

EVICION

Welcome to Advice Direct..., the written information service from Guild Advice.

This leaflet is designed to provide you with information on eviction and how to deal with it. The guide focuses on a landlord's right to end a tenancy and the procedure they that must follow.

What Is Eviction?

Eviction is **the legal process** through which landlords can remove tenants and recover a property. In order to evict tenants landlords have to follow certain legal procedures, and in certain cases they must have valid grounds (reasons) for wanting to evict tenants.

The majority of students living in private rented accommodation will have some form of a written tenancy agreement; therefore you have certain rights and protection under the law. **The type of tenancy that you have will determine whether a landlord can evict you or not**, and also the process that they must follow. However, in all cases it may be possible to delay or even stop the eviction if you act early and seek advice.

Always seek further advice from suitable organisations if you are notified of a possible eviction, or fear that you are being evicted.

Can My Landlord Evict Me?

Whether a landlord can evict you or not depends on a number of factors, which include the type of tenancy that you have, the grounds on which the landlord is evicting you, and whether the correct procedure has been followed.

Type of tenancy

The type of tenancy that you have will determine when your landlord can evict you and the grounds on which they can attempt to do so.

1. Assured Shorthold Tenancy (AST)

This is the most common type of tenancy for students. All tenancies created after 28th February 1997 will be Assured Shorthold unless otherwise stated. An AST can be written or oral, periodic or fixed, joint or sole (for more information see **Advice Direct...Seeking Accommodation**).

Fixed Term Tenancy

A fixed term tenancy is for a specific period of time; for students it is usually for an academic year. Your landlord can only evict you during the fixed term if they have certain grounds (reasons) and your tenancy agreement allows for these to be utilised, or if your contract has a 'break clause' which allows the landlord to take possession of the property.

Some notable grounds for possession laid out in section 8 of the Housing Act 1988 that can be used during the fixed term are:

Mandatory grounds

If your landlord is using a mandatory ground the court has no choice but to make a possession order if it is satisfied that the ground exists.

Examples of mandatory grounds include:

- more than eight weeks rent arrears owing, or two months if you pay your rent monthly, at the time the notice was served and at the date of the court hearing repossession by your landlord's mortgage lender (if prior notice of the possibility of this was given)
- redevelopment of the property
- antisocial behaviour, if the tenant (or a member of her/his household, or even a visitor in some cases) has already been convicted of antisocial behaviour in the courts

Discretionary grounds

If your landlord is using a discretionary ground for possession the court only makes a possession order if the ground is proven and it is reasonable to do so.

Examples of discretionary grounds include:

- some rent arrears
- persistent late payment of rent
- breach of tenancy agreement
- antisocial behaviour

If your landlord wishes to use one of the above grounds to evict you during your tenancy, they must first provide you with a written notice for possession (see 'Notice for Possession' Section, below) and give a date of when they want you to leave. If you do not wish to leave the property, or if you dispute the notice, then you can stay until your landlord obtains a possession order (see 'Court Order' section, below). If your fixed tenancy has come to end and you have not agreed a new fixed term contract, and you continue to stay in the property as no notice seeking possession has been served upon you, then your tenancy will become a statutory periodic tenancy.

Periodic Tenancy

A contractual or statutory periodic tenancy is an agreement with no specific end date and can be continually renewed, e.g. weekly, monthly. If you have a periodic tenancy then your landlord can evict you without having to provide a reason (provided that it is at least 6 months since the start of the original tenancy). Two months' notice of possession (see 'Notice for Possession section, below) has to be given and the notice period must end on the last day of the tenancy period. If you do not wish to leave the property, or if you dispute the notice, then you can stay until your landlord obtains a possession order (see 'Court Order' section, below).

If your landlord wishes to evict you within the first 6 months of the tenancy, or without providing the necessary two months' notice thereafter, then they need to have a valid ground for possession. Your tenancy agreement should include terms which allow for these grounds to be utilised. Your landlord should provide you with a notice for possession and obtain a possession order.

2. Licenses

Occupier with basic protection

An occupier with basic protection is where an **individual lives in the same building as their landlord** but **does not share the accommodation**. If your landlord wishes to evict you they must provide you with a written notice. If you pay your rent weekly you should be given 4 weeks' notice, if you pay rent monthly then you should be given a month's notice. If you do not wish to leave the property, then you can stay until your landlord obtains a possession order (see 'Court Order' below). If you have signed an agreement for a fixed period then your landlord cannot evict you before this period ends, unless you have broken the agreement (for more information see 'Sources of Help', below).

Excluded Occupier

An excluded occupier is an individual who **shares the accommodation** with their landlord. To evict an excluded occupier, a landlord simply needs to provide a reasonable level of notice (which can be verbal) and doesn't need to obtain a possession order from a court.

Notice for Possession

A notice for possession is basically a request from your landlord for you to leave the property. Whether you are entitled to receive a notice depends on the type of tenancy that you have (see 'Type of tenancy' section, above). The notice must include:

- Your name and address
- Landlord's name and address
- The correct notice period
- The date that your landlord wants possession of the property
- The ground(s) on which the landlord is seeking possession (if applicable)

If you feel that the notice is valid then you can leave the property by the requested date. If you disagree with the notice, or if you have nowhere else to live, then you can remain in the property and wait until your landlord obtains a possession order. If you are unsure seek further advice, as soon as possible.

The notice periods that a landlord must provide are:

Ground 14 - Landlord can seek possession order immediately

Grounds 3, 4, 8, 10, 11, 12, 13, 15, 17 – minimum 2 weeks

Grounds 1, 2, 5, 6, 7, 9, 16 – minimum 2 months

Court Order

A landlord can apply to the county court to grant an order for possession if a tenant fails to leave the property having received a notice for possession. Once the notice period has ended, your landlord will have to complete an application form explaining the reason why they wish to evict you and send it to the court. The court will then send the tenant copies of the court forms explaining that their landlord is taking legal action against them. If you disagree with the reasons outlined by your landlord for eviction, or if you wish to delay the eviction process, then you need to complete the 'reply form' which is attached to the paperwork.

When completing the reply form you should explain clearly your circumstances and reasons for disputing your landlord's claims and provide evidence to support your claims where possible. If you are requesting for your eviction date to be extended, then you need to explain why and provide evidence to support your claims. You should seek advice if you are unsure or need help, as what you say could influence a court's decision. Once you have returned the reply form, the court will set a hearing date. If you are an assured shorthold tenant and your tenancy has come to an end you must reply to the paperwork if you disagree with your landlord's claims. **If you do not then there may not be a hearing.**

At a hearing, a judge will examine the information provided by both you and your landlord. The judge will then assess the case and make a decision as to whether to **grant a Possession Order**. There are a number of possession orders that could be granted by a judge. If the judge agrees with the landlord's grounds for possession then an outright Possession Order could be granted, which will outline a date for you to leave the property. The judge could order a Suspended Possession Order which would allow you to remain in the property if you agreed to meet certain conditions. You should seek further advice before attending a hearing (see 'Sources of Help', below).

If a court has issued you with a Possession Order and you still do not leave the property by the date given, then your landlord can ask court bailiffs to evict you. You should seek advice as soon as possible if you receive a 'notice of eviction' from a court.

Illegal Eviction & Harassment

A landlord cannot simply throw you out of a privately rented property. A landlord must have the legal right to evict you from a property, and as indicated on this guide there are certain procedures that must be followed to evict tenants. If your landlord fails to do this then they are committing a criminal offence. If you feel you have been evicted illegally you should seek further advice.

It is also an offence for a landlord to harass a tenant. Harassment could take many forms, such as threatening or offensive behaviour, withholding services or the landlord knowingly acting in a way that causes you disturbance and makes you want to leave the property. If you feel your landlord, or someone who acts on their behalf is harassing you, you should make a note of what happened along with the date and time of events. You should then report it in writing to your landlord and try to resolve the problem, keeping a copy of the dated letter and sending it by recorded delivery. If the harassment continues then you should seek further advice.

Sources of Help

Guild Advice, Guild of Students

Email: thearc@guild.bham.ac.uk

Visit the website at: <http://www.guildofstudents.com/support/thearc/>

<u>Guild Advice Opening Hours</u>	<u>Drop in Clinic</u>	
Term Time: Monday – Friday	10am — 4pm	12-2pm
Vacation Time: Monday – Friday	12pm – 2pm	12-2pm
Saturday & Sunday	CLOSED	

Shelter

www.shelter.org.uk

Offers advice and information about any housing problems.

4th Floor Gateway House, 50-53 High Street Birmingham, B4 7SY

Tel: 0344 515 1800 (9am – 5pm Monday – Friday)

Shelterline is a free phone service providing advice on a range of housing issues. Tel: 0808 800 4444 (Monday – Friday 8am – 8pm & Saturday – Sunday 8am – 5pm)

Birmingham Council Private Tenancy Team www.birmingham.gov.uk/privatetenants

Private Tenancy Officers provide advice and assistance on a range of housing issues, including illegal eviction, disputes and harassment.

- Private Rented Services: 0121 303 5070
- Repairs: 0800 073 333
- Environmental Health: 0121 303 6007

Birmingham County Court

<http://www.hmcourts-service.gov.uk>

Tel: 0121 681 4441

Tenancy Deposit Schemes

Tenancy Deposit Solutions Ltd

The Tenancy Deposit Scheme

The Deposit Protection Service

www.mydeposits.co.uk

www.tds.gb.com

www.depositprotection.com

Disclaimer: The information on this guide only provides general guidance on housing issues and the law. The guide should not be regarded or relied upon as a complete or authoritative statement of the law. Guild Advice will not accept any liability for any claims or inconvenience as a result of the use of information on this guide. If you think that you have a legal problem you should seek further advice.

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