



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 if an application is presented to them as the tenant has failed to leave at the expiry on the s8 notice. 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 for them 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 months notice.
7. The tenant has passed away – 2 months notice.
 - a. 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 – 4 weeks notice.
 - b. 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. Generally, substantial rent arrears are classed as 2 months rent providing the rent is payable on a monthly basis and 8 weeks arrears is payable weekly – 2 weeks notice.

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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 – No notice is required. Proceedings could be issued on the same date as service.

The Notice

For a notice to be issued under section 8 you need to use the prescribed form, 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 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.

Breathing Space ‘The Debt Respite Scheme’ and Rent Arrears

If an individual is struggling with debt, a regulated debt advisor may add them to the breathing space scheme. The breathing space could be a standard 60 day breathing space or a mental health breathing space which typically ends 30 days after the individual stops receiving mental health crisis support. Unfortunately, if your tenant is in a period of breathing space you will not be able to serve a S8 notice for rent arrears.

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 to 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.

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