

Commercial Litigation

Problems with your tenant



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Residential Assured shorthold tenancies – problem tenants

Landlords; Be aware of your rights and potential pitfalls

If you are experiencing difficulties with your tenant whether it is because of rent arrears, damage to the property, anti-social behaviour or even if you are not having difficulties but simply wish to bring the tenancy to an end then this brief guide will make you aware of a number of important legal rights you have.

What are my rights as a Landlord?

As a landlord, you can normally:

1. Repossess the property when the tenancy ends
2. Possession of the property if it gets damaged
3. Access the property by giving your tenant(s) 24 hours' notice
4. Take legal action to evict your tenant in certain situations, such as non-payment of rent
5. Sue the tenant for compensation for damage to the property
6. Make a claim on the deposit which hopefully you have protected via a registered scheme (e.g. TDS/DPS).

You may also have other rights and responsibilities specifically included in your tenancy agreement.

How do I remove a tenant from my property?

There are mainly two methods of evicting a tenant namely

1. The Accelerated Possession route
2. Section 8 Housing Act route

Prior written notice has to be served and if the tenant refuses to leave then a court possession order must be obtained.

The preferred method for evicting your tenant in the majority of situations is to follow the Accelerated Possession route. A written notice has to be served and a court possession order obtained. The attractions of this route are that no grounds/reasons are required to be shown to the court and usually no hearing is required. In the long run it is a much quicker route than the section 8 Housing Act route notwithstanding that the prior written notice to be provided to the tenant is much longer. There are few downsides to this but one important one is the fact that you cannot use this procedure during the fixed term period. That is when you may be able to rely on section 8 Housing Act procedure. The section 8 route has many more disadvantages but can be useful in certain circumstances. The disadvantages include greater costs, more protracted proceedings, delay in obtaining order for eviction, court hearings and a lot more frustration.

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What are the pitfalls in trying to remove the tenant?

Some pitfalls include;

- 1.** If the Notice is defective or in the case of section 21 Accelerated Possession Procedure, if you have not protected the deposit, or failed to serve the prescribed information form then you can expect a legal challenge to your claim which may be struck out by the court. You might have to pay adverse legal costs and then have to start the process again!
- 2.** A failure to follow legal procedure and you might be the subject of a claim by the tenant for substantial compensation for unlawful eviction.
- 3.** A failure to properly protect the deposit and the tenant will be entitled to claim against you compensation equivalent to three times the amount of the deposit.



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Assured Shorthold Tenancies

There are several 'types' of tenancy that govern the relationship between you and your tenant. However, most tenancies used by private landlords nowadays are known as Assured Shorthold Tenancies (AST's). They can either be fixed term or periodic (i.e. on a monthly rolling basis). The distinction between a fixed term and a periodic tenancy is important because it determines how the tenancy can be brought to an end.

Protecting Your Tenants Deposit in a Deposit Protection – Assured Shorthold Tenancies

From April 2007, a landlord is required to place their tenant's security deposit in a "tenancy deposit protection scheme". This is a legal requirement for most Assured Shorthold Tenancies to ensure a tenants deposit is kept safe and that tenants will get their deposits back at the end of the tenancy, providing they meet the terms of the tenancy agreement and do not damage the property.

If your tenant's deposit must be protected, you must use one of the three approved schemes. These are:

- Deposit Protection Service (DPS)
- My Deposits
- Tenancy Deposit Scheme (TDS)

If any other scheme is used, the deposit will not be protected in law.

These approved schemes also provide a dispute resolution service if there is any disagreement between you and your tenant about deductions you wish to make from the tenant's deposit at the end of the tenancy (e.g. for any damage to the property).

There are penalties for not complying with the deposit protection requirements, which can include:

- Not being able to evict the tenant by giving them the normal required notice
- Your tenant claiming repayment of their deposit, plus three times the amount of their deposit

If any other scheme is used, the deposit will not be protected in law.

This fact sheet is intended as a general guidance. Disputes can be a costly, drawn out procedure and should be avoided if possible. We cannot offer case specific advice, unless and until we have been instructed by you and we have access to any documentation and/or correspondence that may be of relevance to your matter. If you have any further questions then please do not hesitate to contact us. If you are unsure how to proceed, we strongly advise you to instruct a solicitor.



0844 984 6444



enquiries@lindermyers.co.uk



www.lindermyers.co.uk