



Emergency First Aid Kit for tenants faced with repossession

by

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Your Law Store
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Emergency First Aid Kit

for tenants faced with repossession

by Tessa Shepperson, solicitor

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Introduction

It is very distressing to receive a summons for possession for your home through the post. Often there is a temptation to just ignore it and hope it will go away. However this is the worst thing you can do.

It is far better to work out whether there is something that can be done to save your home. If there IS something you can do, then you should try to do it, and/or seek help.

However if the situation is one that cannot be saved, you need to know this so you can try to find somewhere else to live. The sooner you start to do this the better.

Taking stock First of all take a look at what the court have sent you. Is it:

A claim for possession from your bank or mortgage company?

If so, this kit is not for you, as this kit is for tenants being evicted by their landlords. However help is at hand, hop over to www.homesavingexpert.co.uk and buy Ben Reeve Lewis's kit on mortgage repossessions. That will give you a lot of help.

A claim brought under the 'accelerated procedure'?

This will generally be one claim form, which looks like the form in the picture below at the top (but with the blanks filled in)



Claim form for possession of property

(accelerated procedure)
(assured shorthold tenancy)

Name of court

Claim no.

- Please write clearly using black ink.
- All documentation must be included with the claim form.
- The full names and addresses, including postcode must be completed on the claim form together with the full address of the premises for which possession is sought.



Claimant — *(name(s) and address(es))*

The accelerated procedure is a special court procedure used to evict tenants of assured shorthold tenancies after the landlord has served them notice under s21 of the Housing Act 1988. Don't panic at the word 'accelerated' - it does not mean the bailiff is coming round tomorrow. It generally takes quite a few weeks, before that happens, if it happens.

Go to part 2.

A claim brought under the standard 'fixed date' procedure?

This will generally be a claim form which will look like the form below at the top (again with the blanks filled in) – notice it does not say 'accelerated procedure'.

And another form (and this is the one which will give the reasons why you landlord is seeking to evict you) which will probably have particulars of claim written at the top.



Claim form for possession of property

In the	
Claim No.	

Claimant
(name(s) and address(es))



Defendant(s)
(name(s) and address(es))

This sort of paperwork means that there is going to be a court hearing where a Judge will decide whether to make a possession order and if so, what sort of order, whether to dismiss the claim, or whether to adjourn to a longer hearing date. **Go to part 3.**

Something else?

Go to part 4. We'll have a look there at what else it could be.

What you must NOT do

Don't throw away any of the paperwork you received from the court. Keep it all. We will discuss what you should do with it later.

Don't move out. Not yet anyway. Your landlord's claim may be faulty in some way. We may be able to save your home. Read the rest of this kit first and see what your options are.

DON'T IGNORE IT. That is the surest way to lose your home. Read the papers, read this kit, take advice if necessary. It may not be as bad as you think.

Part 1: Preliminary stuff

If you go to see a solicitor or an experienced housing advisor, one of the first things they will want to do is to work out what sort of tenancy you have. This is because your legal rights will vary according to the tenancy type.

The type of possession claim your landlord can use will also depend on your tenancy types - in particular the special accelerated possession procedure which is discussed in Part 2 can ONLY be used if you have an assured shorthold tenancy.

Admittedly most tenancies in the private rented sector ARE assured shortholds. But what about yours?

Working out your tenancy or occupation type

Question 1:

- Does your landlord live in the same building (not including purpose built blocks of flats where you live in one flat and the landlord lives in another), and/or
- Is your rent over £100,000 pa

If either of these apply then your tenancy will be a **common law one**. If your fixed term has ended then your landlord will be entitled to a possession order as of right, provided he has served a Notice to Quit on you first (although this may not be necessary if your tenancy fixed term has only just ended).

However if your landlord has issued proceedings under the accelerated procedure you will have a defence, as this procedure cannot be used for common law tenancies.

(Note that the tenancy will also be a common law tenancy if the tenant is a limited company – for example if you are living there because you are a director or employee of the company.)

If your answer to question 1 is no, then:

Question 2:

- Have you been living in the property since before 15 January 1989?

If so, your tenancy will almost certainly be either a **protected or a statutory tenancy** under the Rent Act 1977. You will have long term 'security of tenure' which means that it will be hard for your landlord to evict you. The accelerated procedure cannot be used.

If your answer to question 2 is no, then

Question 3:

- Have you been living in the property since before 28 February 1997 (but first moved in on or after 15 January 1989)

If so, your tenancy can only be an **assured shorthold** if your landlord served a special notice on you, called a section 20 notice, before the tenancy agreement was signed. So if you were given no paperwork at all, or if

you were given a tenancy agreement but no section 20 notice, then your tenancy will be an **assured** and not an assured shorthold tenancy. One effect of this is that your landlord cannot use the section 21 / accelerated procedure to evict you.

However:

Question 4

- Do you rent your property from a local authority?

Is your answer to this is yes, then ignore the previous questions, you will probably have a special kind of tenancy, which only applies to local authority tenants, called a **secure tenancy** – unless you are in the first year of your tenancy when you might have an ‘introductory tenancy’.

Or:

Question 5

- Do you rent your property from a housing association, a housing charity or similar organisation?

If so, you will probably have an **assured tenancy**. If you have been there since before 15 January 1989 you may have a secure tenancy.

However if :

Question 6

- You share living accommodation* with your landlord (ie if you are a lodger), or
- If you are required to live in the property because of your job (for example if you are a caretaker), or
- The accommodation is in a hostel or hotel with services such as room cleaning or breakfast, and/or if you share your room with others in a dormitory
- You are renting accommodation on a boat - e.g. a houseboat

You probably won't have a tenancy at all but what lawyers call a **license**. This is where you are able to live somewhere but you do not have the legal rights which go with a tenancy.

If your landlord has issued proceedings under the accelerated procedure you will have a defence as this procedure cannot be used for licenses. However if the landlord has used the proper procedure you will have no defence.

* Living accommodation means rooms such as kitchens, bathrooms and sitting rooms – rooms you use for living in. If you just share a hallway, stairs, corridor or storage space then that won't count.

So, if none of the situations in questions 1-6 apply:

You will almost certainly have an assured shorthold tenancy, although not if

- You are a student living in accommodation provided by the same university or college which runs the course

you are attending (this will be a common law tenancy)

- You lease shop or office premises which include residential accommodation
- Your accommodation is classed as an agricultural tenancy

Note by the way that this kit only covers short tenancies, and not long leases.

Getting your paperwork in order

You will find with the appendices which come with this kit, an information checklist. It would be a good idea to print this out and answer the questions now, and then keep it in a folder along with all the paperwork you have relating to your tenancy - this should include:

- Your tenancy agreement - if there is more than one, it is particularly important that you have the first one and the most recent one (although ideally you should have them all)
- Any notices which have been served on you, with a separate note of the date that they were served on you (if you can remember - if not, your best guess).
- All correspondence with your landlord or his agents, in chronological order, the most recent at the top. This should include emails and any notes you have made of telephone calls (always keep a written note of telephone calls with the date and the name of the person you spoke to).
- Receipts for any work you may have done at the property or replacement items you may have bought
- The particulars about your property that you were given before you rented it (or the newspaper or printout of the online advertisement if you have them) and any other paperwork from that time
- Evidence of rent payments such as bank statements, rent book etc

- Anything else you think is important

Keep all these together safely in a folder. Do not let the original documents out of your possession - only ever provide copies to people. Take the folder with you if you see an advisor. They will need to see them.

Action plan

This is what you need to do:

- Work out what tenancy type you have (or license) - see above
- Complete the information checklist and keep it safe with all your paperwork
- Read the whole of this eviction first aid kit (and then come back and read this action plan again – you will understand it better then!)
- Work out whether or not you have a defence to the claim

If you have no defence (see later in this guide for this) or if you are genuinely unable to pay your rent arrears (for a claim based on the mandatory rent arrears ground), then:

- Find somewhere else to live, or
- Contact the Local Authority homelessness officer or (if there is no homelessness officer) housing department and apply to be re-housed (although note that not all people are entitled to this)

For claims based on rent arrears: if you are able to pay your rent arrears or bring them down to under 2 months :

- Do so as soon as possible, and ask the landlord to cancel the proceedings (as he may no longer have a case for possession)
- If the landlord refuses to do that, attend the hearing and ask the Judge to dismiss the case or (if there are still arrears) make an instalment or suspended possession order

For claims based on other grounds: if you have a defence to the claim, or have a counterclaim

- Get legal advice from a trained housing advisor, and get them to prepare the defence form for you to send back to the court
- If this is not possible, complete the form as well as you can on your own
- Make sure you attend the hearing

If you need to attend a hearing and are not going to be represented by a solicitor or advisor, consider buying the Your Law Store 'Novice Guide to Court hearings' ebook, particularly if you have never attended a court hearing before.

This kit only deals with the things you need to know and to do, BEFORE the court hearing (if there is one). If at that hearing, the Judge orders that the case should be adjourned to another and longer hearing, you should seek legal advice from a housing specialist.

Next is Part 2 which looks at accelerated possession claims.