

Ending a Tenancy without a Court Order: Surrender and Abandonment

Introduction

Where residential accommodation is let on an assured shorthold tenancy (or a non shorthold assured tenancy), the landlord can legally only end the tenancy by obtaining a Court order for possession. Where the tenancy is an assured shorthold tenancy then the main way to obtain possession, if the landlord wishes to do so, is to give a Section 21 notice and a claim is then made for possession under Section 21 (the no fault ground for possession) once the notice has run out. However, the Court order cannot take effect earlier than the end of the fixed term, unless there is a break clause allowing for the fixed term to be ended early. In any event, an order for possession under Section 21 cannot be made to take effect until the tenant has occupied the property for at least six months.

Alternatively, the landlord must rely on one of the grounds for possession, such as rent arrears or breach of the terms of the tenancy, including Ground 8 where there are 2 months' rent arrears.

In reality, however, the vast majority of tenancies end without a Court order. In these cases, the landlord needs to be sure that the tenancy has come to an end so as to ensure that the tenant has no further rights to occupy the property. The landlord is then free to re-let the property or sell it, if that is what is proposed. In this Guidance we explain the different ways in which the tenant can bring the tenancy to an end because usually the landlord has to rely on the tenant to end the tenancy, if the landlord wishes to avoid having to go to Court to bring the tenancy to end. All of this is linked with abandonment where a tenant moves out leaving the property vacant.

Assured Tenancies at Common Law

The system of assured tenancies, including shortholds, is built on common law rules. First of all there has to be a tenancy at common law and so long as there is, if the tenancy relates to a dwelling which is occupied by one or more of the tenants as his/her only or main home, the tenancy is classified as an assured tenancy. It will be a shorthold assured tenancy, unless the landlord has granted non shorthold status (which is unlikely in practice). To end the tenancy effectively, both the assured/shorthold status must be brought to an end, and also the underlying common law tenancy must be terminated. Where the landlord obtains a Court order for possession the Court order will end both and, in most cases the tenant's own actions, will also have the same effect bringing both to a finish at the same time. Sometimes, however, the assured/shorthold status can end

but without the underlying tenancy being terminated. This is particularly relevant where the tenant moves out, e.g. without telling the landlord midway through a fixed term tenancy so that the property appears to have been abandoned.

Fixed Term Tenancies and Periodic Tenancies

There are two types of tenancy, a fixed term tenancy and a periodic tenancy.

The former, as the name suggests, is granted for a fixed period such as six months or twelve months. It runs out automatically when the fixed term ends but can run on if the tenant remains in occupation. At the end of a fixed term a periodic tenancy will come to being, if the tenant stays on. If the tenancy agreement makes no provision for automatic continuation then this run on tenancy is a new tenancy imposed on the landlord and tenant by law, called a statutory periodic tenancy. The same rules then apply for this purpose as with any other periodic tenancy.

A periodic tenancy runs on from period to period such as weekly or monthly tenancy until the tenant gives a valid notice to end it. The landlord cannot give a notice to quit so long as the tenancy has the status of being an assured/shorthold tenancy. The landlord has to take Court possession proceedings either under Section 21 or some other ground.

Unlawful Eviction

It is important to remember that if you unlawfully evict a tenant (or anyone resident in the property) then you can be sued for damages which can be substantial. An injunction can be granted ordering you to allow anyone who has been evicted to move back into the property. You can also be prosecuted and fined or even imprisoned. The basic rule is that if anyone at all is residing in the property they can only be evicted by Court order. Even when a Court order is obtained the eviction must actually be carried out by a Court Bailiff.

Where a property has been let under a shorthold tenancy (or a non-shorthold assured tenancy) to avoid a civil claim for damages and/or an injunction you will have to show both that the property is no longer occupied by any tenant as their only or main home and the tenancy has come to an end, as well as demonstrating that no one is still residing in the property. To avoid a criminal conviction you will have to show that you believed and had reasonable cause to believe that any occupier had ceased to reside in the property. Always remember that legally someone would be resident in a property even though they may not be physically there. This applies if they intend to return but are temporarily absent, e.g. because they are hospital, on holiday or in prison.

How can the tenant end the tenancy?

A tenant can end a tenancy in a number of ways –

- In the case of a fixed term tenancy it will end automatically by the tenant moving out on or before the last day of the fixed term. The tenant must have gone by midnight on the last day (or whatever other time of day the tenancy agreement may specify). The tenant does not need to give notice that he/she is moving out. If the tenant stays on beyond the last day of the tenancy then a statutory periodic tenancy will come into being or, if the tenancy agreement provides for this, there may be an automatic continuation with a contractual run on. In such a case, where a continuation of a periodic tenancy has begun, even if the tenant then moves out the tenancy will not end unless the tenant gives proper notice to quit as if the tenancy is a periodic tenancy.
- In the case of a periodic tenancy (including a statutory periodic tenancy), if the tenant gives proper notice to end the tenancy, the tenant must then cease to reside and vacate the property by the expiry date of the notice for it to be effective to end the tenancy. The notice needs to be in writing. It must run out on the last day of a period of the tenancy or a rent payment day, unless the tenancy agreement says that it can run out at any other time. If it is a statutory periodic tenancy then it will have to run out at the end of a period of the tenancy and it must always be for a minimum of four weeks. For a four weekly (lunar monthly) tenancy, fortnightly tenancy or weekly tenancy then four weeks' notice needs to be given. In the case of a calendar monthly tenancy then a month's notice must be given. In the case of a quarterly tenancy a full quarters notice is required. Unless the landlord waives the defect and accepts short notice, an ineffective notice will not end the tenancy.
- Surrendering the tenancy – surrender is an agreement by the landlord and tenant to bring the tenancy to an end, whether it is a fixed term tenancy or a periodic tenancy. It may be expressly agreed in writing between the landlord and the tenant or it may be implied from their actions (what is also called surrender by operation of law). There must be unequivocal action by both landlord and tenant signifying that the tenancy is at an end.

The tenant is liable to pay the rent and comply with the tenancy terms down to the last day of the tenancy even if he/she has moved out (unless the landlord agrees to accept an earlier end of tenancy such as where the tenancy is surrendered).

Implied Surrender

Normally a tenant will tell you when they are going to move out. Usually you will meet up with them and they will return the keys. In some cases, this may follow on from you serving a Section 21 notice or a Section 8 notice. In this situation, where the keys are handed over by the tenant who moves out, the tenancy will be ended by an implied surrender, i.e. by the action of the tenant, which is then accepted by the landlord.