SECTION 8 PROCEEDINGS FOR POSSESSION GUIDANCE NOTE

Please see the warning and disclaimer at the bottom of this note.

1. Introduction

The section 8 procedure can be used where a landlord wants to recover possession of his property during the fixed term of an assured shorthold tenancy (AST). In these circumstances a section 21 notice is of no use as it can only bring to an end a tenancy after the fixed term has expired and in any event not within the first 6 months of an AST.

To terminate an AST using section 8 you must be able to prove at least one of the statutory grounds for possession set out in Schedule 2 to the Housing Act 1988. Some of these grounds are mandatory grounds, which means that if the landlord can prove the ground the court must make an order for possession. Others are discretionary grounds so that even where the ground is established the court may only make an order for possession if it is reasonable to do so. A list of both mandatory and discretionary grounds can be found below.

Under section 8 the landlord is required to first serve notice on his tenant informing the tenant that possession is sought and the ground(s) on which the landlord is relying. The form of notice prescribed by the Housing Act 1988 must be used in order for the notice to be valid. A copy of the prescribed section 8 notice can be found on this website and downloaded for use. The length of notice period given to the tenant will depend on the ground(s) the landlord is relying on.

2. Grounds for Possession

Grounds for Possession	**Mandatory/ Discretionary**	**Notice period required**
1. The landlord used to occupy the property or wants to occupy the property as his main home	Mandatory	2 months
2. The property is subject to a mortgage existing before the property was let and the mortgagee is entitled to exercise a power of sale	Mandatory	2 months
3. The property is holiday accommodation let out of season for a term of no more than 8 months	Mandatory	2 weeks
4. The property is student accommodation let out of term time for a term of no more than 12 months	Mandatory	2 weeks
5. The property is accommodation for a minister of religion	Mandatory	2 months
6. The property requires redevelopment	Mandatory	2 months
7. The tenant has died	Mandatory	2 months
8. The tenant owes substantial rent arrears	Mandatory	2 weeks
9. Suitable alternative accommodation is available for the tenant	Discretionary	2 months
10. The tenant is in arrears of rent	Discretionary	2 weeks

11. The tenant has persistently delayed in paying the rent	Discretionary	2 weeks
12. The tenant has breached any obligation in the tenancy other than one related to the payment of rent	Discretionary	2 weeks
13. The tenant's actions have caused the condition of the property to deteriorate	Discretionary	2 weeks
14. The tenant is guilty of causing a nuisance or annoyance or has been convicted of using the property for any illegal or immoral purpose.	Discretionary	None required
14A. One tenant has left the property due to domestic abuse	Discretionary	2 weeks
15. The tenant has allowed the landlord's furniture to deteriorate due to ill-treatment.	Discretionary	2 weeks
16. The tenant occupies the property in consequence of his former employment by the landlord	Discretionary	2 months
17. The landlord granted the tenancy as a result of a statement made by the tenant which is later found to be false.	Discretionary	2 weeks

The above is merely a brief description of each ground. Landlords should refer to Schedule 2 to the Housing Act 1988 for full details of each ground for possession. There may be conditions attached to the ground you are relying on, for example, certain grounds can only be relied on where the AST agreement specifically states so. In some cases a possession order cannot be made to take effect during a fixed term. Also, some grounds state that the tenant is entitled to compensation from the landlord.

3. Rent Arrears

Landlords will most frequently want to recover possession of their property because the tenant is not paying the rent. In these circumstances he can rely on either or a combination of grounds 8, 10 and 11:

(a) Ground 8 – At the date section 8 notice is served the tenant must owe at least 2 months' rent (where the rent is paid monthly) or 8 weeks (if paid weekly or fortnightly). The rent in each case must be "lawfully due" in accordance with s48 of the Landlord and Tenant Act 1987. These arrears must still be owed at the date off the court hearing which means that if the tenant pays off part of the arrears before the hearing this ground can no longer be proved and relied upon. If a landlord has cited this ground alone in his section 8 notice then possession proceedings would have to be abandoned at this stage.

(b) Ground 10 – The court may make an order for possession where any amount of rent was in arrears at the date the section 8 notice was served and when possession proceedings were started. It is therefore worth including this discretionary ground for possession in the section 8 notice along with ground 8 (if applicable) so that an order for possession may still be made even if the tenant pays off the arrears before the court hearing.

(c) Ground 11 – This discretionary ground can be used even where there are no rent arrears at the time possession proceedings are started. All that is required is evidence that the tenant has been persistently late in making rent payments.

NB: Landlords should use as many grounds for possession as they can in order to maximise their chances of obtaining an order for possession.

4. Preparing the section 8 notice

As stated above the prescribed form of notice must be used. Each tenant named on the tenancy agreement must be named on the notice and the property address must be correctly stated.

The notice must also state the ground(s) on which the landlord is relying quoting exactly the wording from Schedule 2 to the Housing Act 1988. An explanation of why each ground is being relied upon is also required and in cases of rent arrears a schedule of arrears detailing what the tenant owes will be needed.

5. Serving the section 8 notice

Care should be taken to ensure that the section 8 notice is correctly served on the tenant. Service may be made by post or in person. If you are serving the notice by post the recorded delivery service should be used (and best practice would suggest a copy by first class post with proof of posting as well) as the landlord can then produce evidence that the notice was delivered. The notice is only considered to be served once it has been received so when preparing the notice to be sent by post the landlord should add a minimum of 3 working days to the notice period to allow for the notice to be delivered to the tenant.

6. Starting possession proceedings

If the tenant remains in occupation of the property after the notice period has expired the landlord may then start possession proceedings against the tenant. If the landlord is successful the possession order will usually take effect within 14 days, or if this will cause the tenant exceptional hardship, within 6 weeks.

WARNING: The law can be complex and the forms referred to in this note are only intended to be used by those experienced or trained to do so.

The information contained in this note is intended for general guidance only and cannot be relied upon. We recommend that you contact us for specific advice before serving notice or starting possession proceedings. Lawson Coppock & Hart will not be responsible for any negative outcome as a result of relying on the content of this note.

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