

“ Plain speaking legal advice ”

**Business Land & Property Disputes  
- Landlords**

[www.herrington-carmichael.com](http://www.herrington-carmichael.com)

This publication is written as a general guide only. It is not intended to contain definitive legal advice, which should be sought as appropriate in relation to a particular matter.

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### 1. Problems with tenants in your residential property portfolio

Tenants who get into rent arrears or otherwise breach the terms of their Assured Shorthold tenancies are going to soak up a lot of your management time. If you decide that you want the tenant out, you will need a Court Order. If the right Notices have not been served before that Court action starts, you could find your possession claim is thrown out by the Court on a technicality.

Do you write off the arrears in order to get possession quickly or is the tenant good for the debt? Using the Accelerated Possession procedure in the Court will generally secure a possession order much faster than the full process for possession and outstanding rent. If you think the tenant might be able to pay the arrears, you can issue a separate claim but you need to know where the tenant is now living. We can help you decide what is the most realistic and cost effective option.

If the tenant ignores the possession order you will need to obtain a bailiffs warrant so that the Court bailiffs attend to forcibly remove the tenant. You will also need to arrange for a locksmith to attend to change the locks and avoid the tenant going back in.

If the tenant is hoping to be re-housed by the Local Authority they will be told to sit tight and wait for the Possession Order to be served by the Landlord. Some Local Authorities will not re-house until the bailiffs are about to attend.

If the tenant has left possessions in the property following a Possession Order, your obligation to keep them safe is generally limited to the following 7-14 days. In that period the tenant must be able to make contact with you to arrange to collect them. After that you can dispose of them.

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## **2. Problems with tenants in your commercial property portfolio**

In the current economic climate, dealing with tenants of business premises in financial difficulties may need a more creative solution than simply forfeiting the lease and finding a new tenant. If your tenant has gone bust - check the lease. If they were not the original tenant, but took an assignment from your original tenant you may be able to go back to the original tenant and recover the rent from them instead.

Notices have to be served within a strict timescale however or you lose the right to recover rent from them. The original tenant may want to take an overriding lease enabling them to go back into the premises, even if only to try and find a new tenant to assign it to.

Lease renewals under the 1954 Landlord & Tenant Act are less complicated than they used to be in relation to the legal obligations, but Notices still need to be served in strict time limits. If you and your surveyor cannot thrash out a new deal with your tenant but you are willing to renew and they want to take a fresh lease, the ultimate choice will be whether to lodge the application with the Court. Generally speaking the Court is very happy for the parties to stay (suspend) those Court proceedings in order to use the PACT Arbitration scheme to determine the terms of the new lease and the rent to be paid.

Both parties get the benefit of a timetable and a process which will produce a decision that does not rely on full agreement, but without the expense of a full blown defended final Court Hearing.

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If the tenant has decided not to seek a renewal, there will be dilapidations issues. Generally they can be dealt with quite happily between the parties and their respective surveyors. However S146 notices need to be served with Schedules of Dilapidations and ultimately if no agreement can be reached, Court action commenced. The Court will expect the parties' surveyors to have complied with the RICS Dilapidations Protocol prior to court action commencing.

If your tenants has the legal entitlement to call for a new lease, but you don't want to grant one, there are only a limited number of statutory reasons that you can rely upon - see below. Understanding what your options are at an early stage is essential because you can only rely on a ground set out in the Notice at the outset.

- The state of the premises as a result of the tenant's failure to repair and maintain.
- The persistent delay in the tenant paying rent.
- The tenant's substantial breaches of its obligations under the existing lease.
- You have offered to provide or obtain for the tenant alternative premises on reasonable terms which will be suitable for the tenant having regard to the nature of its business and the facilities required.
- The tenancy is a sub let of part only of the premises and on expiry of the tenancy you intend to let or otherwise dispose of the property as a whole.
- You intend to demolish or reconstruct or carry out substantial building works to the property.
- You intend to occupy the property in order to carry out your own business or as your residence.

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