



The possession procedure under **Section 8 of the Housing Acts 1988 & 1996** is known as the **Section 8 Route** and is available to landlords where the tenant is in breach of one or more terms of his tenancy – breach of contract - it's a fault based system.

The Section 8 Route gives **8 mandatory** and **9 discretionary** grounds for possession, but the results are not always straightforward – you might not get the result you want, i.e. a possession order and/or a money order.

Whereas the **Section 21 Route** cannot proceed until *both* the notice period (2 months) *and* the fixed-term have expired, the s8 route to court can be taken **during the fixed-term**, once the s8 notice period has expired – 2 weeks for many of the grounds.

Regardless of whether you progress to court, a Section 8 notice can be a very effective way of **asserting your authority** as a landlord or agent and the notice is effective for one whole year. It puts the tenant **on notice** that there has been a breach of contract and that you are prepared to take the matter to court if necessary.

The landlord or agent can start legal proceedings once the Section 8 Notice has expired.

You must then complete County Court Forms N5 & N119 – see the Court Service Web Site – Information > Housing > Possession.

**Form N5 - Summons for Possession** of a residential investment property. One copy is for the court and one copy for each defendant.

**Form N119 - Particulars of Claim for Possession** in cases of non-payment of rent

Paragraph 3b of form N119 can be used to add further grounds for possession in addition to rent arrears.

You must specify the **ground/s that you intend to rely on to claim possession, arrears etc.** The notice must also give precise details of the breach as set out in one or more of the 17 Grounds for Possession (Housing Acts 1988 & 1996) and it's a good idea to use the exact wording as set out in the Act.

[http://www.legislation.gov.uk/acts/acts1988/ukpga\\_19880050\\_en\\_1](http://www.legislation.gov.uk/acts/acts1988/ukpga_19880050_en_1) Schedule 2, Grounds for Possession of a Dwelling House – there are 16 Grounds listed.

Ground 17 (Landlord was induced to grant the tenancy by a false statement made knowingly or recklessly) was introduced in the Housing Act 1996, Chapter 2, s102.

[http://www.opsi.gov.uk/acts/acts1996/ukpga\\_19960052\\_en\\_1](http://www.opsi.gov.uk/acts/acts1996/ukpga_19960052_en_1)

## Notes on Serving a Section 8 Notice and Court Procedure

Unlike the s21 route, if successful the s8 route can give you a **possession order and a money order** for arrears of rent without separate hearings, but if possession is your priority you may not achieve this.

In the case of **rent arrears** (Ground 8) tenants can undermine your claim by paying off some of the arrears (*arrears must be 8 weeks at the time of the notice and at the hearing*).

Another ruse is that tenant/s may claim repairs have been requested and not carried out or that the landlord has been harassing them.

Where tenants are able to gain the sympathy of a judge, he or she may grant a **suspended possession order**. This gives the tenant/s time to “mend their ways” and comply with the terms of the suspension, in which case the possession order will not be enforced.

You need to consider carefully which route to use - the **length of time the tenancy has still to run** will be a major factor here. For practical purposes it may be more cost effective in the long run to await the end of the term and to take the certainty of the s21 route, even if it is necessary to take further action later in the Small Claims Court to recover rent arrears and dilapidations costs etc.

### **Rent Arrears**

Non-payment of rent, some rent arrears and persistent delays in paying rent due are perhaps the most common reasons for taking tenants to court using the Section 8 route, especially if these problems occur early in the fixed-term.

At the first sign of trouble of this kind the landlord/agent should contact the tenant to establish the cause.

If necessary serve a s8 notice citing grounds 8, 10 and 11 and a S21 notice (see Notes on Servicing S21), the latter giving two months notice effective after the last day of the tenancy period.

**Ground 8** - *Both at the date of the service of the notice under section 8 of this Act relating to the proceedings for possession and at the date of the hearing—*  
(a) *if rent is payable weekly or fortnightly, at least thirteen weeks' rent is unpaid;*  
(b) *if rent is payable monthly, at least three months' rent is unpaid;*  
(c) *if rent is payable quarterly, at least one quarter's rent is more than three months in arrears; and*  
(d) *if rent is payable yearly, at least three months' rent is more than three months in arrears; and for the purpose of this ground “rent” means rent lawfully due from the tenant.*

**Ground 10** - *Some rent lawfully due from the tenant*  
(a) *is unpaid on the date on which the proceedings for possession are begun;*

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*(b)except where subsection (1)(b) of section 8 of this Act applies, was in arrears at the date of the service of the notice under that section relating to those proceedings.*

**Ground 11** - *Whether or not any rent is in arrears on the date on which proceedings for possession are begun, the tenant has persistently delayed paying rent which has become lawfully due.*

### **Evidence:**

Once a tenant gets into trouble with rent arrears you should send a **polite reminder letter** and start to send out regular rent statements and schedules of arrears. The schedule is rather like a bank statement, simply (ideally a spread-sheet) an account listing:

Date - Rent Due - Rent Paid - Balance Due (showing outstanding running balance)

This is important evidence to present in court.

**Your own bank statements** will also be needed to show that payments have stopped, therefore always show a Reference to each tenant on ingoing amounts – for example, a standing order payment appearing on your statement might have a reference – Jones 249 – indicating that Jones at 249 has paid x amount on the given date.

### **Nuisance, Noise and Anti-Social Behaviour**

Nuisance, noise, general anti-social behaviour and damages are **contentious issues** and notoriously difficult for a landlord to prove. It's generally only worth pursuing the s8 route as far as the courts in these circumstances if the tenancy has a long period left to run, though landlords/agents must bear in mind their duty of care to neighbours.

If you are affected by these problems **collect all the evidence you can** by keeping a diary of disturbances and reportings to the police and take statements from witnesses.

### **Length of Tenancy**

It's a reminder that issuing long tenancies – more than six months – can introduce an **element of risk for landlords** if the tenant is not proven in performance.

**Harassment** - never be tempted to threaten a tenant or interfere with the property in any way or you could be accused of harassment. Under the **Protection from Eviction Act 1977** there are quite severe penalties for landlords convicted of harassment, which is a criminal offence.

If relations become strained it's best to **avoid personal contact** with your tenant/s without a witness being present, or better still, use a third party such as a letting agent or solicitor. Otherwise you may be wrongfully accused of harassment, which can be very difficult to disprove.

**Voluntary Surrender:** If the tenant will not leave voluntarily of his own free will by **surrendering the tenancy** (usually confirmed by return of keys and you should get something in writing if possible) the only way you can lawfully evict a troublesome tenant is by serving notice and obtaining a **possession order**. A court bailiff must then enforce this if physical eviction is necessary.

**Re-housing:** Remember, if your tenant is looking to the local authority for re-housing you could remind them in your S8 notice that, as they are in breach of contract with you, the council may not be prepared to re-house. However, tenants will always be advised by councils not to leave until they are evicted – otherwise they make themselves homeless and therefore the council has no obligation to re-house.

**Abandonment:** Difficulties arise where a tenant abandons the property (or appears to do so) perhaps owing a substantial amount of rent. Further complications arise if the tenant leaves possessions behind.

Re-entering, changing locks and even re-letting the property in these circumstances can be **very risky for a landlord** – it is possible this could result in both criminal charges and punitive civil damages.

The correct and the only safe procedure is to obtain a possession order having **served an s21 notice**, which must have expired.

There is a defense for **taking over the property** in such circumstances but it's by no means fool proof. You must be able to prove to a Crown Court Jury that you had good reason to believe that the **tenancy had been abandoned** and that you had taken all reasonable steps to contact the tenant.

Posting a notice on the premises, contacting the local authority rent officer and contacting next of kin (you should have a contact person if the tenant completed a [Tenancy Application Form](#)) are all reasonable steps you could take, but is no guarantee you won't be prosecuted for **Unlawful Eviction** or **Harassment**, should the tenant return. It has been known for legal savvy duplicitous tenants to deliberately entrap landlords in this way with a view to getting damages.

#### **The Main Points of the Section 8 Route (from the Housing Act):**

- *the landlord or, in the case of joint landlords, at least one of them, has served on the tenant a notice in accordance with the relevant section (s8) and the proceedings are begun within the time-limits prescribed and clearly stated on the notice*
- *the notice must be given in the prescribed form – there forms are available from legal stationers or downloaded from this website*

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- *The notice must specify the ground or grounds why a landlord seeks possession.*
- *The Housing Acts provide 18 grounds that a landlord can use to recover possession under s8. (Ground 14a applies only to Registered Social Landlords. The landlord must specify in the notice which ground he intends to rely on and give precise particulars of the ground or grounds which apply.*

The Section 8 Route can be used for both Assured Shorthold Tenancies *and* Assured Tenancies, whereas the Section 21 Route can only be used for ASTs.

If you do decide to go the Section 8 Route make sure a Section 21 Notice has been served either before or *with* the Section 8 Notice in case the courts decide to suspend the possession order under the s8 route.

**Periods of Notice Required** - Serving a Section 8 Notice - You must serve notice seeking possession of the property on the tenant *before* starting court proceedings. You need to give the following periods of notice:

Grounds 3, 4, 8, 10, 11, 12, 13, 15 or 17 – at least 2 weeks

Grounds 1, 2, 5, 6, 7, 9 and 16 – at least 2 months

For ground 14 – you can start proceedings as soon as you have served notice.

**Serving the Notice.** Notices can be served (1) in person, (2) at the property (through the letter box) (3) by mail. Remember to keep copies of everything.

- (1) **Serving in person** is perhaps the preferable method as there's no doubt about the actual date of service, but have a witness.
- (2) **Service at the Property** through the letter box is also a good method, but a witness is also important here.
- (3) **Service by mail** is an acceptable method (first class post - next day delivery) but allow 3 working days for delivery and use "**Proof of Postage**" This means the Post Office will give a receipt of postage and the address to which the notice is sent. This will be accepted by the court if you have a receipt.

Some advise posting from 2 different post offices – thus preventing the defendant claiming the notice was not received – unlikely to be "lost in the post" twice!

**Recorded Delivery** can cause problems if the intended recipient refuses to sign. This means it's returned to you, by which time you may have missed the trigger date and you may then need to give an extra month's notice in the case of s21 notices.

### **How long will it take?**

The courts are not fast in the way they process claims and there can be significant delays involved. The overall time it takes to remove a tenant will to a large extent depend on the tenant and the work-load of your local court.

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Tenants may leave on receipt of your notice, when they receive a court summons, or they may stick it out to the bitter end – even asking the judge to delay possession and waiting until the bailiff comes knocking, each stage adding more delays. These timings are a rough guide only, for an average overall time of 2 to 3 months:

Notice period:	14 days	
Time between application and hearing date, on average		2 months
Grant of Possession Order	14 days	
Bailiff's removal	14 days	

Note: The courts and judges are notoriously slow and inconsistent (*not all judges are fully up-to-speed on tenancy matters*) in the way they review these cases and will throw out cases on the slightest pretext or rule in the tenant's favour, sometimes wrongly. Take care to get even the minutest details correct on notices and paperwork, and be prepared to challenge if necessary.

If you are not confident or you are not prepared to do your homework on this, which is vital, consider using an eviction specialist or a solicitor. As a rough guide, the full process will cost in the region of £1000 if someone does it for you.

### **Court Hearing and Psychology:**

Landlords get a bad press generally – it's not the most revered occupation in society - and don't always get much sympathy in court, as often do their tenants.

Try hard to avoid the "Rigsbyesque slumlord" syndrome by presenting yourself as a smart-suited efficient business person with a not unreasonable approach to your tenants and the law.

Present your case clearly and concisely with well organised statements and evidence.

Avoid making personal slights and insults about your tenant/s or responding to these in your tenant's defense – stick strictly to the facts.

Judges will thank you for making their job easier – they don't want the task of reading pages and pages of twittering on about what happened in the tenancy. For example, the tenant owes rent - that's enough!

Generally these hearings are quite informal so you don't have to be a Philadelphia lawyer to win your case!

Once you've done it successfully, it does give you a tremendous sense of satisfaction and the next time, it's a piece of cake!

## Notes on Serving a Section 8 Notice and Court Procedure

See also:

LandlordZONE FAQ - [www.LandlordZONE.co.uk/FAQ](http://www.LandlordZONE.co.uk/FAQ)

LandlordZONE Forums: [www.LandlordZONE.co.uk/forums](http://www.LandlordZONE.co.uk/forums)

[Civil Procedure Rules - CPR 55 - Possession Claims](#)

LandlordZONE Topic - [Grounds for Possession](#)

[Court Service – Information for Landlords](#)