

Recovering possession of abandoned property

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Where an assured or secure tenant occupies a property as his only or principal home (see *Islington LBC v Boyle* [2011] EWCA Civ 1450; [2012] PTSR 1093), he shall have security of tenure (s.81 Housing Act 1985; s.1 Housing Act 1988) so that his landlord will only be entitled to recover possession on one of the statutory grounds (s.82 HA 1985; s.5 HA 1988). Where he ceases to so occupy, he will lose security and may have the tenancy terminated by service of notice to quit. Where he parts with possession of the property and/or sub-lets the whole of it, his security is irrevocably lost (s.93 HA 1985; s.15A HA 1988). Such tenants who, knowing it to be a breach of their tenancy agreement (or acting dishonestly), may thereby commit a criminal offence punishable by up to two years' imprisonment and/or an unlimited fine (ss.1-2 Prevention of Social Housing Fraud Act 2013; s.32 Criminal Law Act 1977; s.85 Legal Aid, Sentencing and Punishment of Offenders Act 2012).

A landlord who unlawfully deprives a residential occupier of any premises of his occupation will commit a statutory tort (s.27(1) HA 1988) and a criminal offence punishable by an unlimited fine (s.1(4) Protection from Eviction Act 1977; s.32 CLA 1977; s.85 LASPO 2012). An owner of property will commit a statutory tort where he seeks to recover possession against a residential occupier without a possession order (s.3(1) PEA 1977; *Warder v Cooper* [1970] Ch 495).

However, the requirement to obtain a possession order is not absolute.

An unlawful eviction prosecution can be defended on the basis that the person carrying it out reasonably believed that the occupier had ceased to occupy the premises (s.1(2) PEA 1977).

Once the Immigration Act 2016 comes into force (s.95 IA 2016), a landlord upon whom the Secretary of State has served notice regarding the occupier's disqualification from renting will be able to serve notice terminating the tenancy within 28 days (s.33D IA 2014). He will not be required to seek a possession order nor instruct a bailiff (s.33E IA 2014).

From commencement of Part 3 of the Housing and Planning Act 2016 (s.216 HaPA 2016), private landlords in England (including private registered providers of social housing - s.62 HaPA 2016) of abandoned premises let under an assured shorthold tenancy may seek possession without a court order where (i) depending on the period of the tenancy, there are 8 weeks' or 2 months' or 1 quarter's rent (lawfully due (s.48 Landlord & Tenant Act 1987)) arrears (s.58 HaPA 2016); (ii) the landlord has given 3 warning notices; and (iii) no tenant, named occupier or deposit payer ("the relevant people") has responded in writing to any of the notices (s.57 HaPA 2016).

Each warning notice must explain that the landlord believes the premises to have been abandoned; that one of the relevant people must respond in writing before a specified date (which must be at least 8 weeks after the first warning notice) if the landlord's

belief is incorrect; and that the landlord proposes to bring the tenancy to an end (s.59 HaPA 2016). The first warning notice may be given prior to the rent condition being met. The second warning notice must be given 2-4 weeks after the first warning notice and at a time when the rent condition is met. Both the first and second warning notices may be given by personal service; alternatively, by being left at or sent to the relevant property, every other UK address given by the relevant people to the landlord as a service address, and every UK address of any tenant's guarantor (s.61 HaPA 2016). The third warning notice must be fixed to a conspicuous part of the property at least 5 days before the specified date.

Within 6 months of service of the notice terminating the tenancy, the tenant may apply to the court for an order reinstating the tenancy if he has a good reason for having failed to respond to the warning notices (s.60 HaPA 2016).

Landlords frequently ask whether they can recover possession of residential premises when they are "sure" that the occupier has abandoned them. The answer need no longer be "no".

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