

'My landlord wants me out'

protection against harassment and illegal eviction



housing

This booklet does not provide an authoritative interpretation of the law; only the courts can do that. Nor does it cover every case. If you are in doubt about your legal rights or obligations you would be well advised to seek information from a Citizens Advice Bureau, your local authority's housing advice service or a law centre, or to consult a solicitor. Help with all or part of the cost of legal advice may be available under the Legal Aid Scheme.

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'My landlord wants me out'

The law protects people living in residential property against harassment and illegal eviction. It does this in two ways: by making harassment and illegal eviction a criminal offence, and by enabling someone who is harassed or illegally evicted to claim damages through the civil court. This booklet describes some of the forms harassment may take and sets out what people can do if they are being harassed or are threatened with illegal eviction. It does not deal with harassment of landlords by their tenants, which is covered to a limited extent in a separate booklet, *Letting Rooms in Your Home*. Throughout this booklet, (with some exceptions), the terms 'landlord' and 'tenant' are used. However, the law against harassment applies to all people living in residential property; it applies to them whether they have tenancies or licences, and it applies to the acts of anybody acting on behalf of a landlord and, in some cases, to people who may or may not be connected with a landlord.



The Protection from Eviction Act 1977

The law makes it an offence to:

- do acts likely to interfere with the peace or comfort of a tenant or anyone living with him or her; or
- persistently withdraw or withhold services for which the tenant has a reasonable need to live in the premises as a home.

It is an offence to do any of the things described above intending, knowing, or having reasonable cause to believe, that they would cause the tenant to leave their home, or stop using part of it, or stop doing the things a tenant should normally expect to be able to do. It is also an offence to take someone's home away from him or her unlawfully.

The precise offences are set out in the Protection from Eviction Act 1977, which has been made stronger by the Housing Act 1988.

A person who is convicted by magistrates of an offence under the Act may have to pay a maximum fine of £5,000*, or be sent to prison for six months, or both. If the case goes to the Crown Court, the punishment can be prison for up to two years, or a fine, or both.

What is harassment?

This booklet deals only with harassment of people whom somebody is trying to drive out of their homes. Even in this context, harassment is a very broad term, used loosely to cover a wide range of activities. It can take many forms short of physical violence. It may not always be obvious to outsiders that particular sorts of activity are intended to drive the tenant from the property. On the other hand there may be cases where a landlord has good reasons for doing things which could be interpreted as harassment. There are defences in the Protection from Eviction and the Housing Acts for landlords who have good reason for acting in a particular way, or for thinking that the tenant had left the property.

* At time of going to press

A landlord, his or her agent, or someone who may or may not be connected with either of them, may do things which are distressing to the tenant and undermine their sense of security; these activities may or may not amount to harassment as it would be interpreted by the courts. Or the landlord may fail to do certain things supposed to be done under the tenancy agreement, either wilfully, because he or she wants the tenant to leave, or from simple neglect; this neglect might also prevent the tenant from enjoying his or her home. There are things the tenant can do in a wide range of circumstances, some of which are outlined below.

Where should I go for advice?

A tenant who believes that an act or omission of the landlord's is being done so as to stop the tenant enjoying, or drive him or her out of the property, should speak to the local council. There may be a tenancy relations officer who can help or there may be someone in the housing or environmental health departments who specialises in harassment issues.

Alternatively, the tenant should seek advice from a law centre, a housing aid centre, a Citizens Advice Bureau or a solicitor. The addresses of advice organisations are usually listed in the telephone directory or the local library, or can be got from the local authority. If physical violence is involved, he or she should contact the police.

Local authorities have the power to start legal proceedings for offences of harassment and illegal eviction under the Protection from Eviction Act. If the evidence justifies it, they can carry out an investigation and prosecute if they believe an offence has been committed. In extreme cases of harassment, and where the property is in poor condition, a local authority may take over the management of a house in multiple occupation (that is, where the occupiers do not live together as a single household), by making it subject to a control order. A local authority also has compulsory purchase powers which it can use in certain circumstances where there is very bad harassment.



Is this harassment?

Withdrawal of services

There is no electricity because the landlord has not paid the bill or has disconnected the supply.

A landlord may be guilty of an offence if he or she persistently withdraws or withholds services which are necessary for the tenant to be able to live in the property. Where a landlord is bound under the tenancy agreement to pay for electricity, gas and water supplies, and these are cut off because the bills have not been paid, the local authority has powers to restore the supplies, and charge the costs to the landlord.

Withholding keys

There is only one key to the property and the landlord will not issue another one. This is awkward as there are two (or more) tenants.

A landlord may, in the interests of security, want to restrict the number of keys he or she issues to occupiers of the property, and may only issue licensed keys which have a serial number and cannot be copied. In certain circumstances, not supplying a key may constitute harassment. If the absence of a key causes intolerable difficulties, and normal negotiation with the landlord fails to obtain one, the tenant should take legal advice.

Anti-social behaviour by landlord's agent

A person who is a friend of the landlord has moved in next door and is making life unpleasant for the other tenants.

Life may be made intolerable for other tenants by a tenant who indulges in anti-social behaviour, for example by making excessive noise late at night. There may be reasons for believing that the disruptive tenant is an agent of the landlord and that his or her behaviour is intended to drive the other tenants out. The tenants should check whether their tenancy agreements bind the landlord to get all tenants to behave in a tenant-like manner. Where the problem is excessive noise, the local authority has power to prevent the disturbance under Section 79 of the Environment Protection Act 1990 (as amended by the Statutory Nuisance Act 1993). For further information see DEFRA booklet *Bothered by Noise? – There's no need to suffer*.

Demand for excessive repairs

The landlord has asked the tenant to do thousands of pounds' worth of work.

The tenancy agreement should set out the responsibilities for repairs. Where these are not set out, the landlord in the case of a short lease will normally have the duties to carry out repairs described below. If a landlord presents a tenant with a list of works which the tenant believes are unnecessary, or works which are not the tenant's responsibility, he or she should seek legal advice. In some circumstances, if the works **are** the tenant's responsibility, he or she may be eligible for an improvement grant. Check with the local authority.

Failure to carry out repairs

The landlord has neglected the property so badly, he or she seems to want to drive the tenants out by letting the place fall into rack and ruin.

For general information, see the booklet *Repairs*. In the case of most short leases the landlord is responsible under the Landlord and Tenant Act 1985 for keeping in repair:

- the structure and exterior of the home, including the drains, gutters and external pipes;
- the installations for the supply of water, gas and electricity and sanitation, which he or she must keep in proper working order;
- the installations in the home for space heating and water heating.

The landlord is not liable for repairs which have been made necessary because the tenant has misused the property or installations; sometimes the landlord is not responsible because he or she does not own a particular part of the property or cannot get access.

A short lease is one granted for less than seven years; this includes periodic tenancies, eg from week to week or month to month, even where the tenant has been living in the property for more than 7 years.

A landlord may have responsibilities under longer leases, depending on the terms of the agreement.

A landlord's failure to carry out repairs may have a reasonable explanation; for example, he or she may genuinely not think that the repairs are necessary, or may be too ill to carry them out. Where the tenant has made reasonable approaches to the landlord and the landlord has failed to carry out the repairs, the tenant may wish to take matters further. Local authorities have powers to oblige a landlord to carry out repairs. These powers apply to:

- major repairs, and
- minor but significant repairs, which could for example present difficulties for a tenant who is elderly or handicapped.

A council may serve a notice on a landlord requiring him or her to carry out the necessary repair or works. If the landlord then fails to do so, the council may carry out the works itself.

If a landlord is taken to court for refusing to comply with a local authority repairs notice served on him or her by the local authority, it is not necessary to name the person who complained originally. The tenant could, of course, also start his or her own court proceedings.

In the past it has been possible for a landlord to delay completing repairs in the knowledge that the inconvenience of works in progress may drive the tenant out. Now the authority can stipulate a start date and a completion date for the required works, so that they are completed in a reasonable time.

Repairs which are not completed

The landlord started to do repairs and left them incomplete. The place is unfit to live in.

A landlord normally has a right of access to the property to carry out essential repairs. He or she should make arrangements with the tenant to gain access at a convenient time. A landlord (or builders acting on the landlord's behalf) may start major works to the property, whether or not they have been requested by the tenant, and leave them unfinished. This may mean that the disruption, and possibly the disconnection of services involved, causes considerable inconvenience to the tenant. Such failure to complete may not be the landlord's responsibility, and it may be owing to circumstances beyond their control. The tenant should take advice as described on page 4.

Threats and physical violence

The landlord has used violent/sexually/racially abusive behaviour.

If a landlord uses language or physical behaviour which is threatening or violent against the tenant, the latter should consult his or her local authority or other advice centre. The tenant should call the police where there is actual physical assault. The abusive behaviour could be prolonged and systematic, or could consist of isolated incidents. Where it is sexually or racially motivated, there may be grounds for action under legislation dealing with sexual and racial harassment. Where the harassment is so severe that it could cause the tenant to leave home, there may be grounds for action under the Protection from Eviction Act 1977.



Illegal eviction

What is illegal eviction?

A landlord's right to get his or her property back from a residential tenant can normally only be enforced through the courts. A landlord seeking possession from an assured or assured shorthold tenant must tell that tenant of his or her intentions to start court proceedings by serving a notice of seeking possession on the tenant. Depending on the grounds on which the landlord is seeking possession, the period of notice will be zero weeks, two weeks or two months except in a few cases where the tenancy agreement stipulates longer notice. A landlord seeking possession from most other kinds of residential tenants

or licencees must serve a notice to quit giving at least 4 weeks' notice. In either case, the tenant is not required to leave the property until the notice expires, and even then may not be evicted without an order of the court. For fuller information, see housing booklets *Assured and Assured Shorthold Tenancies: A guide for landlords*; or *Assured and Assured Shorthold Tenancies: A guide for tenants*; or *Renting Rooms in Someone's Home*; or *Letting Rooms in Your Home*; and *Notice That You Must Leave*.

Do all occupiers need a court order to evict them?

The Housing Act 1988 now makes it a general requirement for a licensor to obtain a court order before he or she can evict a licensee. However, certain licences and tenancies are excluded from this requirement. They are, broadly, licences or tenancies granted on or after 15 January 1989:

- by resident landlords to people with whom they or a member of the landlord's family share accommodation, provided it is in their only or principal home;

(‘Accommodation’ in this context does not include staircases, storage areas, corridors and means of access)

- to trespassers (when granted as a temporary expedient);
- to those occupying a property for a holiday, or occupying it rent-free;
- licences granted to people living in certain publicly funded hostels.

However, although it is not necessary to get a court order to evict someone in the excluded categories, there is a common law requirement for a landlord to serve a periodic tenant with notice equivalent to the period of the tenancy.

This means for example that if the tenancy was from month to month, the landlord must give a month's notice. (In the case of yearly tenancies, he or she must give six months' notice.) At common law, a licensee must be given notice which is reasonable in all the circumstances. See *Notice That You Must Leave* and *Letting Rooms in Your Home*.

Is it a licence or a tenancy?

Whether an agreement is a residential licence or tenancy will depend on the facts of that agreement, not upon what it is called. Normally, if it is a tenancy, the tenant or joint tenants should have exclusive possession. This means that they must not share all of it with some other person who has been granted a separate right to be there. However, these are not the only circumstances to be taken into account and in the event of a dispute the courts will decide the true nature of the agreement.

If the agreement is a licence, and is not in one of the excluded categories outlined on page 9 the landlord will (except in certain cases such as some agricultural licences) have a contractual right to possession when the licence ends; he or she will still need a court order to evict. An agreement which is called a licence may, however, on the facts of the letting, actually be a tenancy. If a court

should find that the landlord has not created a licence but a tenancy, the landlord may have given the occupant the full security of an assured tenancy.

What sort of tenancy is it?

The Housing Act 1988 created new forms of letting: the assured and assured shorthold tenancy and the assured agricultural occupancy. These are now the standard forms of letting to new private tenants. However, tenants who were living in their present home before 15 January 1989 (as well as tenants in unfurnished accommodation provided by a resident landlord under an agreement made before 14 August 1974) may very well have a regulated tenancy under the Rent Act 1977. For further details see housing booklet *Regulated Tenancies*. New lettings to agricultural workers housed by their employer are in most cases likely to be assured agricultural occupancies. However, agricultural tenants or licensees who were housed by their employer before 15 January 1989 may have protection under the Rent (Agriculture) Act 1976.

Can the landlord end the tenancy by refusing to accept the rent?

A landlord should end a periodic tenancy in the ways described above. Returning the rent to the tenant *does not* bring the tenancy to an end. If a landlord does this, the tenant should keep the rent, perhaps put it in a bank, building society or other safe place, and should keep a record of any correspondence concerning his or her offer to pay the rent and the landlord's refusal to accept it. The tenant should continue to offer the rent, and should seek advice from a solicitor, housing aid centre or Citizens Advice Bureau.

Can a tenant be compensated for having been harassed or illegally evicted?

Someone who is protected by the Protection from Eviction Act 1977 may go to the county court to claim damages if they are harassed or illegally evicted. Under the Housing Act 1988, for cases of illegal eviction and of harassment which cause a tenant to leave his or her home, the court may award damages based on the profit made by a landlord from illegally evicting his or her tenant. Normally the market value of an untenanted property is greater than the value of the property with the tenant in it. In some cases, the difference in value could be considerable. The court, in assessing the damages to be awarded to the tenant, may take the development value of the property into account, in certain defined ways.

In certain circumstances a tenant may take legal action against his or her landlord for 'breach of the covenant for quiet enjoyment' – in other words, the landlord has broken a term which every tenancy agreement contains (whether set out in words or not) that the tenant should be able to enjoy his or her home in peace. The tenant may also have grounds for damages on other counts according to the nature of the case.

A tenant may want to return home despite the events that have caused him or her to leave. If **a landlord offers** to let the tenant return to his or her home before court proceedings are disposed of, and the tenant goes back, he or she will not receive the damages under the 1988 Housing Act, but may receive other damages which may be lower.

If **the court orders** the landlord to let the tenant go back, he or she will not receive damages under the 1988 Housing Act.

A landlord who evicts the tenant without going through the proper legal processes because he or she consider that bad behaviour on the tenant's part has provoked him or her, may say so in defence in court. The court may reduce the damages described here *if*:

- it considers that the tenant's behaviour or the behaviour of anybody living with the tenant, justifies awarding him or her less than the full damages; *or*
- it considers that, if the landlord did offer to let the tenant back into his or her home before the court proceedings began, it would have been reasonable for the tenant to accept that offer.

A landlord sometimes obtains an order for possession from the court by misrepresenting or concealing the true facts. If this happens, and the tenant proves this in court, the court in most cases can order the landlord to compensate the former tenant.

If the tenant does not want to go to court

Where harassment is occurring as a result of a dispute between landlord and tenant it should not be necessary in all cases to take the matter to court. There may be cases where the landlord is willing to stop his or her objectionable activities after a letter from the local authority or the tenant's solicitors. Tenancy relations officers, who are employed by some local authorities, try to resolve disputes between landlords and tenants. Any housing advice centre and Citizens Advice Bureau should also be able to give advice on landlord and tenant issues. However, in the end, a tenant may find it necessary to go to court to enforce his or her rights. This is not necessarily as difficult or offputting as the tenant might imagine. The names of local solicitors who have experience in landlord and tenant law may be available from the Citizens Advice Bureau or other independent advice agencies. They will also be able to advise the tenant whether he or she is eligible for legal aid.



Further information

The other booklets referred to in this booklet are:

Letting Rooms in Your Home:

A guide for resident landlords

Renting Rooms in Someone's Home:

A guide for people renting from resident landlords

Notice That You Must Leave

Regulated Tenancies

Assured and Assured Shorthold Tenancies:

A guide for tenants

Assured and Assured Shorthold Tenancies:

A guide for landlords

If you would like further copies of this booklet, please contact Communities and Local Government Publications Tel: 0300 123 1124, Fax: 0300 123 1125. E-mail: communities@capita.co.uk

Publications are also available from the Communities website: www.communities.gov.uk

Alternative formats can be requested from: alternativeformats@communities.gsi.gov.uk

You may also be interested in reading *Bothered by Noise? – There's no need to suffer* which is available from the Department for Environment, Food and Rural Affairs.

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