



# Short Assured Tenancies

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Many home owners are unfamiliar with the law governing residential tenancies and may find themselves falling foul of the statutory rules governing same with potentially disastrous consequences. Highlighted here are just some of the issues surrounding the creation, enforcement and termination of Short Assured Tenancies of which both Landlords and Tenants should be aware.

Since its introduction under the Housing (Scotland) Act 1988, the Short Assured Tenancy has become the most common form of tenancy entered into in respect of residential accommodation. Not to be confused with a Short Scottish secure tenancy nor an Assured Tenancy, the term of let must be at least 6 months.

Whilst Landlords are entitled to recover possession at the end of the Lease, certain procedural requirements must be observed. Otherwise, the Landlord could find it much more difficult to recover possession following the date of expiry.

To begin with, it's imperative the Tenant is given prior written notice that the tenancy is to be a Short Assured Tenancy. A statutorily prescribed form must be served before commencement of the Tenancy agreement i.e. before the agreement is signed.

Should a Landlord fail to serve the required notice to quit prior to the end of the Tenancy, the lease may continue for another 6 months. Not good news for a Landlord who's lined up a willing buyer, keen to purchase an empty property.

In such circumstances, a Landlord may consider taking matters into his/her own hands. It is, however, a criminal offence of "harassment" to turn a Tenant out of his/her home without a Court Order or to try and force him/her to leave by intimidation, violence, withholding of services or any other sort of interference so the risks associated with such a course of action are clear.

Many Landlords could be forgiven for thinking that a notice to quit is all that's required to bring a Short Assured Tenancy to an end. Having said this, to be valid, a notice to quit must, amongst other things, be in writing, refer to the correct period of notice (which will vary depending on the terms of the Lease), state that, even after the period of notice has expired, the Landlord must obtain an order for possession from a court before the tenant can be lawfully evicted.

The notice must also explain that its effect is such that the contractual tenancy will be brought to an end on the expiry of the period specified in the notice. Even if the notice to quit is framed correctly and served on time, court action for recovery of possession will, in all probability, be required. This can take months. Meantime, the Tenant can remain in the property (whether rent is being paid or not), notwithstanding that the Landlord may have already undertaken to sell the house with the benefit of vacant possession.

Generally speaking, a Tenant must be given advance notice of a Landlord's intention to raise proceedings for recovery of possession (as must the Local Authority). Given this, it's a good idea to notify the Tenant of the impending court action at the same time as serving the notice to quit. Both notices are often combined.

In most cases, at least 2 months notice of impending court action must be given. The notice must also include details of the statutory grounds upon which the Landlord wishes to rely.

Failure to serve the correct form of notice, timeously, can significantly prejudice and, in some cases, prevent a Landlord recovering possession. It is often only when a notice to quit/notice of intention to raise court action is served that the Landlord discovers that the tenancy isn't a short assured tenancy after all. This can delay and, in the worst case, prevent the Landlord from recovering possession.

In an action for recovery of possession, the court is obliged to grant possession to the Landlord if satisfied that the tenancy was a Short Assured Tenancy, that the tenancy has come to an end, that it hasn't, automatically, extended and that the required notices have been served on the Tenant.

In addition, the court will find in favour of the Landlord if certain other statutory grounds are met, for example, where the Landlord formerly occupied the property as his/her only or principal home or where the Tenant is, both at the date of service of the notice and at the date of the hearing, at least 3 months in arrears with rent. Note, however, that this latter ground can be defeated if the Tenant makes good the arrears (or at least reduces them to less than 3 months) prior to the case calling in the court.

Failing the mandatory grounds referred to above, it may be possible to rely on one of a number of discretionary grounds instead. Such grounds can be relied upon where, for example, suitable alternative accommodation is available for the tenant or will be available for him/her when the order for possession takes effect. Accommodation which was previously available may be irrelevant for the purposes of establishing this ground. This can present a practical problem for the Landlord if he/she offers alternative accommodation which is refused. If so, the Landlord could face considerable delay in securing the required court order.

Another of the discretionary grounds applies where it can be demonstrated that the Tenant has persistently delayed in paying rent which has become lawfully due (whether or not any rent is in arrears on the date on which proceedings for possession commenced). This ground could be relied upon where the Tenant persistently allows rent arrears to build up and then clears the balance at the point when proceedings are raised or are about to be raised by the Landlord.

Given the discretionary nature of the above grounds, despite circumstances to justify the same, the Court will only grant an order for possession if satisfied that it is reasonable to do so. Obviously this presents less certainty for a Landlord keen to secure vacant possession for the purposes of facilitating a sale.

By introducing the Short Assured Tenancy, the Conservative Government of the day were hoping to introduce a new style of tenancy which would prove more favourable to Landlords and, therefore, stimulate the market in private sector lettings. Despite certain disadvantages, in today's market, there's little reason not to adopt the Short Assured Tenancy as the preferred form of Lease of residential property, subject to the correct advice being provided and appropriate procedures followed at the outset.

Advice should also be sought in relation to the numerous obligations now imposed on Landlords in connection with, for example, safety, licences for houses in multiple occupation, Local Authority registration and Energy Performance Certificates. Please feel free to contact us for further information in this regard.



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