

TENANCY LAW AND THE EVICTION PROCESS

Explained



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The Eviction Process Explained.

Perhaps the most common complaint that a landlord has is about the time it takes to evict a tenant.

This report will explain not only the reasons why it takes the time it does but will also clearly set out the things that can go wrong that drag out a possession claim even longer and also how to avoid those pitfalls.

First things first.....

Why does it take so long to evict a tenant?

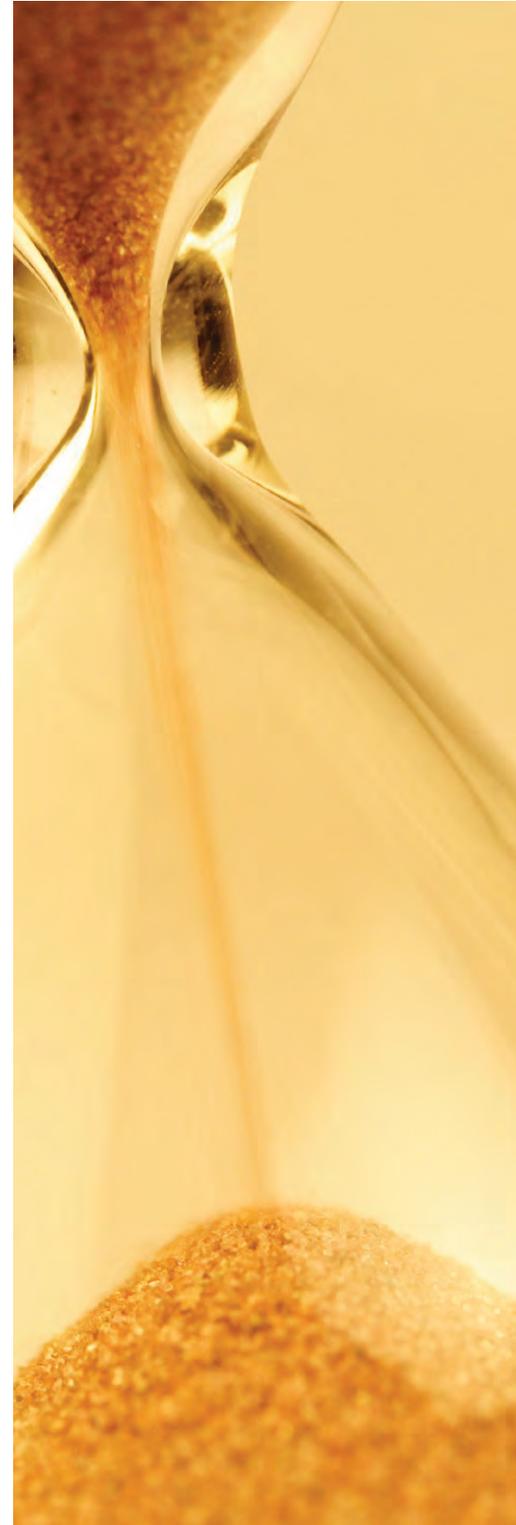
There are a number of reasons why this happens. The process is effectively like a game of Snakes and Ladders. One minute everything is going fine and then, without warning, you hit a snake and slide back down to square 1.

The courts

Firstly there is the simple matter of the court diaries. All possession applications are done in the local County Court and they deal with a wide variety of cases, not just possession applications. They are responsible for hearings in divorce, matrimonial homes claims, small claims hearings, consumer credit action, mortgage cases, employment law, family law etc, etc.

Even a busy court will only have around 8 judges working at any given time. Walk into your county court on any given day and look at the list in the framed cases on the wall and on a day where they have listed only possession claims, especially if you live in a city, and you may well see 30 or 40 possession cases listed for that single day alone...

In the mad round of government cuts in public spending there are a number of county courts listed for closure, which means that other courts in the district have to double up on their workload. This means that in many areas, possession applications are going to take even longer.



The Eviction Process Explained.

The law on evictions

Then there is the procedure for possession itself, as enshrined in numerous government laws.

Regulation on renting goes back to 1917. Each new subsequent piece of legislation adds to the law that went before it until we end up with a legal framework around renting that has become so arcane and unwieldy that it fills 6 volumes, known as the Housing law Encyclopaedia. I have a copy of these and put together they are 2 feet thick and weigh 26 pounds.

Most (but not all) possession claims have to go through the county court and it is the court's job to ensure that the laws are followed.

The big problem is that where the law calls for a certain eviction procedure (there are different procedures) they have to be adhered to. If a landlord doesn't follow the laws or if they simply get confused with the paperwork.....a common problem given its complexity, then, like snakes and ladders the landlord has to start all over again.

Additionally, if a landlord tries to evict without following the legal procedure for eviction then they will usually be committing a criminal offence and can be fined or even put in prison.

Now you can complain about the unnecessary time it takes to evict a tenant, you can be incensed about the damages that can be awarded to the tenant where the landlord takes the law into their own hands or even just makes an honest mistake but that doesn't change the problem.

The law needs simplifying. The government knows this and several years ago drafted a new law to make it easier for everyone involved in the business but that law is not in place and we have to work with what we've got.

It is what it is folks!

Even when following the proper procedure there can be unforeseen hiccups....



The Eviction Process Explained.

Claims, counterclaims and paperwork.

In order to get a case through a possession claim there are many pieces of paper that have to be filled in. fail to complete them and your snake takes you back to the start.....fill them in but make a mistake on the form and you slide back to zero, serve it on the tenant on the wrong day.....slide all the way back.....you employ an agent and they don't set things up properly and then apply for possession in what you think is the right way and guess what?????? Ride that snake to square one again.

Also if you actually get it into court but the judge picks up on a legal problem, a mistake in the details or paperwork served on the wrong date and you will be out the door faster than you can say "What happened?" and you have to start all over again.

Your tenant might owe you £5,000 in rent but then, when you take them to court for possession they counter-claim against you for not carrying out repairs that were your responsibility, the judge may well adjourn the case until another day to allow the tenant to put their claim together and sue you for compensation by counterclaiming for disrepair or what they perceive to be harassment and inexplicably you come out of court owing the tenant money.

Sorry if this sounds daunting but it is what you are dealing with. You could have a tenant owe you vast sums of money but if you don't understand the process of getting them out they end up living there for more months whilst still not paying you.

This report will help you to reduce this likelihood.

It is neither practicable nor necessary to get a degree in landlord – Tenant law to let out a flat, that is what an accommodation agent should be able to do for you. The problem is that most of them don't know this stuff either.

***Choose your accommodation agent very carefully (see my report on 5 questions to ask your agent that they should all know).**

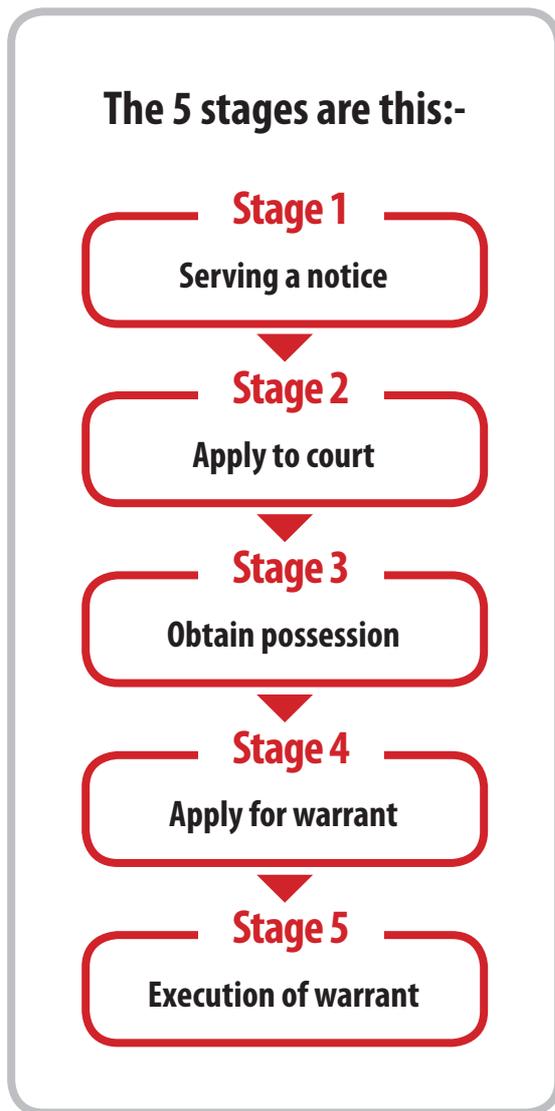


Getting it done.

What is the Eviction Procedure then?

Put simply there are 5 stages from start to finish.

Usually you won't need all 5 as tenants will often leave before being taken to court but you have to be prepared for those that go the distance.



Now let's look at them in detail. ▶



Serving a Notice.

People variously call notices “Notice to quit”, “Nisps”, and “Nosps”, so which is it? All of them to be honest, they are just common names for different types of notice.

Before you can evict a tenant you have to put them on Notice that this is what you are doing. That is why they are called notices. They don’t end the tenancy; they are just stage 1 in the proceedings.

If you serve notice and then change the lock without doing anything else then that is an illegal eviction, which is a criminal offence and could cost you a fortune in fines and damages.

There are different types of notice for different types of tenancy (Did you know that there are around 15 different types of tenancy and licence agreement? All with different required notices?)

Notices are official documents and they each have their own, what are termed, “Service Rules”. I am not going to go into the different types in this report; you can look at my other reports to find that out, I just want you to understand what is required in general.

What can go wrong at this stage?

1. You could use the wrong type of notice for the tenancy type.
2. You could fill it in incorrectly.
3. You could serve it on the wrong day.

To avoid this either learn the law yourself or employ a professional who knows what they are doing. It doesn’t have to be a lawyer.

A word about lawyers.

As mentioned above it isn’t necessary to employ a lawyer to carry out the eviction process for you. Believe it or not most lawyers don’t specialise in landlord- tenant law and are as clueless as Dave down the pub. Landlord-Tenant law is a highly specialised area of work, you need someone with a high level of knowledge and experience in that specific area.



Applying to Court.

It is very important to understand that you must not apply to court until AFTER the notice you have served has expired.

There are court forms that you have to use to make your application.

**N5
N119**



You always have to fill in a **form N5**, this is the standard application for possession that is even used by mortgage lenders. However you must also fill in a **form N119**, which is called the **“Particulars of Claim”**. This is where you set out all the details of the breach. if it is a rent arrears claim then you have to include a rent schedule and provide documents in support of your claim because in a county court it is for the landlord to prove their case, not the tenant.

If you are applying for possession based on rent arrears or damage etc. then you can use a cheaper online system known as PCOL (Pronounced Pee-Kol).

The Accelerated Procedure.

There is a special way of applying to court for possession when you aren't looking to recover rent arrears, and that is the Accelerated Procedure. This is only used when the sole reasons you want the property back is because the tenant had an Assured Shorthold Tenancy and the fixed term (Usually 6 or 12 months) has run out. This is called a “Ground Only Claim”.

You will automatically get possession for this without there having to be a court hearing as long as the tenant isn't counter-claiming for disrepair or harassment.

What can go wrong at this stage?

If you or your agent took a tenancy deposit but failed to protect it in one of the 3 designated schemes then you can't use the accelerated procedure until you do. This will cause massive delays.

Also, if you managed to get possession because the judge didn't pick up on the fact that the deposit wasn't protected the tenant can apply to court to have the possession order set aside.....slide back down that snake and start all over again.

The court hearing.

When you are in court asking the judge for a possession order on anything other than a ground only claim then the landlord has to prove at least one of several other grounds against the tenant.

For Assured and Assured Shorthold Tenancies there are 17 different grounds for eviction that vary from 2 month's rent arrears, and using the property for immoral purposes (like drug dealing or prostitution) to seeking possession to use the property to let to a minister of religion.

You have to supply enough evidence to persuade the judge to grant possession.

In certain grounds, like the infamous "Ground 8" (where there are 2 months' rent arrears outstanding) the courts must give possession. Grounds 1 – 8 are what they call "Mandatory Grounds" but the rest of them, neighbour nuisance, minor rent arrears, persistent delay in paying rent are what are termed "Discretionary Grounds", so that even if the landlord proves the fault the judge has to consider whether or not it is reasonable in the circumstances to take someone's home away, and they may not.

Possession orders.

If the landlord wins the case then the judge will award a possession order.

***Be advised here that even if you have possession you still can't just change the locks. Read below for more explanation..**

If the tenant doesn't turn up to defend the case or if they simply have no defence to a 'Ground 8 claim', then the judge will grant an "Outright Order". They will usually give a date by which it becomes effective, often 28 days later.

However if the rent arrears are less than 2 months, the judge can grant the possession order but it can be what is called a "Suspended Possession Order" (SPO).

This is still a possession order but the activation of it is suspended on terms that the judge will set. Commonly, for rent arrears the term will be for the tenant to carry on paying the rent, plus a set amount off of the arrears, at say £25 per month.

If the tenant doesn't keep to the terms set by the judge then the landlord can return to court and ask for outright possession.

What can go wrong?

A tenant can sometimes default on the terms many times. The landlord keeps returning to court to ask for outright possession but in the 11th hour the tenant borrows money and fulfils the terms set by the court.

Your rights in such cases are entirely determined by the attitude of the judge. There is no law governing this, the judge simply has to consider what is "Reasonable" in the individual circumstances of the landlord and the tenant.

My sister, who is a housing officer for a housing association has a case where late payments into court were accepted 26 times and the judge would still not grant outright possession.



Apply for Warrant.



If the tenant doesn't move out when possession is granted then the landlord still has to apply again to court for a "Warrant of Eviction", more commonly known as a "Bailiff's Warrant".

This is a form that is sent out to the tenant giving them a time and date on which possession will finally be taken.

The court bailiffs will do no more than attend the property on the allotted date and time to oversee the eviction the landlord or their representative has to be there to take possession or the bailiffs will simply return to their office.

It is common for the landlord to employ a locksmith to change the locks under the supervision of the court bailiff.

Round-up.

In a strangely tortuous nutshell that is it. There are a variety of other legal complexities and you can get updates on these through my other reports.

Remember that that however difficult or unreasonable these requirements may seem they are simply what is required by law.

They may seem unfair, they may seem impossibly difficult for a lay person to get to grips with.....I agree, but they are what they are.

Any good agent worth their fee should be able to ensure that everything is done by the book.

Nobody, not even Rumpole of the Bailey or Judge John Deed, can guarantee a quick eviction, or any eviction for that matter, but they should be able to guarantee that all court forms and paperwork are completed and served correctly, which will maximise your chances of success and at the same time, minimise the chances of you sliding back down the snake to the starting blocks.

Too many accommodation agents fail to deliver, so choose carefully. Make sure your agent knows all of the legal requirements and small print.

If they don't, then they could leave you thousands of pounds out of pocket, or even with a criminal record.





The Eviction Process – Explained

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