What To Do When It All Goes Pear-Shaped!

The Property Secrets Landlord's Guide to Regaining Possession of Your Property

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propertysecrets*

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Table of Contents

1 THE GUIDE WE HOPE YOU'LL NEVER NEED

What To Do When It All Goes Pear-Shaped! is actually a guide we hope you'll never need to use – although we hope you read it and consider yourself better armed because of it.

When difficulties strike, especially legal difficulties, knowledge is essential. Why? Because knowledge can save you money. Get things right first time and the chances are you will avoid wasting money AND time running down blind alleys.

Obviously, no guide such as this can completely replace professional legal advice – but knowing what legal recourse you have and how to access it can, at least, in all probability, head off minor problems before they escalate.

Of course, as Churchill said, 'Jaw, jaw is better than war, war.'

In the context of landlord and tenant, we are using Churchill's words to refer to the fact that negotiation and persuasion is always preferable to legal recourse – war!

But as, President Theodore Roosevelt **:** said 'Speak softly, carry a big stick.'

In other words, try all the gentle persuasion stuff, but if it doesn't work and you really need your tenants to vacate, the stick you need to be carrying is knowledge of the law and what it says about the process of getting those intransigent tenants out.

So, let's go. Welcome to the world of legal niceties.

2 What Pear Shaped Can Amount To...

Several new Internet sites have recently sprung up offering professional services to landlords stuck with bad tenants.

Some claim to be the ultimate tenant eviction service, dealing with the entire process from start to finish at a fixed fee.

Bad tenants come in all shapes and sizes and can inflict unexpected financial mayhem on any letting operation.

2.1 Picking a good tenant is never clear cut

I have suffered from a number of dreadful tenants during thirty years of being a landlord, despite the fact they all started out with what seemed to be honest, reliable and stable track records, good character references and exemplary credit scores.

If I have learned anything, it is that unpredictable circumstances and volatile events can transform even the most ideal tenancy into a nightmare of catastrophic proportions.

For example, one particular applicant seemed at the outset to be the perfect choice for a two-bed executive style apartment I had vacant at the time.

He was in his early forties, well presented, very polite and friendly. The persuading factor was that he was a solicitor by profession and provided evidence of having a high annual income and considerable savings.

The tenancy began without problem; rent was paid in full and on time, often ahead of the due dates.

Then, four months into the tenancy, rent stopped dead. It transpired his reason for taking the tenancy was due to rather unpleasant divorce proceedings started by his wife.

While the exact circumstances of divorce were unknown by me at the time, he had clearly been forced to leave the marital home and had quickly fallen into financial hardship following the court hearing.

I later discovered he had lost his high earning job and had gambled and drank the last of his savings.

Embarrassed by what had happened to him, he had also used some of his savings to feign a successful lifestyle for the benefit of his friends and acquaintances – all at the cost of paying rent.

Although I began possession proceedings quite quickly, the tenant's legal experience and knowledge allowed him to delay court action for three months and, although I got him out eventually, I never managed to trace him for the outstanding rent arrears.

Another example turned out to be the epitome of a tenant from hell.

Neighbours in a flat adjoining the one I had rented to a young professional couple called me out late one night.

The tenants had thus far been excellent. They had paid their rent on time and hadn't bothered me with the all too often little grumbles that tenants sometimes have.

When I arrived at the block of flats I found the bay window of my first floor property smashed to pieces, there was glass everywhere and (somewhat alarmingly) the flashing blue lights of two police cars were illuminating the entire scene.

It transpired the tenant's girlfriend had vacated several weeks earlier after a particularly violent argument. He had become increasingly depressed and distraught by the split, culminating in him throwing himself through the window in an attempt at suicide.

The flat itself was totally destroyed.

Furnishings had been broken, carpets burnt and stained, kitchen cupboards ripped out and unidentifiable grime covered every wall and door in the property.

Added to this, it now lacked a window!

The scene was one of utter devastation and chaos. Even more disconcerting – the property was now classified as a potential crime scene and nothing could be done until statements had been taken from the tenant, who was currently unconscious in a local hospital's intensive care ward.

With no rent coming in, I was losing money; but I wasn't allowed to clean the property for several weeks, let alone contemplate re-letting it.

The situation only improved when the tenant eventually became well enough to respond to court possession papers. It took weeks just to get to a stage when the property could be reinstated and viewings for new tenants got underway. The cost was unparalleled in my experience and, even putting compassion aside, there was little chance of ever recouping what had been lost.

These two 'real-life' examples may seem a little extreme, but they help explain how even the best referenced individuals can swiftly evolve into bad tenants, just through a change of situation or circumstances.

And bad tenants cost money – so getting them evicted quickly is the most sensible and cost-effective action a landlord can take.

The problem for many investors is they lack the time, knowledge and experience to act quickly or effectively enough to regain possession of their property ... and thus be able to re-let it.

Re-letting the property to new tenants is the only sure-fire way of re-establishing an income, so expediency becomes the most important factor.

Chasing rent arrears and damages from the prior tenant can always be undertaken once possession has been determined and is, in any event, a secondary issue.

Apart from your own preferred legal advisors, there are now a number of firms offering suitable alternative services online.

Try Googling 'tenant eviction service' to see what contacts even a simple search can produce. The advantages of an online service usually includes:

- A fast response by qualified and professional legal advisors;
- A free initial assessment of the situation and proposals of how best to pursue a remedy;
- Complicated court documents completed on your behalf;
- Barristers specialised in letting issues employed when required;
- A fixed fee structure, so you know exactly how much regaining possession could cost at the outset;
- No delays caused by badly completed forms, inaccurate date calculations or attempts at
- negotiation by the tenant or tenant's advisors.

2.2 Costs

Cost is always a major issue for investors and, so you can compare online expenses with those that may be charged by your own solicitor, here are the typical fees charged by one of the online market leaders in this field:

2.2.1 £79 Stage One Possession Fee

For drawing-up and serving initial Notice (section 8/section 21) on the tenant. The cost includes provision for serving Notice in person, if required, and includes all taxes and costs involved. Service of Notice is completed as soon as instructed, regardless of where in the country the property is located. If the tenant fails to vacate on the due date:

2.2.2 £580 Stage Two Possession Fee

This may seem a lot, but it includes £150 court costs, barrister and solicitor court hearing fees and taxes. If the tenant still fails to vacate:

2.2.3 £180 Stage Three Possession Fee

If the tenant fails to vacate after the 14 day court order period, bailiffs are arranged to eject the tenant.

It is not usual for all the above fees to be incurred, since most tenants tend to vacate at the end of the notice period or after a court order has been granted.

Even if Stage One and Stage Two costs have to be paid, they are probably less than what might otherwise be incurred in lost rent if possession takes longer through the standard high-street solicitor route.

Time and accuracy are of the essence in such proceedings, so make sure whoever you hire is adequately experienced and able to act for you without delay.

In the meantime, this guide is aimed at arming you with a little knowledge of the law – it could save you a great deal more than just money...

3 When, How And Which Notice To Issue?

If you need to regain possession of your property, it's essential to ensure you issue the right notice to end the tenancy under Section 21 of the Housing Act.

However, even solicitors and letting agents can get the procedure, timing or type of notice wrong and scupper any chance of success, if a case goes to court.

Section 8 of the Housing Act dictates how Notice should be issued when a tenant has broken one or more of the terms of tenancy and the landlord intends seeking possession because of the breach, during the fixed term.

Conversely, Section 21 describes the appropriate Notice procedure that needs to be followed to properly end an assured shorthold at the end of the fixed term or when the fixed term has ended and the tenancy has lapsed into a statutory periodic tenancy.

Under these circumstances, the landlord is not relying on a breach of the usual contract terms to recover possession, but merely employing his legal right to determine the period of tenancy.

It is important for landlords to remember that, despite assured shortholds having a fixed term (for example, six or twelve months), a tenant cannot be forced into vacating a property just because the fixed term has ended.

Court officials are the only people empowered to evict tenants and bailiffs cannot be called in to undertake the task unless the landlord has a valid possession order.

In short, any tenant intent on continuing his or her occupation against the landlord's wishes can be taken to court, but the landlord will only succeed in recovering possession if a court is satisfied that due Notice was served on the tenant.

There are two types of Notice under Section 21 of the Housing Act.

They apply to all assured shorthold tenancies, but the apposite type must be issued according to the circumstances.

And to repeat ... it is imperative that the correct Notice is served, as a landlord cannot seek formal recovery of his property through a court without it.

3.1 The Fixed Term Notice

Section 21(1)(b) Notice – this is best remembered as the Fixed Term Notice.

When a landlord is certain he wants his property back at the end of the assured shorthold fixed term, he must issue this notice.

It can be issued at any time after the start of tenancy, but must be of at least two clear calendar months length.

Some landlords actually issue notice at the start of tenancy even though the tenancy itself may be for six months or longer, because by doing this they can be certain of recovering possession at expiry of the fixed term.

This is particularly useful for owners intending to sell a property after letting it for a predetermined period.

Notice 21(1)(b) can also be issued up to and even on the very last day of tenancy, because the rules simply state it must be issued within the fixed term.

However, since a minimum of two clear calendar months have to be given, an application for possession cannot be made until the notice period has expired - and assuming the tenant has subsequently failed to vacate.

When notice is sent by first class post, the courts generally accept that notice will have been duly served two days after posting it.

It is important to allow for this additional two days in the two clear calendar months notice calculation and to write on the notice the date on which the notice will be deemed to have been served.

Section 21(1)(b) does not have to be in prescribed format.

This means the layout and wording are not dictated by the Housing Act, though a certain amount of information must be included within it.

There are standard template proforma notices for section 21(1)(b) and 21(4)(a) available for purchase on the high street at a law stationer and they can also be obtained through various legal websites. A simple Google search will disclose several sources.

3.2 The Periodic Notice

Section 21(4)(a) Notice - This is best remembered as the Periodic Notice.

When an assured shorthold tenancy fixed term expires (and neither landlord or tenant intervenes to end the tenancy), occupation by the tenant continues under what is termed a statutory periodic tenancy.

There is no administration required and the terms of tenancy quoted in the original agreement continue to apply. This type of tenancy runs from week-to-week, month-to-month, or some other period, according to the nature of rent payments.

Once a statutory periodic tenancy has begun, the landlord can only bring it to an end under the ‘no fault’ ground by serving a section 21(4)(a) notice.

This is a much more complex procedure than the 21(1)(b) notice, because the dates specified in it must be carefully calculated.

Letting agents, landlords and even solicitors are not immune from getting it wrong – and getting it wrong usually involves a possession claim being thrown out of court.

Although the rules are similar to the 21(1)(b) insofar as a minimum of two months notice must be given, in this case they must be two full ‘rental period’ months and notice must end after the last day of a rental period.

Understanding how this applies in practice is crucial.

The procedure is also complicated by the fact that some landlords change the day they accept rent from their tenants, so believing they are making the administration and management of their letting a little easier.

For example, many landlords and some letting agents change the rent due day to the 1st or last day of a month, rather than the actual day it becomes due.

For this reason, it is important to refer to the original assured shorthold tenancy agreement when calculating the 'rental period' dates for the 21(4)(a) notice, rather than relying on what may have become the norm on a day-to-day basis.

The tenancy agreement will show when rent is due.

Let's say, for this example, it states the 17th of the month. Usually this will also be the date of contract, but not necessarily, and nor might it have been the day the tenants moved in.

The crucial date is the one when rent is due, as this becomes the start of your calculation for notice dates.

Let's say the tenancy began on 17th March and was for a fixed period of six months. The tenancy would therefore expire on 16th September and a statutory periodic tenancy would automatically begin on 17th September, assuming the tenant wanted to stay in occupation and the landlord had no objection.

The 17th September would also be the first rent due date for the periodic tenancy, which would run from month to month thereafter.

For the purpose of clarity, let's say the landlord decided on 20th September that he wanted to issue notice to regain possession of his property. He would have to give two clear rental period months, so if he issued it immediately, the earliest date he would need to quote for notice to expire would be 17th December ... this being the day after a rental period had ended.

In our example, a rental period would run from 17th of one month to the 16th of the next month.

And if you have read that three times and still need to read it again before understanding it, you will appreciate why so many get it wrong!

3.3 Saving Formula

Prudent and legally savvy landlords might wish to add a few words after the expiry date has been entered on the section 21(4)(a) notice. To benefit from this and using our example above, write that:

...'the landlord requires possession ... after 16th December or after the expiry of two clear rental periods soonest after service upon you of this notice.'

By using the above phrase (known commonly as a 'saving formula'), some court judges have found in the landlord's favour even when the date on the notice has been entered incorrectly.

Other court judges have objected to this failsafe tactic, but have nonetheless proceeded to issue a possession order.

Two Court of Appeal cases have lead to mass confusion on whether or not to use the date calculation or the formula wording or a combination of the two, when the start date of the tenancy differs to the routine rent paid date.

In the absence of an absolutely safe court ruling on this subject, the consensus from solicitors is for landlords and their agents to use the standalone formula in section 21(4)(a) notices.

An appropriate formula might be: '*the landlord requires possession ... after the expiry of two clear rental periods soonest after service upon you of this notice.*'

3.4 You can appeal if you get the dates wrong

Landlords who are denied a possession order through miscalculating the notice dates can appeal.

However, the court appeal system is inordinately slow. It is not uncommon for an appeal hearing to be announced six months after an application has been made.

It therefore makes sense to simply re-issue a new notice with the correct dates, thereby cutting the legal process from notice to possession to less than three months – half the potential length of an appeal procedure.

As if further discouragement to appeal was needed, court costs are also usually more expensive than bringing a straightforward possession action.

4 Going To Court

Taking court action against a defaulting tenant is often considered a last resort by landlords.

The process is fraught with problems and, despite winning a case, the original problem can sometimes continue unresolved.

However, most difficulties realised at the end of the process are actually initiated much earlier because of an oversight, a technical error or poor judgement.

For a case to be successful, a court application needs to be completed meticulously and with the availability of adequate documentary evidence to back up a claim.

4.1 When there's no point chasing unpaid rent

For example, there would be very little point filing a claim for rent arrears, if the tenant's current whereabouts are unknown. The court cannot serve the necessary documents if it has not been provided with the tenant's new address.

Likewise, landlords who take court action against a tenant for substantial rent arrears and possession might be aware the tenant is in serious financial hardship and has accrued other debts as well as the rent arrears.

In such situations, going to court for the arrears would likely be a fruitless and wasted exercise, since there would be very little chance of getting any money back – not even the costs involved in taking court action.

It would probably make more sense to simply file for possession in such circumstances.

The latter process is quicker, because the 'accelerated possession procedure' can be employed under the 'shorthold ground' (when a tenant fails to vacate at the end of the tenancy term, having been given due notice).

The procedure cannot be used when seeking possession under any of the formal grounds (Housing Act 1988 as amended), including those relating to rent arrears.

At the end of the day, being able to re-let your property at the earliest opportunity to a more reliable rent-paying tenant might prove a more practical objective than attempting to chase after unpaid rent.

It is better to get the awkward tenant out of your property first, then pursue them for the arrears later on (assuming the inclination to do so hasn't faded by that point).

4.2 What you need to ask yourself before you begin

Therefore, the first step a landlord needs to take when considering court action is to answer the following questions as bluntly and honestly as possible:

- What is it I want the court to do for me?
- Is it likely, justifiable and fair for the court to approve what I want?
- Do I just want to regain possession of my property as quickly as possible (employing the accelerated possession procedure) without chasing after rent arrears at this time?
- Do I only want to claim rent arrears (while the tenant continues occupation of the let-property or now that he has vacated)?
- Do I want to take both actions simultaneously or separately?

- Do I have enough indisputable evidence to back up my claim and is there a reasonable chance of success?
- Are all the records and documents relating to the tenant, tenancy and events leading up to this court action available and are they up-to-date?
- Is the tenant receiving sufficient regular income to repay the debt?
- Are there any other debts belonging to the tenant known to me, which might frustrate or complicate my action?
- Do I know where the tenant currently resides?

Having decided to proceed with formal action and then having determined the actual nature of the action you intend taking, the next stage is to determine the best route.

It is worth mentioning that the county court or the small claims court deal with possession and arrear cases respectively; but for clarity, it may be helpful to know that the county court and the small claims court are generally recognised as one and the same institution, despite their separate titles and procedures.

In practise, it is only the nature of the application that determines which court system is adopted. The court service will advise which court is the appropriate one to apply to for your particular case.

4.3 Which route to court?

There are several methods of bringing court action against your tenant.

You could:

- Deal with the entire process yourself, either through the appropriate local county court or by using the Internet-based online court service access procedure, if this is available in your area.
- Employ a suitably experienced and letting-knowledgeable solicitor to organise and administrate the case.
- Employ a specialised agency to prepare and submit your application and deal with the case through to possession and/or arrear collection.
- Employ your letting and managing agent or an insurance policy administrator to deal with the case, if the service is appropriate and available (for example, where a legal protection policy has been taken out).

In addition, the route to court will also be determined according to the reason for you claiming possession.

For example, the standard court procedure must be used if possession is sought under one of the ‘grounds for possession’, contained in Schedule 2, Part 1 of the Housing Act.

The faster route offered by the ‘accelerated possession procedure’ cannot be employed for claiming rent arrears or possession due to the above mentioned ‘grounds’.

4.4 A few considerations that may influence your decision

You need to be completely confident that the appropriate period and type of Notice has been served on the tenant, otherwise taking a possession claim to court is likely to fail at the first hurdle.

This presents a slight ‘chicken or egg’ dilemma, because the type of Notice issued will also determine the route to court.

It is therefore important that landlords have experience and an understanding of the Section 8, Section 21 and 'shorthold notice' rules – otherwise it may be prudent to employ either an agency or a solicitor to act for you.

The Notice period must have ended before a claim for possession can be submitted to court. This is because the tenant has to be given the opportunity to leave at the end of the notice period, before formal action can be taken against him for failing to vacate.

Wily tenants (many of whom are so familiar with the law they would make good barristers) often ignore Notice issued by their landlord, because they know they can only be evicted by a court – which takes time.

This delaying tactic is unavoidable. In recent years, tenants have also been advised against surrendering their tenancy or vacating it, because such action prevents them access to automatic re-housing by the local authority.

The application for possession must be completed fully, accurately and with no errors or omissions. Badly completed forms and notices are one of the most common reasons courts throw out possession cases. If you have a friend, colleague or relative involved in the legal field, now is a good time to call in a favour and have them check through your application.

Landlords living overseas cannot appoint a letting agent to attend court on their behalf.

The 'Rights of Audience' rules mean a solicitor usually has to be appointed to act for them and attend any court hearing.

Some judges are more lenient over this issue, but it really isn't worth taking the risk, since arranging a new hearing date would simply delay any chance of regaining possession even further.

4.5 Once you're certain you want to go ahead...

Once you are certain you intend proceeding with a possession claim – and have identified the best route to court for your situation – the next stage is to obtain the appropriate application forms and guidance notes.

You should also verify that you have in your possession the original tenancy agreement, a copy of the Notice issued to the tenant and, if appropriate, a comprehensive record of rent payments and arrears.

Letters to and from the tenant should also be kept at hand, as these may be useful as additional evidence later on.

All court application forms can be obtained from your local county court or online at www.hmcourts-service.gov.uk

Once you have completed the application forms, you should submit them together with the appropriate fee and all required documents to the relevant local county court.

The forms have comprehensive notes to help guide you through the formal process.

If you have any questions or queries relating to the forms or to attending court, telephone your local county court and ask to speak to the court manager (if he or she is unavailable, ask to speak to the listing officer or the issuing section officer).

The court staff are usually very helpful and their advice often makes the daunting process of going to court much easier.

4.6 Using an agency to act for you

There are several agencies that offer comprehensive services to landlords with problem tenants.

They will deal with rent arrear and possession cases on your behalf, for a set fee, and take on the burden of completing application forms and attending court hearings where necessary.

Agencies with good reputations include:

Landlord Action

Tel: 0870 389 0580.

www.landlordaction.co.uk

Offer a three stage fixed fee service, which includes all court and solicitor fees involved as well as bailiffs and advocates where required.

The number of stages needed will depend on the tenant's recalcitrance to pay arrears and/or vacate the premises. Stage one costs £115; Stage two £565; Stage three £198.

Landlord Law

www.landlordlaw.co.uk

Tessa Shepperson's excellent legal site offers members a variety of helpful services from drafting and serving notices to orchestrating a full possession claim. Prices differ according to the level of service required.

Obtaining full possession through the courts costs £561.25.

Regency Law

Tel: 01293 525665.

www.tenancyeviction.org.uk

The only solicitors in the country believed to offer a 'no win no fee' service for landlords who want to regain possession of their property.

They also offer a fixed fee schedule for those preferring this option. Service of notice costs £69. Acquiring possession through the accelerated possession route costs £380 – or through the standard fixed hearing route costs £539. The fees include all court costs, but there would be an additional £195 to pay if bailiffs become necessary to evict the tenant. Initial advice is provided free.

4.7 The online court service

The online court service is excellent and very easy to navigate. I have personally used it successfully on two recent occasions, one to claim arrears and another to regain possession.

There are two different sites:

www.hmcourts-service.gov.uk/onlineservices/mcol/index.htm

This is 'Money Claim Online', which can be used to claim rent arrears. There is a very comprehensive user guide and FAQ section. The interface for Money Claim Online is straightforward and very user friendly.

www.possessionclaim.gov.uk/pcol

This is the 'Possession Claim Online' service, which can be used to pursue possession of rented property. The service effectively provides landlords with a route to the standard court procedure and allows for most of the paperwork and fee collection to be undertaken online. The site includes a section where forms and guidance notes can be downloaded and where a full claim pack can be ordered.

4.8 Attending court

Most possession cases proceed without either the tenant or the landlord ever needing to attend court.

It is only when the tenant decides to defend a possession claim or where additional information is required by the judge, that a hearing is arranged where the parties or their representatives are required to attend.

Hearings are relatively informal affairs and the court staff are very experienced in helping novice landlords and nervous tenants feel at ease.

4.9 How long does it all take?

Different county courts have varying demands on the time they have available to hear cases, so it is difficult to provide a general guide over how long a possession case might take from commencement to completion.

The time also depends on whether a tenant admits the claim or defends it, as the latter usually involves a hearing and a more protracted agenda.

4.9.1 Claims involving the Accelerated Possession Procedure

Claims involving the Accelerated Possession Procedure usually take about four weeks from submitting the claim form (court form N5B) to a judgement being awarded.

Because the court judgement will largely be based on documental evidence alone, delays in the process are quite rare.

4.9.2 Claims through the standard court procedure

Claims through the standard court procedure take longer, usually six to nine weeks – and there are cases that have taken substantially longer, because tenants have exploited their rights and purposely frustrated the process at every stage.

4.9.3 Once a possession order is granted

Once a possession order is granted, the tenant is usually given 14 days to vacate – the date when the tenant must leave the premises is included on the court order.

If the tenant fails to leave by the due date, a warrant of possession can be requested (there is an additional charge for this). The warrant allows court bailiffs to formally and legally evict the tenant from the dwelling.

5 Making Sure Your Possession Claim Gets To Court

Landlord possession claims usually succeed in arriving at court, but many are then thrown out on a technicality.

Let's examine the most common causes for rejected claims, which include:

- badly completed forms
- unacceptable signatures and
- missing tenancy documentation

5.1 Acting in a crisis – don't panic!

One of the main problems landlords and their agents have with a possession claim is the entire process usually takes place during a crisis.

The tenant may be in severe rent arrears, may be damaging the property or could be causing a nuisance – and the landlord is often at the end of their tether with bills piling up and no income coming in.

The first stage in removing the tenant from the property involves issuing notice and making a formal application for possession.

Unfortunately, frustrating circumstances, a desire for speed and bureaucratic court procedures often generate simple mistakes, which can later prove catastrophic.

Tessa Shepperson, a solicitor that specialises in landlord and tenant law, says:

'*Judges will be unforgiving if the paperwork is wrong! Not unreasonably they take the view that if they are to deprive someone of their home (a serious business), landlords must have their paperwork correct and comply with all that they are required to comply with.*'

Since a rejected claim means paying for unproductive fees, losing valuable time, having to start from scratch again and possibly being forced into paying the tenant's legal costs and court fees, it is vital that landlords verify their documentation before submitting forms to the courts.

Agents and even solicitors are not immune from making mistakes, so it is worthwhile for landlords to have at least an understanding of the procedures involved so they can double-check what is being done on their behalf.

It is far better to stop a bad claim from arriving at court than have it rejected by the District Judge.

5.2 The five most common reasons for rejected claims

These are the five most frequent reasons why claims are rejected (rated in order of occurrence):

5.2.1 Getting the notice wrong

A court will not even consider a possession claim unless there is evidential proof that a valid notice has been correctly issued to the tenant and that the notice period has reached expiry.

The most common form of notice for assured shorthold tenancies (and subsequent periodic tenancies) is covered under Section 8 and 21 of the Housing Act 1988.

These are commonly referred to as the Section 8, Section 21(1)(b) or Section 21(4)(a) Notice.

Unfortunately, the latter is also one of the most complex forms in landlord and tenant law to complete, as the dates specified in it must be exact and calculating the correct dates involves dealing with a legal puzzle that even the best advisers sometimes struggle with.

But for now, it is crucial to realise that notice must be issued at the correct time with the correct dates and in the correct manner – and that a valid copy of the form and back-up service evidence must be made available.

Failure on any of these points means a possession claim won't even get off the starting block.

5.2.2 Defective paperwork

Landlords and their agents often make simple mistakes through rushing to complete a possession form.

Claims will be thrown out of court if a form has a tick in the wrong box, has incomplete or illegible details or is missing an appropriate signature.

The judicial system rarely provides any margin for error when dealing with possession claims, so make sure you undertake the task in a place free from noise and other distractions.

It is always worth completing a copy of the form first and then having it checked by an erudite third party, before transferring the information to the actual possession claim form you will submit to court.

5.2.3 Unacceptable signatures

The Civil Procedure Rules 2006 dictate that *'An agent who manages property or investments for the party cannot sign a statement of truth. It must be signed by the party or by the legal representative of the party.'*

All possession claim forms include a statement of truth, which is a declaration confirming the authenticity and accuracy of details entered onto the form. Inexperienced agents sometimes inadvertently sign a possession claim (even more common under the Accelerated Possession Procedure) and in doing so they secure an application's failure.

Landlords must sign the form themselves or have it signed by the solicitor acting for them.

5.2.4 Missing documentation

Perhaps the most unfortunate reason why some claims are rejected is because the package that arrives at court is lacking one or more of the documents required.

It is an easy oversight, but a costly one. The application-form usually has to be submitted together with the tenancy agreement and a copy of the appropriate notice having been served.

Other documents may be requested later, depending on the nature and complexity of the claim and whether the tenant(s) offer a plausible defence to it.

5.3 Missed hearing appointments

Court hearings are arranged when there is some uncertainty over validity of the claim, when more information is required or when tenants opt to challenge the possession application.

Landlords and their advisors and/or witnesses must attend the court hearing, otherwise any evidence or information required by the District Judge may go unsatisfied and – by default – the entire case could be rejected.

The judge has complete discretion over attendees, but with due regard to Tessa Shepperson's comments above, most will be unforgiving if the people involved miss their appointment.

6 Regaining Possession – The Discretionary Grounds

When landlords need to recover possession of their property from their tenants through the formal court procedure, they must refer in their claim to one or more of the seventeen Grounds for Possession contained in Schedule 2 of the Housing Act 1988 (as amended).

6.1 The two Grounds

There are two distinct 'Ground' types.

First, let's look more closely at the *Discretionary* group.

A discretionary ground operates exactly how it says on the tin – even if the ground is proved by the landlord, its validity as a reason for granting a possession order is left entirely 'to the discretion' of the court judge.

In effect, the court judge will only grant an order if he thinks it is reasonable to do so.

There is therefore every good reason why landlords might wish to court the

judge's favour by supplying unequivocal evidence to back-up their claim and, where possible, submit a claim based on more than just one of the possession grounds.

There is no restriction on how many or on what type of ground a possession order application can be made, only that the strict wording and interpretation of the grounds as per the Housing Acts are 'pertinent and demonstrated'. In other words the grounds must be relevant.

6.2 Literal wording

The exact wording of each ground entered should be quoted on the correct legal form.

The discretionary grounds are numbered 9 to 17 and relate to specific aspects of letting:

- No 9 deals with the availability of suitable alternative accommodation
- Nos. 10 and 11 deal with inadequate and late rent payments
- Nos. 12, 13, 14 and 15 deal with a breach of the tenancy agreement
- No 16 deals with a letting that is linked with employment
- No 17 deals with false statements given by the tenant(s)

The exact wording of each ground as per the Housing Acts applicable in England and Wales is itemised below in italic, together with useful additional information to help landlords understand how the ground operates and better relate it to their own given situation.

There are also additional notes where there is major discrepancy under Scottish law.

6.3 Each of the grounds explained

So, let's look at each of the grounds in turn.

6.3.1 Suitable alternative accommodation - Ground 9

Suitable alternative accommodation is available for the tenant or will be available for him when the order for possession takes effect.

Judges rarely accept this as a good enough reason for granting possession unless the landlord can ensure:

- The alternative accommodation is in the same area,
- Offers the same facilities
- Is of a comparable size and quality with no lesser security of tenure, and
- Is at the same or a lower rent

What qualifies as suitable accommodation is set out in the Housing Act.

Judges may consider the landlord's circumstances, but not when they solely relate to financial gain (as may be the case where the landlord wishes to dispose of his property by selling it with vacant possession).

Another stipulation of this ground is that the landlord must agree to pay the tenant's reasonable expenses of moving.

6.3.2 Some rent due - Ground 10

Some rent lawfully due from the tenant

1) is unpaid on the date on which the proceedings for possession are begun; and

2) except where subsection(1)(b) of section 8 of this Act applies, was in arrears at the date of the service of the notice under that section relating to those proceedings.

Section 8 (1)(b) refers to the issue of due notice. The equivalent ground under Scottish law is ground number 12.

Tenants will have a strong defence against a case for possession if they have been offering some portion of the rent and the landlord has been refusing it; but despite the fact that possession may not be granted to the landlord, the tenant will still have to pay the amount owed to court.

6.3.3 Late payments - Ground 11

Whether or not any rent is in arrears on the date on which proceedings for possession are begun, the tenant has persistently delayed paying rent which has become lawfully due.

It is common practice for landlords to claim possession due to the tenant defaulting on their obligation to pay rent under both grounds 10 and 11, so that even if the mandatory ground fails there is a possibility of success under either of the discretionary grounds.

6.3.4 Broken obligations - Ground 12

Any obligation of the tenancy (other than one related to the payment of rent) has been broken or not performed.

The equivalent ground under Scottish law is ground number 13.

6.3.5 Waste and neglect - Ground 13

The condition of the property or any of the common parts has deteriorated owing to acts of waste by, or neglect or default of, the tenant or any other person residing in the property and, in the case of an act of waste by, or neglect or default of, a person lodging with the tenant or a sub-tenant of his, the tenant has not taken such steps as he ought reasonably to have taken for the removal of the lodger or sub-tenant.

For the purpose of the ground, "common parts" means any part of a building comprising the 'dwelling-house' and any other premises that the tenant is entitled under the terms of the tenancy to use in common with the occupiers of other dwelling-houses in which the landlord has an estate or interest.

The equivalent ground under Scottish law is ground number 14.

The term 'dwelling-house' is defined as the part of a building that the tenant has exclusive possession, such as a house or self-contained flat; 'other premises' refers to parts that might be shared with other tenants or occupiers, such as a hallway that is owned by the landlord.

6.3.6 Nuisance, illegal use, etc - Ground 14

The tenant or a person residing in or visiting the dwelling-house:

1) has been guilty of conduct causing or likely to cause a nuisance or annoyance to a person residing, visiting or otherwise engaging in a lawful activity in the locality, or

2) has been convicted of –

    a) using the dwelling-house or allowing it to be used for immoral or illegal purposes, or

    b) an arrestable offence committed in, or in the locality of, the dwelling-house.

Ground 14 was amended for situations arising from anti-social behaviour, such as taking or selling drugs.

The equivalent ground under Scottish law is ground number 15.

There was an addition made to the Schedule by the Housing Act 1996, Ground No 14A, which is rarely referred to in letting information leaflets, because it only applies to registered social landlords and charitable housing trusts.

Ground 14A applies to cases of domestic violence or the threat of violence to the remaining partner of a married couple or a common law couple or to a member of the family residing with them.

6.3.7 Ill-treatment of furniture - Ground 15

The condition of any furniture provided for use under the tenancy has, in the opinion of the court, deteriorated owing to ill-treatment by the tenant or any other person residing in the dwelling-house and, in the case of ill-treatment by a person lodging with the tenant or by a sub-tenant of his, the tenant has not taken such steps as he ought reasonably to have taken for the removal of the lodger or sub-tenant.

The equivalent ground under Scottish law is ground number 16.

This is a useful ground to quote, as it deals with not only the neglect or abuse of furnishings by the tenant, but also guests of the tenant who may be residing in the property.

6.3.8 Change of job - Ground 16

The property was let to the tenant as part of his employment by the landlord seeking possession or a previous landlord under the tenancy and the tenant has ceased to be in that employment.

Ground 16 refers to former employees of the landlord, where accommodation was provided in association with their employment. The equivalent ground under Scottish law is ground number 17.

6.3.9 False statements - Ground 17

The tenant is the person, or one of the persons, to whom the tenancy was granted and the landlord was induced to grant the tenancy by a false statement made knowingly or recklessly by (a) the tenant, or (b) a person acting at the tenant's instigation.

Ground 17 was added by the Housing Act 1996.

There is no equivalent ground under Scottish law.

This is a very useful discretionary ground and can be quoted if information or references supplied by and at the instigation of the tenant through a pre-tenancy application process have, in retrospect, proved to be false, exaggerated or misleading.

6.3.10 The shorthold ground

There is of course one additional ground available to all landlords using an assured shorthold tenancy, which can be employed when notice has been properly issued and has expired at the end of the fixed term – and the tenant has subsequently failed to vacate.

This route to recovering possession is known as the Section 21 route and requires the issue of a Section 21 Notice.

In reality this is a mandatory ground by default as, providing everything about the tenancy and issue of notice has been undertaken properly, possession is guaranteed.

It is referred to here simply for clarity.

6.4 Notice periods

The issue of correct Notice before making an application for possession is of paramount importance, as it provides the tenant with time to comply with or offer a defence against the landlord's claim.

For grounds 10, 11, 12, 13, 15 and 17, the notice period must be a minimum of two weeks.

A minimum of two months notice is required for ground 16.

Because of the often urgent nature of possession under ground 14, possession proceedings can begin immediately on serving notice to the tenant.

6.5 Timing is all

The standard court possession procedure is exceptionally laborious, slow and frustrating.

Tenants also vary considerably and while some may realise their right to occupy the property is rapidly coming to an end – and therefore may move out before formal proceedings have concluded – others may fight tooth and nail and only leave when forced by a court bailiff after a warrant for possession has been issued.

From start to finish, a case can take on average between three and five months.

Clearly, it is often prudent (and more economic) for landlords to wait for the fixed term of an assured shorthold to expire, rather than attempt the formal court possession route.

However, since 2001 the courts have been allowed to determine the kind of route a case can take – fast track, multi track or small claims (but both tenant and landlord must agree to the court making such a decision).

The decision will also be made according to the severity of rent arrears (if any) and how important it may be for the tenant to continue occupying the property (for example, whether granting possession would generate undue hardship) balanced against the urgency or value to the landlord of acquiring vacant possession.

The process introduced in 2001 has helped reduce the possession process to about three months from start to finish.

The so-called 'accelerated possession procedure' is often the faster and preferred alternative route for claiming possession under the shorthold ground - but it cannot be used to reclaim rent arrears, which have to be pursued under a separate claim.

7 Regaining Possession Part Two – the Mandatory Grounds

When landlords seek to recover possession of their property from their tenants through the formal court procedure, they must refer in their claim to one or more of the seventeen Grounds for Possession contained in Schedule 2 of the Housing Act 1988 (as amended).

Here we look more closely at the more complex *Mandatory* group.

The mandatory grounds are more useful to landlords than the discretionary group because, providing the requirements of the ground under which recovery of possession being sought is proved, the court judge *must* grant a possession order.

That said, it is always worth submitting a claim that includes pertinent discretionary grounds as well, because if the mandatory ground fails in court (either on a technicality or due to lack of evidence), the judge will consider other factors before making his decision - but only if they are entered on the application.

7.1 Exact wording

The exact wording of each ground being relied upon should be quoted on the prescribed form.

The mandatory grounds are numbered 1 to 8 and relate to specific aspects of letting:

- Nos. 1 to 5 are 'prior notice' grounds (see below)
- No 6 deals with a proposed redevelopment of the property
- No 7 deals with the death of the former tenant
- No 8 deals with substantial rent arrears

The exact wording of each ground as per the Housing Acts applicable in England and Wales is shown below in italic, together with useful additional information to help landlords understand how the ground operates and better relate it to their own given situation (there are also additional notes where there is major discrepancy under Scottish law).

7.1.1 Prior notice grounds

Grounds 1 to 5 are known as 'prior notice', which means before the tenancy begins, the landlord must have served notice to the tenant informing them that they may wish to acquire possession at some point during the tenancy due to the ground specified.

It is common practice – and has been for a long time - for the prior notice to be included within the text of the tenancy agreement, but landlords should verify this matter with their legal advisor if they believe they may need to rely on the ground at a later date.

Courts have thus far not grumbled about this arrangement, but there is always a first time.

The courts also have discretion to dispense with the prior notice requirement on grounds 1 and 2, providing the judge considers it just and equitable to do so under the individual circumstances evident at the time.

7.1.2 Giving notice - Ground 1

Not later than the beginning of the tenancy, the landlord gave notice in writing to the tenant that possession might be recovered on this ground, or the court is of the opinion that it is just and equitable

to dispense with the requirement of notice and (in either case) – at some time before the beginning of the tenancy, the landlord who is seeking possession or, in the case of joint landlords seeking possession, at least one of them occupied the dwelling-house as his only or principal home; or

1) the landlord who is seeking possession or, in the case of joint landlords seeking possession, at least one of them requires the dwelling-house as his or his spouse's only or principal home and neither the landlord (or, in the case of joint landlords, any one of them) nor any other person who, as landlord, derived title under the landlord who gave the notice mentioned above acquired the reversion on the tenancy for money or money's worth.

If this or any other mandatory ground is proved, the court *must* grant what is known as an 'absolute possession order'.

This means the tenant **has to vacate the property** by the date specified in the order.

If the tenant subsequently fails to vacate, the landlord can obtain a warrant for eviction and the court will send bailiffs to evict them.

Under no circumstances should landlords seek to enforce a possession order themselves by physical means – eviction can **only** be undertaken by court officials or those empowered by them.

7.1.3 Mortgage lenders' power - Ground 2

The property is subject to a mortgage granted before the beginning of the tenancy and

1) the mortgagee is entitled to exercise a power of sale conferred on him by the mortgage or by section 101 of the Law of Property Act 1925; and

2) the mortgagee requires possession of the property for the purpose of disposing of it with vacant possession in exercise of that power; and

3) either notice was given as mentioned in Ground 1 above or the court is satisfied that it is just and equitable to dispense with the requirement of notice;

This ground effectively provides lenders the power to repossess and sell a property when a landlord/owner fails to make due mortgage payments.

It is of particular importance to buy-to-let investors, because it warns of the potential repercussions from overstretching beyond one's financial abilities.

Even worse, if the prior notice requirement is not followed, evicted tenants can take compensatory legal action amounting to thousands of pounds against the landlord.

7.1.4 Fixed term tenancy - Ground 3

The tenancy is a fixed term tenancy for a term not exceeding eight months and not later than the beginning of the tenancy the landlord gave notice in writing to the tenant that possession might be recovered on this ground.

And at some time within the period of twelve months ending with the beginning of the tenancy, the property was occupied under a right to occupy it for a holiday.

This refers to out-of-season holiday lettings and makes it clear that any fixed term occupation of the property cannot exceed eight months for this ground to apply.

It is also a prerequisite for the property to have been rented as a holiday letting within the previous year.

7.1.5 Fixed term tenancy - Ground 4

The tenancy is a fixed term tenancy for a term not exceeding twelve months and

1) not later than the beginning of the tenancy the landlord gave notice in writing to the tenant that possession might be recovered on this ground; and

2) at some time within the period of twelve months ending with the beginning of the tenancy, the dwelling-house was let on a tenancy falling within paragraph 8 of Schedule 1 to this Act.

This ground applies only to student lets where the letting was previously provided through a university or college to students.

7.2 Ground 5 – Religious reasons

The property is held for the purpose of being available for occupation by a minister of religion as a residence from which to perform the duties of his office and not later than the beginning of the tenancy the landlord gave notice in writing to the tenant that possession might be recovered on this ground; and the court is satisfied that the dwelling-house is required for occupation by a minister of religion as such a residence.

This refers to a property used as a home for a minister of religion and which is now required for another minister of religion.

7.3 Ground 6 – demolition, refurbishment

This is a particularly complex ground, as it deals with scenarios where the landlord wants to empty the property of tenants so they can demolish or otherwise substantially redevelop the building and/or land.

In the rare instances where courts grant a possession order under this ground, the landlord is required to pay the tenants' reasonable moving costs.

The landlord who is seeking possession (or, if that landlord is a registered housing association or charitable housing trust, a superior landlord), intends to demolish or reconstruct the whole or a substantial part of the dwelling-house or to carry out substantial works on the dwelling-house or any part of it or any building of which it forms part.

But the following conditions must be fulfilled:

1) the intended work cannot reasonably be carried out without the tenant giving up possession of the dwelling-house because

2) the tenant is not willing to agree to such a variation of the terms of the tenancy as would give such access and other facilities as would permit the intended work to be carried out, or

   a. the nature of the intended work is such that no such variation is practicable, or

   b. the tenant is not willing to accept an assured tenancy of such part only of the dwelling-house (in this sub-paragraph referred to as "the reduced part") as would leave in the possession of his landlord so much of the dwelling-house as would be reasonable to enable the intended work to be carried out and, where appropriate, as would give such access and other facilities over the reduced part as would permit the intended work to be carried out, or

   c. the nature of the intended work is such that such a tenancy is not practicable; and

d. either the landlord seeking possession acquired his interest in the dwelling-house before the grant of the tenancy or that interest was in existence at the time of that grant and neither that landlord (or, in the case of joint landlords, any of them) or any other person who, alone or jointly with others, has acquired that interest since that time acquired it and

e. the assured tenancy on which the dwelling-house is let did not come into being by virtue of any provision of Schedule I to the Rent Act 1977, as amended by Part I of Schedule 4 to this Act or, as the case may be, section 4 of the Rent (Agriculture) Act 1976, as amended by Part II of that Schedule.

For the purposes of this ground, if, immediately before the grant of the tenancy, the tenant to whom it was granted or, if it was granted to joint tenants, any of them was the tenant or one of the joint tenants of the dwelling-house concerned under an earlier **assured tenancy** or under a tenancy to which Schedule 10 to the Local Government and Housing Act 1989 applied, any reference in paragraph (b) above to the grant of the tenancy is a reference to the grant of that earlier assured tenancy or, as the case may be, to the grant of the tenancy to which the said Schedule 10 applied.

For the purposes of this ground "registered housing association" has the same meaning as in the Housing Associations Act 1985 and "charitable housing trust" means a housing trust, within the meaning of that Act, which is a charity, within the meaning of the Charities Act 1960.

For the purposes of this ground, every acquisition under Part IV of this Act shall be taken to be an acquisition for money or money's worth; and in any case where:

1) the tenancy (in this paragraph referred to as "the current tenancy") was granted to a person (alone or jointly with others) who, immediately before it was granted, was a tenant under a tenancy of a different dwelling-house (in this paragraph referred to as "the earlier tenancy"), and

2) the landlord under the current tenancy is the person who, immediately before that tenancy was granted, was the landlord under the earlier tenancy, and

3) the condition in paragraph (b) above could not have been fulfilled with respect to the earlier tenancy by virtue of an acquisition under Part IV of this Act (including one taken to be such an acquisition by virtue of the previous operation of this paragraph), the acquisition of the landlord's interest under the current tenancy shall be taken to have been under that Part and the landlord shall be taken to have acquired that interest after the grant of the current tenancy.

7.4 Ground 7 – death of the tenant

This ground refers to a former tenant that has died and situations arising where, despite the landlord potentially accepting rent from the surviving occupier, they have no legal right to ‘succeed’ the tenancy.

The tenancy is a periodic tenancy (including a statutory periodic tenancy), which has devolved under the will or intestacy of the former tenant and the proceedings for the recovery of possession are begun not later than twelve months after the death of the former tenant or, if the court so directs, after the date on which the landlord became aware of the former tenant's death.

For the purposes of this ground, the acceptance by the landlord of rent from a new tenant after the death of the former tenant shall not be regarded as creating a new periodic tenancy, unless the landlord agrees in writing to a change (as compared with the tenancy before the death) in the amount of the rent, the period of the tenancy, the premises which are let or any other term of the tenancy.

7.5 Ground 8 – unpaid rent

This is the most often used ground for possession by landlords – and the one most landlords get wrong (failing in court on a technicality).

The problem with this rent arrear possession ground is that notice must have been properly served AND (for monthly rent due tenancies) rent arrears equating to two continuous months must have accrued both at the start of the notice period and on the day of the court hearing.

Under Scottish law, the minimum arrear period differs – tenants must be in arrears for three months for this ground to apply.

Tenants often wilfully make a payment just before the hearing date to thwart this ground being effective, hence it is important landlords apply to court using the appropriate discretionary grounds as well to stand any chance of succeeding with a 'knowledgeable' tenant.

Both at the date of the service of the notice under section 8 of this Act relating to the proceedings for possession **and at the date of the hearing**...

1) if rent is payable weekly or fortnightly, at least eight weeks' rent is unpaid;

2) if rent is payable monthly, at least two months' rent is unpaid;

3) if rent is payable quarterly, at least one quarter's rent is more than three months in arrears; and

4) if rent is payable yearly, at least three months' rent is more than three months in arrears;

For the purpose of this ground "rent" means rent lawfully due from the tenant.

7.6 The shorthold ground – success guaranteed!

The shorthold ground can be employed when notice has been properly issued and expired at the end of the fixed term – and the tenant has subsequently failed to vacate.

This route to recovering possession is known as the Section 21 route and requires the issue of a Section 21 Notice. This is effectively a mandatory ground by default as, providing everything about the tenancy and issue of notice has been undertaken properly, possession is guaranteed.

7.7 Notice periods

The issue of correct Notice prior to making an application for possession is of paramount importance, as it provides the tenant with time to comply with or offer a defence against the landlord's claim.

For grounds 1, 2, 5, 6 and 7, the notice period must be a minimum of two months.

A minimum of two weeks' notice is required for grounds 3, 4 and 8 (but see rent due dates for ground 8 above).

8 CONGRATULATIONS...?!

You've finished **What To Do If It All Goes Pear-Shaped!** and are now fully armed with what to do to regain possession of your property if things go wrong.

I hope you never need this knowledge!

Tony Booth, Member of the National Association of Estate Agents (MNAEA).