

## Rent Arrears Eviction – Section 8 Notice for landlords



We talk to many landlords who are experiencing problems with tenants and who may wish to evict a tenant due to breaches of the tenancy agreement. To evict a tenant for a breach of the tenancy, either during the fixed term or once the fixed term has expired, is known as a 'fault' eviction. The process starts with the issue of a section 8 notice. This is a reference to section 8 of the Housing Act 1988.

Under section 8 there are two types of reasons ('grounds') that the landlord can use to issue his notice. The grounds are broken into two classifications:

- Mandatory grounds
- Discretionary grounds

### Mandatory grounds

If you can establish that the reason for the breach of the tenancy is one of the mandatory grounds listed, then the court must order possession of the property. Listed below are the mandatory grounds 1 to 8 that can be used on a section 8 notice and the relevant notice period that needs to be provided to the tenant for them to leave the property:

1. The landlord requires possession of the property in order to move in as their main residence – 2 months' notice.
2. The property is subject to a mortgage and mortgagee requires possession in order to sell the property – 2 months' notice.
3. The property was previously used as a holiday let and is required to return to the status of a holiday let – 2 weeks' notice.
4. The property is let by an educational institution and is required for students – 2 weeks' notice.

5. The property is owned by a religious body and they require possession for a minister of religion – 2 months' notice.
6. The landlord wishes to demolish or reconstruct all or a substantial part of the property or carry out substantial works – 2 weeks' notice.
7. The tenant has passed away – 2 months' notice.
- 7A The tenant, or someone visiting had been convicted of a serious criminal offence and they must satisfy one or more of five conditions relating to a criminal offence – 1 months' notice.
- 7B The landlord has been issued a notice by the Secretary of State in writing that the tenant is disqualified to occupy the property due to their immigration status – 2 weeks' notice.
8. At the date of service of the section 8 notice and at the date of the hearing, the tenant had substantial rent arrears. Substantial rent arrears are classed as 2 months' rent providing the rent is payable on a monthly basis – 2 weeks' notice.

### Discretionary grounds

With discretionary grounds there is no guarantee that, if established, the courts will grant possession of the property. Listed below are the discretionary grounds under section 8 of the Housing Act and the relevant notice required:

9. Suitable alternative accommodation is available for the tenant – 2 months' notice.
10. The tenant has some rent arrears – 2 weeks' notice.
11. The tenant persistently pays rent late – 2 weeks' notice.

12. The tenant has breached an obligation of the tenancy (other than non-payment of rent) – 2 weeks' notice.
13. The condition of the property has deteriorated due to the tenant – 2 weeks' notice.
14. The tenant is guilty of conduct causing or likely to cause a nuisance – Notice on the same date as service.
- 14A. The tenant/adult at the property has been convicted of an indictable offence which took place during a riot – 2 weeks' notice.
15. The condition of the furniture has deteriorated due to the tenant – 2 weeks' notice.
16. Tenancy was provided to an employee as part of their employment and they are no longer employed – 2 months' notice.
17. The landlord was induced to enter the tenancy as a result of a false statement by the tenant – 2 weeks' notice.

## The Notice

For a notice to be issued under section 8 you need to use the prescribed format, which you can find [here](#). It is often referred to as a statutory Form 3. It is an approved form where the wording has been carefully drafted to make sure that the tenant understands it and the nature of the action being taken. You will need to ensure:

- That you follow the instructions on the form carefully. Failure to complete the form correctly could lead to a claim for possession being dismissed.
- The correct ground has been highlighted.
- If you are seeking possession on more than one ground that all the relevant grounds are referenced.
- You use the precise wording for the ground as set out in the Housing Act and which you can access [here](#).
- If you are sending the notice by first class post, you allow 2 clear working days for postage, counting the

first day after the day of posting.

- If you are giving the notice in person, you obtain signatures from the tenant or evidence it was posted through the letterbox. The notice runs from the next day.

## Rent Arrears

The most common ground we are asked about is rent arrears. When issuing notice for rent arrears it is always advisable that you wait for the tenant to be two months (or eight weeks) in arrears so that it is classified as a mandatory ground for possession, issue the notice on the mandatory ground 8 as well as grounds 10 +11.

The reason for this is to safeguard the position in the event the tenant pays just under the 'substantial arrears' figure for ground 8. It will then be for the court to decide on the facts if possession should be granted.

## Can I serve a section 8 notice and section 21 notice at the same time?

If the facts allow, it is possible to issue both notices at the same time. Very often we advise landlords to do this where they feel they want take some action immediately and perhaps 'shock' the tenant into making payment for the arrears immediately.

Should you want more information please call to discuss.

*NOTE: Please be aware there are links contained within this factsheet that may take you to external sites, we are not responsible for their content. This is a general advice and information factsheet only and should not be treated as a definitive guide and does not constitute legal or professional advice. We are not a law firm and information is not intended to create a solicitor client relationship. Law Express does not accept any responsibility for any loss which may arise from relying on information contained in this factsheet. This is not a substitute for legal advice and specific and personal legal advice should be taken on any individual matter. If you need more details or information about the matters referred to in this factsheet please seek formal legal advice. This factsheet is correct at time of going to print. The law set out in this factsheet applies to England and Wales unless otherwise stated.*