

Dealing with Antisocial Behaviour

Introduction

The purpose of this guide is to briefly outline what a landlord can do, if faced with a tenant who is committing anti social behaviour. Anti social behaviour can come in many different forms, including noise, threatening neighbours, damaging the property itself or neighbouring property or using the property as a brothel. These are just examples. In this situation the landlord may well decide that the best way forward is to evict the tenant. However, evicting tenants who are guilty of anti social behaviour can be notoriously difficult, time consuming and expensive.

The Importance of the Tenancy Agreement

Vitally, you need to ensure that the tenancy agreement is robust and clearly prohibits anti social behaviour. Legally this is often described as "nuisance or annoyance". In reality nuisance has a specialist meaning. For nuisance the behaviour complained of must be sufficiently serious as to amount to legal nuisance either under environmental protection legislation or common law. Therefore, do not use the word nuisance alone. The much wider prohibition is to forbid "annoyance". This word is very widely interpreted and can include any actions or behaviour which might adversely affect someone else. There should also be a clause prohibiting illegal or immoral behaviour.

In the next section, you will learn what action can be taken when faced with anti social behaviour, issues with other residents and the landlord's responsibility.

Taking Action Against Antisocial Behaviour

What action can be taken when faced with anti social behaviour?

The first step is to talk to the tenant, if possible, and make it clear that the behaviour complained of is not acceptable. Alternatively, you can write to the tenant. In any case, any conversations should always be confirmed in writing. The correspondence needs to make it clear what you are complaining about and that what has happened is not acceptable. Obviously, before taking this action you need to be as satisfied as you can that any complaints received about your tenant are in fact genuine and there should hopefully be some evidence available before you take up the issue with the tenant.

What about other residents who cause anti social behaviour?

We are not just talking here about dealing with tenants. Other residents in the property such as children can also cause problems. However, under the tenancy agreement, if it prohibits anti social behaviour, then the tenant will be responsible for the conduct of others living in or visiting the property.

Can the Landlord be responsible?

As a matter of law, there is rarely any compulsion for a landlord to do anything about anti social behaviour. Situations where landlords have to take action are quite limited, except where the property is licensed — see further below. Otherwise, a landlord is only liable (e.g. to a neighbour) if the landlord has participated directly in a nuisance or it has been let in such a way that the nuisance is pretty well inevitable, which is unlikely in practice with a normal letting of residential accommodation. Action must also be taken if the premises are being used for immoral purposes — see below.

What happens if anti social behaviour continues?

If the initial approach to the tenant does not work then obviously you should consider a follow up such as a "final warning". Always put this in writing.

Collecting Evidence

It is very important that you collect evidence of anti social behaviour. Make sure that you keep a record of dates, times and places of what happened, as well as the names and details of anyone who was a witness. Try and obtain some sort of statement at the time from a witness such as a letter setting out their record of what happened. If you take down details at the time an incident occurs (or as quickly as possible afterwards) then this will always carry more weight. Nuisance diaries can be helpful. You can ask neighbours to keep a diary of all incidents with full details, including dates and times and exactly who was involved, as well as what happened.

Can I involve outside agencies?

You should always consider, particularly in serious cases, whether to involve any of the following -

- Local Authority Noise Abatement Team. They may be able to help, e.g. by serving a noise abatement notice.
- Tenancy Relations Officers/Anti Social Behaviour Team. Local authorities often will provide teams which can assist private landlords in dealing with residents who are committing anti social behaviour.

- The Police

Obviously if a criminal offence is involved such as criminal damage or assault you should consider involving the police. Make sure that you get a crime reference number.

Taking Legal Action

In serious cases a landlord faced with tenants or residents who are committing anti social behaviour has the following options:-

- (i) Use Section 21.

Section 21 is a no fault ground and if you can use this then the Court must make an order for possession. This is by far and away the best option. However, you cannot obtain an order against the tenant which is effective until the tenant has lived in the property for at least six months. This runs from the date when the tenant first moved in. Section 21 is a mandatory ground for possession so the Court does not have any choice but to make the order so long as the requirements of Section 21 are met. If you have not done so already you will need to serve a 2 months' notice of intention to take possession proceedings in the usual way which could hold up proceedings.

- (ii) Breach of the tenancy agreement

If your tenancy agreement is properly drafted and prohibits anti social behaviour (see above) then you could pursue a discretionary claim for possession, if you cannot rely on Section 21. This will arise for instance if the tenant has been in occupation for less than six months or if you have failed to protect a deposit properly, so that you then lose your Section 21 rights unless you repay the deposit. However, to pursue this ground you have failed to produce evidence and even then it is down to the Court whether or not a possession order is made.

- (iii) Specific anti social behaviour ground

Fortunately if the tenancy is not properly drafted and you cannot rely on Section 21 then there is a discretionary ground for possession based on anti social behaviour contained in the Housing Act 1988. Again you will have to provide evidence and persuade the Court that it is appropriate to make an order for possession.

NB: If you are relying on a claim for possession for breaching the tenancy agreement or relying on the anti social behaviour ground you will need to serve a Section 8 notice of intention to take proceedings giving the required necessary details as to why possession is being claimed. However, you do not need to wait the usual 14 days if you rely on the specific anti social behaviour ground.

Premises Closure Orders

In certain circumstances Local Authorities or the Police can apply for a premises closure order deal with cases of anti social behaviour. These are also known as "crack house" orders but have been extended to all forms of anti social behaviour. For further details see our Guide to Premises Closure Orders.

Licensed Premises

If a property is licensed as an HMO (whether under mandatory HMO Licensing or because additional licensing applies) or is subject to Selective Licensing, there will be a licence condition that the landlord must take action to deal with anti social behaviour. This will usually be worded along the lines of requiring the landlord to take all practical steps to minimise anti social behaviour. What you need to do will depend on the circumstances and you should consult with the Licensing Team at your Local Authority. Failure to comply will mean that your licence could be revoked or that you could be prosecuted for breaking the licence condition (a fine of up to £5,000 can then be imposed). Therefore the landlord of a licensed property is under a duty to take action if he/she is aware of anti social behaviour affecting a licensed property.

Injunctions

A private landlord faced with anti social behaviour can also apply to the Court for an injunction. An injunction is a Court Order ordering the tenant to refrain from a particular action and if the tenant or someone else such as a resident breaches the terms of the injunction then they can be committed to prison and/or fined. In practice private landlords rarely resort to injunctions and it would be only something that you would normally be advised to do in a very serious case.

Dealing with Immoral Use

Unfortunately one of the problems a private landlord can encounter is where you let the property (hopefully unknowingly) which is then used for prostitution. It is a criminal offence if you permit premises to be used for prostitution so any landlord faced with this situation needs to consider taking action. Your tenancy agreement should contain a prohibition order for illegal or immoral use. Action can then be taken to enforce the tenancy agreement term.

Should I take Legal Advice?

You should always consider taking legal advice or other appropriate advice if confronted with an anti social behaviour problem.