

Factsheet 68

Preventing evictions

July 2022

About this factsheet

This factsheet provides information on a tenant's right to keep their home (security of tenure) and what to do if threatened with eviction. Brief information is given for occupiers who are not tenants, for example people living with friends or family.

For information about other aspects of tenancy rights, see the Age UK factsheets 35, *Tenancy rights - rent* and 67, *Home improvements and repairs*. We also publish factsheets on finding accommodation in the private rented sector and from social landlords, specialist housing for older people, and park homes.

The information in this factsheet is applicable in England. If you are in Wales, Scotland or Northern Ireland, please contact Age Cymru, Age Scotland or Age NI for information. Contact details can be found at the back of this factsheet.

Contact details for any organisation mentioned in this factsheet can be found in the *Useful organisations* section.

Contents

1	COVID-19	4
2	Help in a crisis	5
3	What type of tenancy do I have?	6
4	Other living arrangements	6
5	Types of tenancy – detailed rules	8
5.1	Fixed term or periodic?	8
5.1.1	Assured shorthold tenants	8
5.2	Private tenants	8
5.3	Local authority and housing association tenants	9
6	The eviction process	9
6.1	Grounds for possession	11
6.2	Defending a claim for possession	12
6.3	Suitable alternative accommodation	13
7	Grounds for possession for private tenants	14
7.1	Regulated (often called ‘protected’) tenants	14
7.1.1	Mandatory grounds	14
7.1.2	Discretionary grounds	14
7.2	Assured tenants	15
7.2.1	Mandatory grounds	15
7.2.2	Discretionary grounds	15
7.3	Assured shorthold tenants	16
8	Grounds for possession for local authority tenants	18
8.1.1	Mandatory grounds	18
8.1.2	Discretionary grounds	18
9	Grounds for possession for housing association tenants	19
10	Probationary, ‘flexible’ and demoted tenancies	19
10.1	Probationary tenancies	19
10.2	Flexible tenancies – England only	21

10.3	Demoted tenancies	22
11	The right to inherit a tenancy ('<i>succession</i>')	22
11.1	Joint tenants	23
11.2	Private tenants	23
11.2.1	Assured (including assured shorthold tenancies)	23
11.2.2	Regulated (protected and statutory) tenancies	24
11.3	Local authority tenants	24
11.3.1	All Welsh tenancies and English tenancies pre-1 April 2012	24
11.3.2	Tenancies in England that began on or after 1 April 2012	25
11.4	Housing association tenants	25
12	Other issues	25
12.1	Relationship breakdown	25
12.2	Mortgage repossession	26
12.3	Immigration status	27
	Useful organisations	28
	Age UK	31
	Support our work	31

1 COVID-19

Government measures to protect renters during the pandemic have largely been withdrawn, but there are still some points to be aware of.

Landlord notices

If your landlord asked you to leave between 26 March 2020 and 30 September 2021, you may have been entitled to an extended notice period. Eviction may be challengeable on the basis that an incorrect notice period was given.

Broadly speaking, you were entitled to extended notice if you have one of the tenancy types listed in section 3. For notices served between 1 June 2021 and 30 September 2021, extended means four months. There were different rules applying at earlier points in the pandemic.

Extended notice may not have been required if you were in rent arrears or your landlord wanted the property back due to anti-social behaviour. The precise rules vary depending on when they served notice.

Shelter has a coronavirus notice checker you can use to establish whether the right amount of notice was given, see:

https://england.shelter.org.uk/housing_advice/eviction/notice_periods_during_coronavirus

This does not cover every possible outcome, so seek advice if you are unsure.

Bailiff evictions

Restrictions on bailiff evictions have been lifted. This means all cases can progress to the point of eviction, although you are advised by the Government to stay at home and avoid contact with others if you test positive for COVID-19.

If you or a member of your household has symptoms of COVID-19 or tests positive, the Shelter website advises you to contact the bailiffs as soon as possible. Their details should be on the notice informing you of the date and time of the eviction. They should use personal protective equipment (PPE) and keep to social distancing if they attend your property.

2 Help in a crisis

If you have been told you must leave your accommodation, do not panic. In most cases, the person owning or managing the property needs to get a court order if they want to evict you, called an '*order for possession*'.

If you are a tenant, your landlord can usually only evict you if they have a good reason. It is possible to challenge this in court and, in some cases, the court can consider whether it is reasonable to evict you, taking your age, health and other circumstances into account.

Eviction can also be challenged on other grounds, for example if you are disabled and the landlord's reason for evicting you relates to your disability.

The key thing is to seek specialist housing advice as soon as possible. Legal aid is available for challenging a landlord's '*possession claim*', so you may be able to get free legal advice and representation, if you are on a low income and your case is considered strong enough. Check if there is a law centre in your area and, if not, speak to an advice agency such as the local Citizens Advice about sources of free legal help.

The earlier you do this, the stronger your chances of preventing eviction, but you should seek advice even if the eviction is at a very late stage. In some circumstances, it is possible to challenge eviction right up until the date the bailiffs are scheduled to attend.

Preventing homelessness

Another key source of help if threatened with eviction is the local authority. They can help even if you do not have a formal tenancy agreement, for example if you are staying with friends or family.

If the authority has '*reason to believe*' you may be threatened with homelessness, it must make inquiries to determine whether it has a duty to help you. It has a duty if it accepts you are threatened with homelessness and '*eligible for assistance*' on the basis of your nationality and immigration status. British citizens are usually eligible.

You are threatened with homelessness if it is likely you will become homeless within 56 days. This includes if you have an assured shorthold tenancy and received a valid '*section 21*' notice from your landlord that is due to expire within 56 days.

If the local authority accepts a duty to help you, it must take '*reasonable steps*' to prevent you from becoming homeless over the next 56 days or so. The reasonable steps should be tailored to your circumstances and needs and focused on helping you to stay in your current property. For example, assessing you for a Discretionary Housing Payment, negotiating with your landlord, or arranging a mediation appointment for you and your family. You are likely to have to take certain steps too.

For more information, see Age UK factsheet 89, *Homelessness*.

3 What type of tenancy do I have?

As a tenant, your rights against eviction depend mainly on your tenancy type, so it is important to work this out.

The table below gives an overview of the main types and an indication of what you are likely to have depending on who your landlord is and whether your tenancy was granted before or after **15 January 1989** (the '*relevant date*'). Later sections set out exceptions to these rules.

Landlord	Tenancy began before relevant date	Tenancy began on or after relevant date
Local authority	Secure	Secure (could be introductory or flexible)
Housing association	Secure	Assured (could be assured shorthold)
Private landlord	Regulated (often called ' <i>protected</i> ')	Assured shorthold (could be assured)

If you are not sure, check your tenancy agreement – it should say what tenancy type you have. However, it is important to get this checked by an adviser as agreements can sometimes be incorrect or misleading.

Alternatively, you can use the '*tenancy rights checker*' on Shelter's website. This asks a series of questions to help you work out your tenancy type. It can even give you some information about your legal rights if your living situation is more unusual or informal.

4 Other living arrangements

Most people living in housing they do not own are tenants. However, you are unlikely to be a tenant if you live in:

- someone else's home (a lodger)
- a friend or family member's home
- an almshouse
- a care home
- a hostel.

You are likely to be a '*licensee*', with different rights, although your level of protection against eviction depends on your specific circumstances.

Being a licensee means you have permission to stay at the property, but no legal '*interest*' in it that could potentially be transferred to others.

It is also possible to be a tenant, but not have one of the tenancy types in section 3. This is because the tenancies in section 3 are protected by Acts of Parliament and, in certain circumstances, a tenancy agreement will not meet the conditions to be protected by an Act. If this applies, you have a '*contractual tenancy*' as your rights depend mainly on your contract.

The main examples are:

- you live in a converted building and your landlord lives in another part of the building (this does not apply if this is a purpose-built block of flats)
- you are homeless and living in local authority temporary accommodation (if the accommodation is provided by a private landlord or housing association, you are likely to have an assured shorthold tenancy)
- you have a tenancy, but the property is not your main or only home.

Contractual tenants and licensees have fewer rights against eviction than people with a tenancy protected by an Act of Parliament. They either:

- have '*basic protection*' against eviction, meaning the landlord needs to get a court order if they want to evict but does not need to give the court a reason, or
- are '*excluded occupiers*', meaning the landlord only needs to give a reasonable notice period before evicting, or whatever notice period is set out in the contract.

The Shelter '*tenancy rights checker*' can help you to work out if you are in one of the above groups.

Even if your rights are fairly limited, it is important to seek advice. Your landlord must give you whatever legal protections you are entitled to and any attempt to force you to leave without following these steps may constitute harassment or illegal eviction.

It may be important to question the nature of your agreement and whether you have more rights than your landlord is saying. In the past, landlords would sometimes try to avoid giving renters strong rights by issuing them with licence agreements instead of tenancies. This is now much less common, but the courts have said it is the reality of the living situation that matters, not the '*label*' on the agreement.

Note that the position for people living in accommodation provided by an employer ('*tied accommodation*') is complicated. You may have a tenancy, a licence, or a particular kind of licence called a '*service occupancy*'. Speak to an adviser about your status and rights.

5 Types of tenancy – detailed rules

5.1 Fixed term or periodic?

All tenancies are either fixed term or periodic. The distinction is important – it affects your rights as a tenant. It is particularly important if you are an assured shorthold tenant.

Fixed-term tenancies are granted for a specific length of time. They are very common in the private rented sector, where you are likely to be given a tenancy with a fixed term of six or 12 months.

Fixed-term tenancies are less common in the social housing sector, although local authorities and housing associations can grant them and have been encouraged to do so. You may be able to challenge an offer of a fixed-term tenancy by a local authority or housing association, or the length of the tenancy offered (see section 10).

Periodic tenancies do not have fixed terms, but instead roll on until you or your landlord decide you want the tenancy to end. Some tenancy agreements specify the tenancy '*period*', stating that it runs from week to week or month to month. If not, the period is inferred from how the rent is calculated in the tenancy agreement, e.g. a certain amount per week. Periodic tenancies are sometimes called '*lifetime*' tenancies.

5.1.1 Assured shorthold tenants

If your tenancy comes to the end of its fixed term and you stay there without a new tenancy being granted, it continues as a '*statutory periodic*' tenancy. From this point, your landlord can use the '*no-fault*' procedure to evict you, but not until six months have passed from the start of the fixed-term tenancy (see section 7.3). If the tenancy was always periodic, you can be evicted on a no-fault basis after six months.

5.2 Private tenants

Most private tenants have **assured shorthold tenancies**. This is the default private tenancy today. If a landlord wants to grant an **assured tenancy**, which offers more security, they must take special steps.

However, you are likely to have:

- **a regulated (often called 'protected') tenancy** - if you have lived in your home or with the same landlord since before 15 January 1989. Regulated tenancies are no longer granted.
- **an assured tenancy** – if you moved into your home between 15 January 1989 and 28 February 1997 (unless given prior notice the tenancy was to be assured shorthold) or have been with the same landlord since then.

Regulated tenancies are governed by the *Rent Act 1977*. Assured and assured shorthold tenancies are governed by the *Housing Act 1988*.

5.3 Local authority and housing association tenants

If you live in social housing, you are likely to have one of the following:

- **a secure tenancy** (governed by the *Housing Act 1985*) – housing association tenants who moved in before 15 January 1989 and local authority tenants
- **an assured tenancy** – housing association tenants who moved in on or after 15 January 1989.

However, some social landlords grant fixed term tenancies, either on a trial basis or as a rule of thumb.

If your landlord does this, you may have an **introductory** or **flexible tenancy** (if renting from a local authority) or an **assured shorthold tenancy** (if renting from a housing association). This is only relevant if you moved in fairly recently. For more information, see section 10.

If a local authority transfers its stock to a housing association, all existing tenants become assured tenants of the housing association. You may keep extra rights, for example the right to buy.

6 The eviction process

If you have one of the tenancy types mentioned in section 5, the eviction process has three main stages:

- 1 the landlord serves a notice indicating they want the property back
- 2 the court grants an '*order for possession*'
- 3 the court issues a warrant authorising bailiffs to evict you.

However, there may be more stages or fewer. You may end up going to court several times, for example if a possession order is '*suspended*' or '*postponed*' and you struggle to comply with conditions the court has set (see section 6.1 for more information).

On the other hand, the court can sometimes allow a possession hearing to take place without the landlord serving notice first. It may do this if you have caused considerable nuisance to your neighbours, for example.

You may choose to leave at the end of the notice period or by the date specified on the order for possession, meaning no further action is necessary. Speak to an adviser before doing this.

More information on the individual steps is now set out overleaf.

Stage one – eviction notice

It is likely you will receive a '*notice to quit*', a '*notice seeking possession*' or a '*notice requiring possession*' as the first stage in the eviction process. The type of notice depends on your tenancy and the reason why the landlord is seeking possession.

In most cases, a notice must include your name and address and give you a period of time before the landlord will apply to court for a possession order. In some cases, your landlord's name and address and full details of any '*ground*' for possession must be given. A '*ground*' is the reason why the notice is being served (see section 6.1).

Different grounds require different notice periods. For some, a landlord should give two months' notice, for others, two weeks or less. For assured shorthold tenancies, no ground is required if the landlord is seeking possession after six months or at the end of a longer fixed term, but at least two months' notice must be given.

Stage two - order for possession

When the notice period ends, the landlord can apply to the court for a possession order. If your landlord takes action in the courts, you may end up having to pay some, or all, of their legal costs.

For most tenancies, there must be a court hearing to decide whether an order should be granted. There is a fast-track procedure for assured shorthold tenancies if the landlord is applying on a '*no-fault*' basis, meaning there may not be a court hearing (see section 6.3). The court still has to consider the case and look at all relevant papers.

If a possession order is granted '*outright*', you are told to leave the property by a certain date, usually two weeks after the date on the order. You can ask the court to allow you up to six weeks to leave if you would otherwise experience '*exceptional hardship*'.

In some cases, the court may grant a possession order that is '*suspended*' or '*postponed*', meaning a bailiff's warrant will not be granted if you comply with certain conditions

Stage three – bailiff's warrant

If you do not leave by the date on the possession order or comply with conditions set by the court, your landlord can apply to the court for a warrant authorising bailiffs to evict you.

Most eviction cases are dealt with by the county court. However, your landlord can ask for your case to be transferred to the High Court. The county court judge decides whether to allow this. If they do, the eviction is carried out by officers working for the High Court, sometimes called '*Sheriffs*'. High Court eviction is usually quicker, and Sheriffs have powers to seize your goods if money is owed.

You will not generally be notified if your landlord applies for a warrant in the county court. They must notify you in if they apply in the High Court, but there is no requirement for the notice to be in a particular form. In one case, a reminder from the landlord of the terms of the possession order and a request for the tenant to leave was deemed to be sufficient.

Unless the court directs otherwise, a notice of eviction must be delivered to your property at least 14 days before the eviction date. This applies regardless of the route your landlord has chosen (county or High Court).

6.1 Grounds for possession

In most cases, your landlord must have a specific reason for wanting to evict you (a '*ground for possession*'), for example rent arrears, anti-social behaviour, or other breaches of your tenancy agreement. The court will not make a possession order unless it is satisfied the ground applies.

The grounds for possession are set out in law and vary according to tenancy type, although there is overlap. Grounds for possession are either '*mandatory*' or '*discretionary*'. See sections 6 to 8 for the main grounds for possession your landlord can use.

The main exception is if you are an assured shorthold tenant, as your landlord does not need a ground after a certain point and can evict you on a '*no-fault*' basis. See section 6.3 for more information.

Mandatory grounds

If a ground is mandatory, the court has no discretion over whether it makes a possession order. It must make an order if it is satisfied the ground applies. However, you may be able to challenge eviction on '*public law*', human rights, or discrimination grounds (see section 5.2). There may be a requirement on the landlord to show that suitable alternative accommodation is available for you.

Discretionary grounds

If a ground is discretionary, the court has discretion over whether it makes an order. It will only make an order if this is '*reasonable*'. In some cases, suitable alternative accommodation must be available for you (see section 6.3).

In deciding whether eviction is reasonable, the court may consider factors such as the length of time you have lived in the property, your health and age, your conduct and willingness to remedy any issues, and in cases of anti-social behaviour, the effects of your behaviour on others.

When considering a claim for possession on a discretionary ground, the court has the power to '*adjourn*' (delay) the proceedings to give you time to clear rent arrears or rectify another issue. Alternatively, it can grant an order that is '*suspended*' or '*postponed*' on certain conditions.

If you fail to meet these conditions, the landlord can go back to court and ask for a bailiff's warrant to be granted, although you may be able to ask the court to vary the terms of the order instead.

If your landlord is a local authority or a housing association, they must comply with a Ministry of Justice Pre-Action Protocol before seeking to evict. This sets out steps they should take if you are in rent arrears or are '*particularly vulnerable*'. If their ground for possession is discretionary and they do not comply with the protocol, the court can dismiss the case.

6.2 Defending a claim for possession

If you receive a notice from your landlord stating they want the property back, seek advice immediately. Bring a copy of the notice to your appointment with the adviser so they can check when your notice period runs out, why your landlord is seeking possession, and whether the notice is valid.

A notice may be invalid if the landlord uses the wrong form (for some tenancies, notice must be given using a specific form) or if the form is not properly completed, does not give enough information about why possession is being sought, or gives an incorrect date by which you should leave the property.

If your notice is invalid, the court may refuse to grant a possession order. This is unlikely to prevent eviction altogether, as your landlord can simply serve a valid notice to begin the process again, but it could buy you time to consider your options or remedy any issues.

It may be possible to raise a defence against eviction by disputing the landlord's ground for possession, or by claiming they are behaving unlawfully or unreasonably. If the ground for possession is discretionary, you can argue that eviction would be unreasonable. If the landlord must show that suitable alternative accommodation is available, you could challenge its suitability or availability.

Your ability to raise a successful defence depends on factors such as your tenancy type, the reason your landlord is seeking possession, whether they are classed as a '*public body*' (meaning they must comply with public and human rights law), and whether you have a '*protected characteristic*' under the *Equality Act 2010*.

If you have a disability and possession is sought because you have done, or not done, something that might relate to being disabled, the possession proceedings may be considered discriminatory under the *Equality Act 2010*. For example, you may have been prevented from claiming Housing Benefit on time because of a mental health problem.

If your notice appears invalid or there are other '*defences*' you can raise against eviction, you may be referred for specialist legal help. Legal aid funding is available for eviction cases. You must meet eligibility criteria to qualify, such as being on a low income or in receipt of certain benefits. Contact a local Law Centre or Citizens Advice for more information.

When can eviction be challenged?

You should always seek advice to see what can be done about an eviction. The earlier you do this, the better your chances of keeping your home, although it is possible to challenge eviction at every stage of the process, including after a bailiff's warrant has been issued.

In some exceptional cases, it is even possible to regain occupation of a property after you have been evicted. This includes where there has been an abuse of process or you have been given misleading information by the landlord or the court about the eviction and how you might act to stop it.

'No-fault' evictions, including 'retaliatory' evictions

For assured shorthold tenancies, no ground for possession needs to be given after a certain point. This is often called a '*no-fault*' eviction and can be difficult to challenge as, usually, the landlord must simply follow the correct procedure for possession to be granted.

There are legal restrictions that aim to prevent '*retaliatory*' evictions, when a landlord uses the no-fault procedure to evict a tenant who has complained about the condition of their property. See section 5 of factsheet 67 *Home improvements and repairs* for more information. See section 7.3 for other restrictions on using the no-fault procedure.

6.3 Suitable alternative accommodation

In some cases, the court can only grant a possession order if satisfied you are to be provided with suitable alternative accommodation. The suitability rules vary depending on your tenancy type but generally, the new tenancy must offer the same or comparable security of tenure and the new property must meet certain conditions.

If you are a regulated or assured tenant, the court must consider whether the new property is '*reasonably suitable*' in terms of proximity to your workplace, cost and size. If furniture was provided under your old tenancy, similar or '*reasonably suitable*' furniture must be provided at the new property.

If you are a secure tenant, the court must consider additional issues, such as the proximity of the new property to a family member's home (if essential to wellbeing) and the terms of the tenancy agreement.

In some cases, a landlord can provide a certificate from the local authority stating they will re-house you by a specified date. Seek advice, particularly if the court must also be satisfied eviction is reasonable.

7 Grounds for possession for private tenants

7.1 Regulated (often called 'protected') tenants

Regulated tenancies offer very strong rights. They are often referred to as '*protected*' tenancies, but actually have two phases (a '*protected*' phase and a '*statutory*' phase). Most are now in their statutory phase.

The protected phase of a fixed-term regulated tenancy ends when the fixed term expires. If the tenancy is periodic, it ends when the landlord serves a notice to quit. If you remain in occupation after a protected tenancy ends, a statutory tenancy comes into being. Statutory tenants can only be evicted if the landlord can prove a ground to the court.

7.1.1 Mandatory grounds

The main mandatory grounds are:

- the landlord previously lived in the property or bought it for their retirement and now wants to live in or sell it
- the property was intended for a member of the clergy, or was previously occupied by a farm manager, widow or widower, and has been temporarily let out to an ordinary tenant
- the landlord is a member of the armed forces and intends to live in the property after discharge.

Normally, these grounds can only be used if the landlord notified you in writing before your tenancy started that you may be evicted for such a reason (although the court can make an exception).

7.1.2 Discretionary grounds

Discretionary grounds for possession include:

- not paying your rent
- damaging or neglecting the property or furniture
- causing a nuisance or annoyance
- renting the property to someone else without the landlord's permission
- the landlord needs the property for themselves or family
- you are a former employee of the landlord and the property is needed for a new employee
- there is suitable alternative accommodation available.

The court must be satisfied it is reasonable to make a possession order.

7.2 Assured tenants

Assured tenants have strong tenancy rights and can only be evicted if the landlord can prove a ground to the court.

If the tenancy is within a fixed term, the landlord can only use some of the grounds to gain possession and, in most cases, only if there is a clause in the tenancy agreement allowing it to be ended in this way.

For example, the discretionary ground where the landlord can show that suitable alternative accommodation is available to you cannot be relied upon.

7.2.1 Mandatory grounds

The main mandatory grounds include:

- the landlord previously lived in the property or intends to do so and told you this before your tenancy started (the court can make an exception)
- the mortgage lender is repossessing the property – this ground can only be used in certain circumstances, seek advice if in this position
- the landlord intends to demolish or carry out substantial work to the property
- significant rent arrears both at the date the landlord serves notice and the date of the hearing - at least eight weeks' arrears if paying weekly or fortnightly, or two months' arrears if paying monthly
- conviction for a serious offence or anti-social behaviour that has been proven in another court – see factsheet 9, *Anti-social behaviour in housing*, for more information.

7.2.2 Discretionary grounds

Discretionary grounds for possession include:

- the landlord can show that suitable, alternative accommodation is available for you
- some rent arrears (at the time of serving the notice and at the start of court proceedings)
- persistent delays in rent payment
- breaking a condition of your tenancy agreement
- damaging or neglecting the property or furniture
- causing a nuisance or annoyance to neighbours or other people living in or visiting the area
- false information given by you prior to the grant of the tenancy.

In these cases, the court must be satisfied that it is reasonable to make a possession order.

7.3 Assured shorthold tenants

An assured shorthold tenancy is a type of assured tenancy and has limited security. During the first six months (or the length of the fixed term if longer), you can only be evicted if your landlord proves one of the grounds for possession set out in section 7.2.

After the first six months (or the end of the fixed term if longer), you can be evicted on a '*no-fault*' basis. This means the landlord does not have to prove a ground in court, although they must follow the correct procedure.

No-fault eviction may be called a '*section 21*' eviction. This is because the landlord must serve a '*section 21*' notice to start the process. To be valid, a section 21 notice must be in writing and, in some cases, use a specific legal form. It must give you at least two months' notice that the landlord wants the property back.

If you have a fixed term assured shorthold tenancy with a housing association or another social landlord, they should give you notice at least six months before the end of the fixed term if they plan not to renew the tenancy. This applies if your tenancy was granted on or after 1 April 2012 for a fixed term of at least two years.

The notice must be in writing, state that the landlord will not be renewing the tenancy and tell you where to get help and advice. If the landlord does not serve this notice, the court cannot make a no-fault order for possession at the end of the fixed term. The landlord must also serve a section 21 notice as explained above.

Restrictions on no-fault eviction – all tenancies

A landlord cannot serve a valid section 21 notice if they have not complied with their deposit protection obligations. The law says landlords granting assured shorthold tenancies must protect your deposit in an '*authorised scheme*'.

The rules are different depending on when your deposit was paid. If it was paid on or after 1 April 2012, your landlord should have protected it within 30 days of receipt and should have provided you with '*prescribed information*', including details of where it is protected.

If they did not protect the deposit within 30 days of receipt, or they fail to give you information about where it was protected within 30 days, they cannot use the no-fault procedure until they return the money to you (subject to agreed deductions), or until the matter has been decided in court or settled out of court.

A landlord must not serve a section 21 notice within the first four months of the tenancy. If your tenancy has been renewed, the four-month period begins on the first day of the original tenancy. If you have been served with a section 21, your landlord must commence court proceedings within a specific time limit (usually six months). If they do not, they must serve a fresh notice to start the process again.

If you rent privately, your landlord cannot serve a valid section 21 notice if you have complained about the property's condition and been backed up by the local authority serving a notice. Nor can they serve a valid notice if they have charged you an unlawful fee and not repaid this or credited it towards your rent. See factsheets 67, *Home improvements and repairs* and 63, *Finding private rented accommodation* for more information.

Further restrictions for new tenancies

Further restrictions on a landlord's ability to use the no-fault procedure were introduced by the *Deregulation Act 2015*. These apply if your tenancy was granted or renewed on or after 1 October 2015.

Your landlord cannot use the no-fault procedure if they have not provided you with a copy of your property's current Energy Performance Certificate and current gas safety certificate. This applies if you rent from a private landlord or housing association. If you rent privately, the landlord must also provide you with an up-to-date copy of the government's '*checklist for renting*' at some point during the tenancy.

Challenging no-fault eviction

The rules above mean a no-fault eviction can be challenged, even though the landlord does not have to prove a ground in court. Seek advice if you are in this position. However, you should be clear about what you can hope to achieve by challenging eviction in this way. You may only succeed in delaying eviction.

This may give you time to explore your housing options, but some options, such as making a homelessness application, can be more difficult to pursue if you are not at immediate risk of losing your home.

Bear in mind that if you do not leave by the date on the section 21 notice and the matter goes to court, you may have to pay your landlord's costs and your credit score can be affected.

See Age UK information guide 8, *Housing options* for information about your housing options and factsheet 89, *Homelessness* for information about the homelessness application and assessment process.

Homelessness and no-fault eviction

A local authority should consider you '*threatened with homelessness*' if you receive a valid section 21 notice that is due to expire within 56 days (unless you have other accommodation available to you). Provided you are '*eligible for assistance*' on the basis of your immigration status and nationality, the authority has a duty to help you prevent homelessness.

Such help usually lasts for a maximum of 56 days. However, if you are threatened due to a section 21 notice meeting the above conditions, the authority cannot stop helping you simply because this time period has elapsed.

It must continue to help you until its duty ends for another reason, for example you become homeless. If that happens, the authority must take steps to help you resolve your homelessness. It is important to note you can be treated as homeless before an eviction is actually carried out. This is because you are homeless if you have accommodation but it is not reasonable for you to stay there.

Government guidance states it is unlikely to be reasonable for an assured shorthold tenant to stay past the expiry of a section 21 notice if the landlord intends to seek possession, further efforts from the local authority to resolve the situation are unlikely to be successful, and there is no defence to eviction. Do not give up your accommodation without speaking to the authority first.

8 Grounds for possession for local authority tenants

Most local authority tenants are '*lifetime*' secure tenants and can only be evicted on certain grounds. There are exceptions, for example your tenancy is probationary, fixed term or demoted, or you are homeless and living in temporary accommodation provided by the authority.

8.1.1 Mandatory grounds

These include:

- your home is illegally overcrowded
- your landlord needs the property empty in order to repair or demolish it
- an '*absolute*' ground for anti-social behaviour (ASB), identical to the mandatory ASB ground for assured tenants in section 7.2.1.

Broadly speaking, the court will only make a possession order if satisfied that suitable alternative accommodation is available to you. This does not apply if your landlord is seeking possession due to '*absolute*' ASB.

8.1.2 Discretionary grounds

These include:

- not paying your rent or breaking a condition of your tenancy agreement
- damaging or neglecting the property or furniture provided by the landlord
- causing a nuisance or annoyance to local residents or visitors
- you or your partner have left the property because of domestic violence, including threats of violence, and are not going to return
- you obtained your tenancy by giving false information to the landlord.

In these cases, the landlord must prove one of the grounds applies and the court must be satisfied it is reasonable to make a possession order.

There are discretionary grounds where the landlord must also show they can provide you with suitable alternative accommodation. These include:

- your home is specifically designed or adapted for someone with a physical disability or other special needs and no one with those needs lives with you, or
- you took over the tenancy after a previous tenant died and the home is larger than you need, except if you were the spouse or civil partner of the previous tenant (it is unclear if this applies if you were live-in partners).

9 Grounds for possession for housing association tenants

If you are a housing association tenant and your tenancy began before 15 January 1989, the grounds for possession are the same as for secure local authority tenants.

If your tenancy began on or after 15 January 1989, the grounds for possession are the same as for assured private tenants, with an additional discretionary ground available in domestic violence cases.

A housing association can seek possession if you or your partner have left the property because of domestic violence, including threats of violence, and are not going to return.

Some housing association tenants have less protection, for example if you have a fixed-term or demoted tenancy. Housing associations may offer fixed-term tenancies as a probationary or longer-term measure.

10 Probationary, ‘flexible’ and demoted tenancies

10.1 Probationary tenancies

Both local authorities and housing associations can grant probationary or trial tenancies to new tenants. These generally last for 12 months.

Provided there are no issues during that time, you should get another, more secure tenancy at the end of the 12-month period, although this could be a fixed-term tenancy.

Probationary tenancies have limited security of tenure and you can be evicted fairly easily if problems arise, such as rent arrears or anti-social behaviour.

Local authority probationary tenancies are called ‘*introductory tenancies*’. Housing association probationary tenancies are called ‘*starter tenancies*’.

Introductory tenancies – granted by local authorities

If a local authority chooses to run an introductory tenancy scheme, they must grant introductory tenancies to all new tenants. The exception is if you are already a secure or assured tenant. This might apply, for example, if you live in a '*general needs*' council property and ask to be transferred to sheltered housing. Your new tenancy is secure or assured, not introductory.

If you are an introductory tenant, you have limited security of tenure. To evict you, the local authority must serve a notice giving its reasons and allow you 14 days to request an internal review of the decision. If no review is requested or the decision remains the same, the local authority may apply to the court for a possession order.

Provided the local authority serves the correct notice and carries out the review in accordance with the law, you have no defence to the possession claim, other than on public law, equalities, or human rights grounds.

If the authority does not start possession proceedings within a 12-month period and other conditions are met, the tenancy automatically becomes secure.

If the authority offers '*flexible*' tenancies (secure tenancies granted for fixed terms), the tenancy may become flexible after the introductory period, but only if a notice was served in advance of the tenancy being granted informing you this would happen.

Local authorities can extend introductory tenancies by up to six months, for example if there are rent arrears or to tackle anti-social behaviour. A notice of extension must give the landlord's reasons for extending.

You have the right to ask for a review of a decision to extend your introductory tenancy. You must request this within 14 days of the notice of extension being served.

Starter tenancies – granted by housing associations

If a housing association decides to operate a starter tenancy scheme, it must grant starter tenancies to all new tenants, or all new tenants in a designated area.

These should be for a maximum of 12 months, or a maximum of 18 months if reasons for extending the probationary period are given and you have the opportunity to request a review.

If no action is taken, you are offered another tenancy at the end of the trial period. Housing associations are encouraged to use tenancies with fixed terms, like a local authority flexible tenancy. These should be granted for a minimum of five years or, exceptionally, a minimum of two years.

Housing associations can grant '*lifetime*' rather than fixed-term tenancies to certain groups of people, such as older people. They should have a policy on when longer-term tenancies are granted and take the needs of vulnerable households and households with children into account.

They should give you the opportunity to appeal against or complain about the type or length of tenancy offered. They should have a policy on the circumstances in which they may or may not grant another tenancy on the expiry of the fixed term.

10.2 Flexible tenancies

A flexible tenancy is a secure tenancy granted for a fixed term, normally a minimum of five years. In '*exceptional circumstances*', a flexible tenancy can be granted for a minimum term of two years. Local authorities have been able to grant flexible tenancies since 1 April 2012.

Flexible tenancies have more limited security of tenure than '*periodic*' or '*lifetime*' secure tenancies, which roll on indefinitely unless terminated by you or a court. As a flexible tenant, you can be evicted at the end of the fixed term if your landlord follows the correct procedure, although the decision to evict must not be '*wrong in law*' and you may be able to raise a public law, human rights or equality defence. See section 6.2 for more information on defending an eviction claim.

When a flexible tenancy is coming to the end of its fixed term, the local authority must either grant another flexible tenancy, or a periodic secure tenancy, or seek possession. If they do not do any of these, the tenancy automatically becomes a periodic secure tenancy at the end of the fixed term.

If the authority does not want to grant another tenancy when a flexible tenancy comes to an end, it must serve two types of notice:

- the first notice must be served at least six months before the tenancy is due to end, with reasons for the non-renewal
- the second notice must be served at least two months before the tenancy is due to end, saying that the authority is seeking possession.

If you receive notice that the local authority does not intend to renew your flexible tenancy, seek advice immediately. You have 21 days from the date the first notice is served to request a review. The law says a review must, in particular, consider whether the decision has been made in line with the authority's tenancy strategy (see below). The authority must notify you in writing of its decision on the review.

Before a fixed-term flexible tenancy ends, the grounds for possession are the same as for periodic secure tenancies (see section 8). There must be a clause allowing the landlord to '*re-enter*' the property in this way in the tenancy agreement. Flexible tenants have other rights in common with periodic secure tenants, such as succession (see section 11).

Tenancy strategy

Before a local authority can grant flexible tenancies, they must publish a tenancy strategy. It must set out when flexible tenancies are granted, how long the terms are and the circumstances in which the authority will grant a further tenancy after the existing tenancy ends.

Authorities must have a policy on how to take the needs of households who are vulnerable by reason of age, disability or illness, and the needs of households with children, into account. This includes offering tenancies providing '*a reasonable degree of stability*'.

You can request a review if you think the authority has not followed its policies by offering you a flexible tenancy of a certain length. You must do so within 21 days of receiving the offer, unless the authority agrees to an extension. You can make a complaint about being offered a flexible instead of a periodic secure tenancy.

10.3 Demoted tenancies

Local authorities and housing associations can apply to have a tenancy '*demoted*' by the court. This reduces your security of tenure for a period of time, making it easier for the landlord to evict you.

The court makes a demotion order if satisfied you, or someone living with you or visiting you, have engaged or threatened to engage in anti-social behaviour, or used or threatened to use the property for unlawful purposes.

The court must consider it reasonable to make the order. If the landlord does not apply for possession within the period of time specified in the demotion order, usually 12 months, your tenancy becomes secure or assured again.

If you receive notice that your landlord is applying to have your tenancy demoted, seek advice immediately. See factsheet 9, *Anti-social behaviour in housing* for more information.

11 The right to inherit a tenancy ('*succession*')

Your right to inherit a family member's tenancy after their death depends on various factors, including the tenancy type, when it was granted, your relationship to the tenant, and how long you lived together.

Sometimes succession happens by law ('*statutory succession*'), meaning the tenancy automatically transfers to you if you meet certain conditions.

This section sets out the different statutory succession rules for each tenancy type. However, you should always check the tenancy agreement of the person who passed away, as this may give additional rights.

If neither the law nor the tenancy agreement allow succession, check the landlord's policies to see if they will grant new tenancies in exceptional circumstances, for example to a child of deceased joint tenants.

Unless there is more than one potential successor, statutory succession happens automatically and does not have to be granted by the landlord.

However, the rules on succession are complex and it can be difficult to get a landlord to recognise your right to succeed. Seek advice if you are having difficulties with establishing a right to succession.

If there is more than one eligible successor, try and decide amongst yourselves who should succeed. If you cannot decide, it is up to the landlord or the court to make a decision.

Note, same-sex married couples are treated the same as opposite-sex married couples. Civil partners are treated the same as married couples. Same-sex partners living together as if they are married or in a civil partnership are treated the same as opposite-sex unmarried couples living together as husband and wife

11.1 Joint tenants

If you have a joint tenancy and one tenant dies, the tenancy usually continues in the name of the surviving tenant or tenants. This happens automatically, via a process called '*survivorship*'. The surviving tenant(s) are responsible for paying the rent in full.

If the surviving tenant(s) are not actually living in the property, their rights are affected. If the tenancy is regulated and in its '*statutory*' phase, at least one of the surviving tenants must be living in the property at the time of the other tenant's death for the tenancy to continue.

If the tenancy is secure, assured or assured shorthold, it continues even if the surviving tenant(s) are not living in the property, but may become less secure. It is possible to regain security, so seek advice immediately if you are in this position.

When a joint tenancy becomes sole due to survivorship, i.e., when there is only one tenant left, that tenant is treated as a successor. If the tenancy is secure, assured, or assured shorthold, no further succession is permitted, unless the tenancy agreement states otherwise or the landlord allows it. If the tenancy is regulated, there is nothing to prevent further succession to the now-sole tenancy.

11.2 Private tenants

11.2.1 Assured (including assured shorthold tenancies)

Periodic assured tenancies (including assured shorthold tenancies) can be inherited by the tenant's spouse, civil partner, or a person who was living with the tenant as if they were their spouse or civil partner.

You must have been occupying the property as your only or principal home immediately before the tenant's death. Succession can only happen once.

As assured shorthold tenancies have limited security, it can be difficult for successors who were not previously joint tenants with the deceased tenant to assert succession rights. You could try to negotiate a new tenancy with your landlord rather than take over the existing tenancy by succession.

If the assured shorthold tenancy is fixed term rather than periodic, it should pass on according to the will of the deceased or under the laws of intestacy if there was no will.

11.2.2 Regulated (protected and statutory) tenancies

Regulated tenancies can be inherited by the tenant's spouse, civil partner, or a person who was living with the tenant as if they were their spouse or civil partner. You must have been living in the property immediately before the tenant's death.

Alternatively, a tenancy can be taken over by a member of the tenant's family if they lived in the property for the two years leading up to the tenant's death. If a member of the family other than the tenant's spouse, civil partner or partner takes over the tenancy, it becomes assured instead of regulated. Otherwise, the successor inherits a statutory tenancy.

Regulated tenancies can be passed on twice, but generally only if the first succession is to a spouse, civil partner or co-habiting partner and the second is to a person who was related to both the original tenant and their successor. The second successor gets an assured tenancy.

11.3 Local authority tenants

11.3.1 Tenancies granted before 1 April 2012

These tenancies can be inherited by a spouse, civil partner or a member of the tenant's family (including a partner the tenant lived with as if married or in a civil partnership).

A spouse or civil partner must have occupied the property as their only or principal home at the time of the tenant's death.

A member of the family (including a partner) must have lived with the tenant for at least 12 months and occupied the property as their only or principal home at the time of death. If there is more than one potential successor, the spouse or civil partner has priority.

If you succeed to a tenancy after someone's death and are not the spouse or civil partner of the deceased tenant, the authority can ask the court for permission to move you to suitable alternative accommodation.

They can only do this if the property is larger than you need and they gave you written notice between six and 12 months after the tenant's death. The court may only order possession if it is reasonable to do so.

A tenancy can only be passed on once in this way.

11.3.2 Tenancies granted on or after 1 April 2012

If a tenancy (secure or flexible) was granted on or after 1 April 2012, succession rights are more limited. A tenancy can only be inherited by a spouse, civil partner, or person living with the tenant as if they were their spouse or civil partner. However, the tenancy agreement may extend this right to other family members.

11.4 Housing association tenants

Periodic assured tenancies granted by housing associations (including assured shorthold tenancies) can be inherited by the tenant's spouse, civil partner, or a person who was living with the tenant as if they were their spouse or civil partner. The successor must have occupied the property as their only or principal home immediately before the tenant's death and succession can only happen once.

For tenancies granted after 1 April 2012, the tenancy agreement may give additional succession rights, which apply if there is no-one eligible to succeed as a spouse, civil partner etc.

For secure housing association tenancies (granted before 15 January 1989), a family member (including a live-in partner) can succeed in the absence of an eligible spouse or civil partner. They must have lived in the property for at least 12 months before the tenant's death.

There are specific rules for fixed-term tenancies granted by housing associations – seek advice if in this position.

12 Other issues

12.1 Relationship breakdown

If you are asked to leave your home by your spouse, civil partner or partner (referred to collectively as '*partner*'), you may have rights to stay temporarily or permanently. This may be the case even if the tenancy agreement is in their sole name.

If you and your partner separate and find it difficult to agree on who should keep your home, you can try mediation. This can help avoid court proceedings, but is unlikely to be appropriate if you have experienced or are at risk of domestic abuse.

Legal aid, or funding for legal advice and representation, is available for mediation, but you must meet eligibility criteria, such as being on a low income or in receipt of certain benefits. If you try mediation, make sure you understand your rights to keep your home and your potential options first. For more information, see factsheet 89, *Homelessness*.

It is important to be aware a joint '*periodic*' tenancy can be ended by one tenant serving a valid notice on the landlord. This means a tenancy that is not a fixed-term tenancy or where the original fixed term has elapsed.

Your partner does not have to obtain your consent to end the tenancy in this way and you may be unable to remain in the property. The situation may be different if you have a '*regulated*' (protected) tenancy, seek advice if you are in this position.

If your partner leaves your property but has not served a notice to quit, you must establish whether you can be made a sole tenant. It may be possible through a deed of assignment (this means your partner transfers their '*share*' of the tenancy to you), or by the creation of a new sole tenancy in your name.

Some social landlords (local authorities and housing associations) may be unwilling to do this, particularly if you are under-occupying the property. However, a social landlord is likely to be classed as a '*public body*', meaning it must comply with public and human rights law, which gives you more scope to challenge eviction.

12.2 Mortgage repossession

The property you rent may be mortgaged or your landlord may have secured other debts against its value. This gives the person who granted the mortgage or the loan, the lender, a right of possession if your landlord breaches the terms of their agreement, for example by failing to keep up with payments.

If your tenancy was granted before your landlord took out a mortgage and the lender obtains possession of the property, the tenancy is '*binding*' on the lender. This means you become the lender's tenant and pay rent to them. They cannot evict you unless they can prove a ground for possession or the no-fault procedure is available to them.

Your tenancy binds the lender if it was granted after the mortgage was taken out and with their consent, although there are specific grounds for possession that may apply in these circumstances. If your tenancy was granted without the lender's consent, it will not be binding on them and you can be evicted if they obtain possession.

You can ask the court to allow you to remain in the property for a number of months. You should be sent notices by the lender in advance of the mortgage possession hearing and before an application for a bailiff's warrant is made. This gives you an opportunity to ask the court to postpone the eviction.

12.3 Immigration status

'Right to rent' immigration checks were introduced by *the Immigration Act 2014*. Some people have an unlimited right to rent, such as British citizens and people with indefinite leave to remain. Others have a time-limited right to rent and or are disqualified from renting altogether.

You are disqualified from renting if you are not a British citizen and:

- you require leave to enter or remain in the UK but do not have it, or
- you have leave to enter or remain in the UK subject to a condition that you are disqualified from renting.

Private landlords in England must carry out pre-tenancy checks on all prospective adult occupiers of a property to ensure they are not disqualified from renting. They must carry out follow-up checks if an occupier has a time-limited right to rent. For more information, see section 11 of factsheet 63, *Finding private rented accommodation*.

If you or a member of your household is disqualified from renting, your security of tenure is affected.

If you are an assured (including assured shorthold) or regulated tenant, there is a ground for possession allowing your landlord to start the eviction process if informed that you, or an adult living with you, is disqualified. This is a '*mandatory*' ground for assured tenants and a '*discretionary*' ground for regulated tenants.

If your landlord is told all members of your household are disqualified from renting, they do not have to get a court order for possession to evict you. They must serve a notice terminating your tenancy. Once this expires, the landlord can '*peaceably*' evict you, although they may choose to apply for a bailiff's warrant to avoid any risk of illegal eviction.

Useful organisations

The law relating to rights for tenants is complicated. This factsheet aims to give you basic information about your rights but in many cases, you may want to get more detailed advice from a specialist adviser.

Citizens Advice

www.citizensadvice.org.uk

Telephone 0800 144 8848

Helps people resolve their money, legal and other problems by providing free, independent and confidential advice. Details of your local office can be found on the website.

Department for Levelling Up, Housing and Communities (DLUHC)

<https://www.gov.uk/government/organisations/department-for-levelling-up-housing-and-communities>

Telephone 030 3444 0000

Website has useful information on planning laws, tenants' rights and environmental protection.

Housing Ombudsman Service

www.housing-ombudsman.org.uk/

Telephone 0300 111 3000

Investigates complaints about landlords. Membership is mandatory for social landlords registered with the Regulator of Social Housing. Membership is voluntary for private landlords and very few are members.

Law Centres Network

www.lawcentres.org.uk

Telephone 020 3637 1330

Supports a national network of community law centres. They can tell you if there is a community law centre in your area and signpost you to other legal advice providers if not.

Local Government and Social Care Ombudsman (LGSCO)

www.lgo.org.uk

Telephone 0300 061 0614

Investigates complaints about injustice arising from poor administration by local authorities.

Regulator of Social Housing

www.gov.uk/guidance/about-the-regulator-of-social-housing

Telephone 0300 124 5225

Regulates registered providers of social housing, including local authority landlords and housing associations. It sets a number of standards that providers are expected to meet, but only intervenes in serious cases.

Shelter

www.shelter.org.uk

Telephone 0808 800 4444 (free call)

A national charity providing telephone advice to people with housing problems on tenancy rights, homelessness, repairs and housing benefit.

Your local authority

www.gov.uk/find-local-council

If you are not a local authority tenant and are having problems with your landlord, the authority may have a tenancy relations officer who can help you. Whoever your landlord is, the authority must ensure that advice and information about homelessness and the prevention of homelessness is available to you free of charge. They may have a duty to help you if you become homeless or are threatened with homelessness.

Age UK

Age UK provides advice and information for people in later life through our Age UK Advice line, publications and online. Call Age UK Advice to find out whether there is a local Age UK near you, and to order free copies of our information guides and factsheets.

Age UK Advice

www.ageuk.org.uk

0800 169 65 65

Lines are open seven days a week from 8.00am to 7.00pm

In Wales contact

Age Cymru Advice

www.agecymru.org.uk

0300 303 4498

In Northern Ireland contact

Age NI

www.ageni.org

0808 808 7575

In Scotland contact

Age Scotland

www.agescotland.org.uk

0800 124 4222

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