

SECTION 4

Grounds for Possession and Protection from Eviction

Once a letting has been agreed, the tenant or licensee can then move in and start paying rent. However, the landlord may, at some point in the future, want possession of the property.

In this section we will look at the ways that landlords can gain possession where different types of letting agreements have been used. We also look at how the law protects residential occupiers from harassment or eviction by landlords.



LEARNING OBJECTIVES

Having completed this section you will know and understand about

- the common law rules for gaining possession for fixed or periodic tenancies
- the rules covering regaining possession of Housing Act 1988 tenancies (assured tenancies and ASTs)
- the rules that apply for Rent Act 1977 protected tenancies
- the main provisions of the Protection from Eviction Act 1977, which covers harassment and the need for court proceedings to regain possession

4.1 COMMON LAW POSSESSION RULES

At common law there are two possible ways of regaining possession, depending on whether the tenancy is for a fixed period or if it is periodic. These methods apply to **non-Housing Act 1988 tenancies** (and those outside the Rent Act 1977).

Fixed Period Tenancies

For a fixed period tenancy, neither the landlord nor the tenant need do anything to end the tenancy. At common law, the tenancy will end **automatically** at the end of the fixed term. The legal phrase for this is that it ends through **effluxion of time**. For example, if a tenant has a fixed-term tenancy of one year, ending on 30 September, the tenancy will end automatically on that date, even if both the tenant and landlord do nothing.

Periodic Tenancies

If a tenancy is periodic, it will continue to renew itself from period to period, unless it is ended by a **notice to quit**. At common law, there is no set form of a notice to quit and it does not even have to be in writing. (However, the Protection from Eviction Act 1977 does require a written four-week notice – see later in this section.)

Notice Periods

There are customary time periods for service of the notice related to the period of the lease, so

- for **weekly** tenancies, the notice period is **one week**
- for **monthly** tenancies, the notice period is **one month**
- for **quarterly** tenancies, the notice period is **quarterly**, but
- for **yearly** (or longer) tenancies, the notice period is **six months**

If the notice period in the lease is **longer** than these common law periods, the notice period in the lease must be used.

Changes under the Protection from Eviction Act 1977

However, the Protection from Eviction Act 1977 (see later) overrides the common law rules. This Act means that any notice to quit must now

- be in **writing**
- give at least **four weeks' notice**
- contain '**prescribed information**' (wording specified by law – see later)

Again, if the notice period in the lease is more than four weeks, or the common law rules require a longer period, the longer notice period in the lease or at common law must be used. Therefore, four weeks is the **minimum** notice that can be given.

Prescribed Information

The prescribed information is contained in further Regulations. These require that the notice to quit must explain that

- a landlord must get a **possession order** from a court before evicting an occupier
- application for the possession order cannot be made until the **notice period** in the notice to quit expires
- the receiver of the notice must be told they can get **advice** from a solicitor, citizens' advice bureau, housing aid centre, etc

If a landlord (or the landlord's agent) tries to gain possession without a court order, this is a criminal offence under Section 1 of the Protection from Eviction Act 1977. (We will look this Act in more detail later in this section.)

**SELF CHECK QUESTION 1**

1 A lease has a notice period of two weeks. Rent is paid monthly.

a) What is the notice period in the contract?

b) What is the notice period under common law?

c) What is the statutory notice period (ie the period required by law)?

d) Which notice period would have to be followed if the landlord wanted to serve a notice to quit?

2 You act for a landlord who has a tenant with a lease outside the protection of the Housing Act 1988. The rent is paid monthly. You served one month's notice to quit five weeks ago but the tenant has not left. The landlord has asked you to evict the tenant. What advice would you give the landlord?

Compare your answers with those given at the end of this section.
