

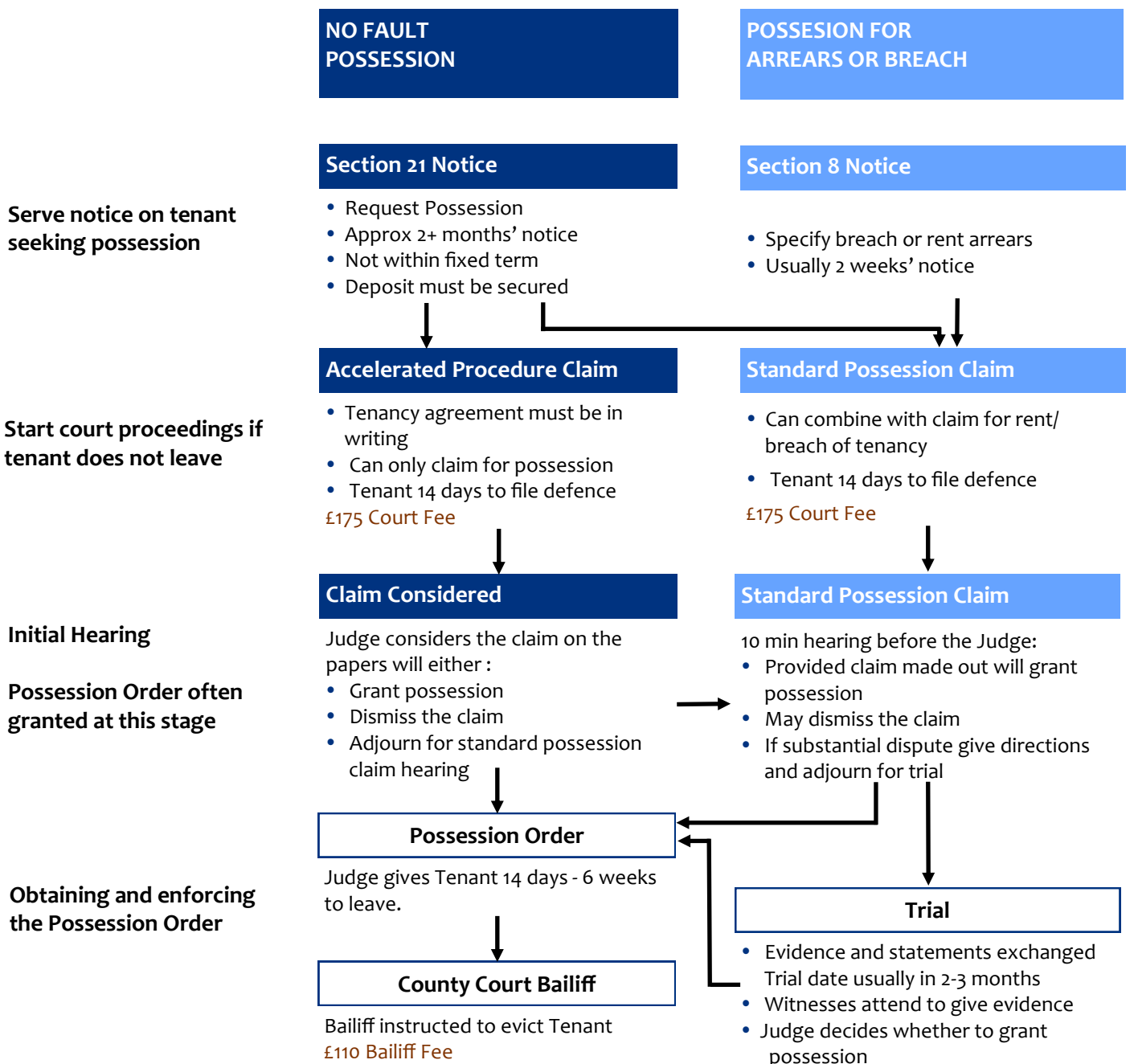
Evicting Your Tenant

Obtaining Possession of Your Property Let to Tenants

Most landlords let their property out as an investment. Often the easiest way to deal with a troublesome tenant is to evict them. The majority of short term residential tenants have an Assured Shorthold Tenancy.

Provided the correct procedures are followed, most landlords will be able to evict their tenants and recover possession. This leaflet describes the general process in a landlord obtaining possession. The process is often shortened where the tenant decides to leave the property.

Summary



How a Shorthold Tenancy Can be Ended

Tenant Leaving

If tenant leaves early without landlord's permission, there may be a claim for unpaid rent.

Landlord Serving Notice and Obtaining a Court Order

The tenancy will not automatically finish at the end of the term. Should the tenant refuse to go, the landlord must serve either a section 8 or 21 notice as specified below.

Serving Notice to Quit

No Fault Notice (Section 21 notice)

- Served any time after creation of the tenancy
- Gives the tenant at least **2 months** to quit before court proceedings are started (specific rules apply to the date of expiry of the notice)
- Cannot obtain possession in fixed term granted by the tenancy or first 6 months
- Tenancy deposit must have been protected in a Tenancy Deposit Scheme and the prescribed information provided to the Tenant within 30 days of receipt

Possession for Rent Arrears (Section 8 notice)

- Failure to pay rent is the most common reason for a landlord to seek possession. While possession can be sought for any amount of arrears, the court is only obliged to grant possession if those arrears are substantial.
- Gives the tenant only **2 weeks** to quit before court proceedings are started
- Possession will be granted if **2 months rent** owing at the date of serving notice and any subsequent hearing (otherwise judge has discretion)
- Provided the tenancy allows, possession can be sought at any time including during the fixed term
- No rent is due from the tenant unless the landlord has provided the tenant with an address for receiving notices.

Possession for Tenant Breach (Section 8 notice)

- The landlord can also seek possession where the tenant has breached the terms of the tenancy, caused a nuisance, neglect, been convicted of using the property for immoral/illegal uses, or there has been domestic violence.
- Such claims are harder to prove and are often disputed by the tenant. Even if the grounds for possession are made out, the court has a discretion whether or not to evict the tenant. Many landlords do not rely on these provisions as save for serious misconduct, this discretion to evict is usually exercised in favour of the tenant
- Gives the tenant usually only **2 weeks** to quit before court proceedings are started
- Provided the tenancy allows, possession can be sought at any time including during the fixed term
- Can be difficult to establish and no guarantee of possession

Other grounds for obtaining possession using a Section 8 notice include owner occupier, mortgage lender repossession of the property, holiday and student accommodation, demolition, death, end of employment and provision of alternate accommodation.

Court Proceedings

If the notice to quit is ignored, the landlord must commence possession proceedings to evict the tenant.

Accelerated Procedure Possession Claim

Most landlords choose to obtain possession on the basis of the no fault Section 21 notice and utilise the court's accelerated procedure.

This can be used where:

- Possession sought following Section 21 Notice
- Tenancy in writing
- Cannot combine with a claim for rent or other breach of tenancy

Timetable

- Serve section 21 notice, wait for expiry
- Claim then sent to court, usually processed in 2 weeks
- Court serves the claim on the tenant
- Tenant has 14 days to file a defence to the claim
- Judge considers the papers without a hearing. Usually considered in 2-3 weeks.
- Typically either grants the possession order or lists for an initial hearing (as per a standard possession claim)
- Only fixed costs ordered (see below)

Standard Possession Claim

The landlord must commence a standard possession claim if they seek possession on the basis of a section 8 notice or seek to combine their action with a claim for rent or breach of tenancy.

Timetable

- Serve section 8 or 21 notice, wait for expiry
- Claim sent to court, usually processed in 2 weeks
- Court serves the claim on the tenant
- Tenant has 14 days to file a defence to the claim
- Case listed for initial possession hearing at court, usually 4 - 6 weeks from the claim being served

Initial Possession Hearing

- The court will usually only have 10 minutes to deal with each claim.
- If the claim is made out and there is no substantial dispute of fact the possession order will be made
- Otherwise the court will direct service of witness statements and evidence and list the matter for a trial to determine any dispute issues in 2 - 3 months time

The further delay and cost involved in taking the matter to trial is often prohibitive. Even if the landlord is entirely successful at trial, it is likely that the tenant will not be in a financial position to meet any costs order. This leaves landlords with unscrupulous tenants with little immediate remedy. Given this we understand the importance of, where possible, obtaining possession at the initial hearing.

Possession Order and Exceptional Hardship

The court will typically order possession within 14 days of making the possession order. If the tenant alleges exceptional hardship this can be increased up to 6 weeks. In our experience most exceptional hardship applications are granted when sought.

If the possession order is made in the tenant's absence, they can seek to have the matter reopened.

Bailiffs - Failure to Comply with the Possession Order

Should the tenant not comply with the possession order the county court bailiff can be instructed to evict them. The bailiff cannot be instructed until the date for possession has passed and there can often be a delay (2 - 8 weeks) in obtaining an appointment.

The landlord or their agent must attend the eviction with the bailiff. If it is thought that the tenant will cause difficulties on being evicted the police are often notified. We advise instructing a locksmith to attend so that you can secure the premises.

In the rare occurrence that the bailiff is unable to obtain possession, the matter is brought back to court.

Costs

Unless the tenancy provides for costs or the matter is dealt with at trial, the landlord will only be entitled to fixed costs on obtaining possession. Fixed costs means the fees paid to the court and bailiff and £79.50 for an accelerated procedure claim or £126.75 for a standard possession claim.

Arrears of Rent / Other Action

Where the deposit is insufficient to cover any losses and provided the claim is not being brought on the accelerated procedure, a claim for rent or other breach of the tenancy (such as for damage to the property) can be combined with the claim for possession.

You will need to weigh up with our advice the cost of including such matters against the likely of recovery from your tenant.

For more advice contact Matthew Knight on 01722 410664 or email matthew.knight@sampsoncoward.co.uk