured in accordance with the scheme within 14 days of its receipt. Within that period, the landlord must give the tenant prescribed information relating to the deposit and the scheme including particular details of the scheme and information supplied by the scheme provider.

There are severe sanctions against the landlord if he does not comply with the scheme. If the landlord does not comply with his obligations within the 14 day period and the matter comes to court, the court must order the deposit to be returned and order the landlord to pay an amount equal to three times the deposit. The tenant can apply to the court for such an order at any stage. A landlord who has not safeguarded the deposit or provided the prescribed information will not be able to serve notice claiming possession at the end of the fixed term until he has fulfilled the obligations.

There are a number of approved scheme providers including the following:

www.depositprotection.com

www.mydeposit.co.uk

This Guide is intended as an overview and broad outline of the matters covered in it. Its purpose is to inform and raise awareness. We are happy to offer specific legal advice on particular circumstances.

This Guide should not be relied on as a substitute for comprehensive legal advice with reference to the particular circumstances.

While we have taken due care in the preparation of this publication, we do not accept legal liability as a result of any reliance placed on anything in this Guide. The reader should rely only on specific legal or taxation advice.