

A SHELTER GUIDE

Rent arrears



Shelter

About Shelter

Shelter is a national campaigning organisation that every year works with over 100,000 homeless and badly housed people. We have two aims. One is to prevent and alleviate homelessness by providing information, advice and advocacy for people with housing problems and by piloting new solutions to homelessness and bad housing. The second is to campaign for lasting changes to housing related legislation, policy and practice.

Shelter's practical work includes providing expert information, advice and advocacy through our network of housing aid centres and projects and through Shelterline, a free, national helpline, providing advice and information 24 hours a day. We also provide online information about solutions to common housing problems via the Shelternet website **www.shelternet.org.uk**.

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Rent arrears

This guide is for people who are having problems paying their rent, or who are at risk of losing their home because they owe their landlord rent. It only gives an introduction to the law. If you need further advice about your rent problems, or have received legal papers from your landlord or the court, contact a housing aid centre, law centre, housing solicitor or citizens advice bureau. If you are having problems paying your mortgage, see the Shelter guide 'Mortgage arrears'.

This guide covers the law in England and Wales. If you live in Scotland or Northern Ireland the law is different and you should contact Shelter Scotland or the Housing Rights Service in Northern Ireland (see 'Organisations' at the back of this booklet).

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What are rent arrears?

If you don't pay all or part of your rent, you owe money to your landlord. This debt is known as **rent arrears**. People often get into rent arrears because of:

- a change in financial circumstances, such as losing a job
- delays with benefits
- splitting up with a partner
- having to meet unexpected expenses.

If you are getting behind with your rent, or think that you might not be able to pay your rent in the future, it's important to act quickly to avoid the risk of losing your home by being evicted. It is often possible to sort things out. If you don't take action, the situation is likely to get worse. Your landlord could take you to court to get the money you owe, and/or evict you from your home. You might have to pay court costs as well as the money you owe if this happens.

Even if you end up in court, there is often a solution. As soon as you can, get advice from a housing aid centre, housing solicitor or citizens advice bureau. They can explain your options and help you decide what to do. Don't wait until the last minute. Act as quickly as possible or your options may be very limited.

Which tenants are most at risk?

Most private tenants have assured shorthold tenancies. It is usually easy for a landlord to evict an assured shorthold tenant, and the landlord doesn't usually need to prove a legal reason for doing so.

Some new council tenants have introductory tenancies, which means that they are living in the property for a trial period (usually one year, but this can vary). If you miss rent payments during that time the council may try to evict you. Introductory tenants can be evicted very easily providing the council has

begun court action before the end of the trial period. If the council hasn't begun action by that date, then your tenancy will become a secure tenancy and it will be harder for the council to evict you.

If you have an assured shorthold or an introductory tenancy, then it's very important to get advice as soon as you think you may have problems paying the rent.

What's the worst that could happen?

If you have rent arrears, then there are several things your landlord can do. S/he may decide to do one or more of the following:

- negotiate with you to pay back the money you owe (see page 6)
- apply to the court for a money judgment to force you to pay back the arrears (see page 14)
- apply to the court to have you evicted, or, if you live with your landlord, s/he could just ask you to leave (see page 9).

If you don't pay off your rent arrears and end up being evicted, you may find it difficult to find a new place to live. Your local council may not help you if you have been evicted because of rent arrears, even if you are homeless. Some councils may say you can't go on the waiting list for a permanent home. Many private landlords ask for a reference from your last landlord, and may not rent to you if you've been evicted for rent arrears.

What financial information should I check?

It's important to check with your landlord how much you owe, in case you disagree. It might also be important in court if your landlord tries to evict you. Ask your landlord for a statement of your rent account from the date when the rent arrears are supposed to have arisen. Rent usually only covers the amount

your landlord charges for living in the property, but sometimes it includes other things such as bills and service charges. Ask your landlord how much of what you owe is rent, and how much is for other services. Your tenancy agreement may also outline what 'rent' includes and does not include. If you are in any doubt about what is in the tenancy agreement or what your landlord has said, get advice.

If you claim housing benefit (HB) then you are still personally responsible for making sure your rent is paid, and for any arrears you have, even if your HB payments are going directly to your landlord. For more information on problems with housing benefit, see page 7.

If your name is the only name on the tenancy agreement, then you are responsible for paying the whole of the rent. If you have a joint tenancy agreement, then each tenant is equally liable for paying the rent. If one joint tenant does not pay, then the other tenants are responsible for paying her/his share as well as their own.

An adviser at a housing aid centre or citizens advice bureau can check:

- whether the money you owe is rent arrears
- if the amount is correct
- whether you are entitled to any benefits and, if so, how much.

How can I stop the arrears building up?

If you are a council or housing association tenant, and are on income support or job-seekers allowance, your landlord can ask for an amount to be taken out of those benefits each week towards paying back the arrears. This can be done whether or not you agree to it. An amount will usually be taken out directly, before you get your benefits, if your

rent arrears are sufficiently high. It will mean you have less money to spend, but will help to ensure you don't lose your home.

A debt adviser can go through your finances with you to see if you can reorganise your money to enable you to repay the rent arrears. It may be possible for you to stop the arrears building up any further by seeing if there is any way you could reduce your spending or increase your income so that you can afford to pay your rent. It may be possible to reduce payments on other debts, or if you have a job, it may be possible to work more hours or ask your employer or trade union for a loan. You might also be entitled to claim benefits (see below).

Try to pay as much as possible towards your arrears on a regular basis. This will prevent your arrears from rising too sharply and will show your landlord that you are making an effort to deal with the problem. It's worth doing this even if you can only afford to pay a small amount off each week. See page 6 for information on negotiating repayment with your landlord.

Could I claim benefits?

If you are on a low income, there may be benefits you can claim, such as housing benefit (HB), which could help you pay your rent. If you are working, you may be able to get a tax credit. If you are not sure what benefits you may be able to get, a citizens advice bureau could help you find out.

If you are already claiming HB but your payments are delayed, you may be able to take action to speed up your payments and stop the situation getting worse. If your HB is not covering the whole of your rent and you can't afford the difference, it may be possible for you to apply for extra payments from the council. See page 7 for more information about housing benefit.

6 **Can I withhold rent because of repair problems?**

If you have already started to withhold rent because of repair problems in your home, get advice immediately. If you are thinking of doing so, get advice before you stop paying. This includes situations where:

- you are willing to do the repairs yourself and take the cost out of your rent, and/or
- you want compensation for the inconvenience or damage to your health or personal belongings.

It's only possible to take these costs out of your rent in certain situations and you have to give your landlord a chance to put things right first. You need to follow a special legal procedure if you want to withhold your rent because of repair problems. If you simply stop paying without following the correct procedure, there is the possibility that the court will make an order to evict you. The law in this area is very complicated, so get advice as soon as possible if the situation arises. In any event, if you withhold your rent because of repair problems, it is always advisable to keep the money set aside until the repair problems have been resolved.

What if I've got other bills to pay?

If you decide to pay other bills or debts instead of your rent, it could make things worse. Rent should always be your number one priority because if you don't pay it, you could be evicted or taken to court. Although catalogue and credit card payments are important, they shouldn't come first. You won't lose your home if you delay payment.

It's also important to pay your utility bills (such as your gas and electricity bills) and council tax before you pay credit card or other bills. If your gas or electricity gets cut off, you will have to pay to have them reconnected. If you don't pay your council tax, you could end

up in court, and may have to pay court fees on top of the debt.

It's sometimes possible to negotiate to reduce the payments you are making towards bills, credit cards, or loans. You should ask your utility company, credit card company or lender whether it is possible to pay a smaller amount each month, at least until you have paid off your arrears. An advice centre may be able to help you negotiate with them if they won't agree to do this.

If you're thinking of borrowing a lump sum to pay off your arrears and other debts, get advice first. It's usually best to avoid companies who advertise that they can reduce your debts down to one monthly payment. They usually charge high interest rates for their services, and you will probably end up paying much more in the long run. A citizens advice bureau can help you for free. They can usually help you to negotiate with those you owe money to, and can often help you to reduce your payments and reorganise your spending. See the list of useful organisations at the end of this booklet.

Should I negotiate with my landlord?

It is always a good idea to tell your landlord if you are having trouble paying the rent. Your landlord will notice that you haven't paid and is more likely to take action if you ignore the problem. Telling your landlord and offering a practical solution may prevent her/him from starting court action, as it shows that you are making an effort to deal with the situation.

It may be possible to come to an agreement with your landlord to pay a certain amount each week or month off the arrears you have built up. If you decide to do this, then make sure you agree on an amount you can realistically afford. It is better to make small regular payments than to miss payments

because you can't afford it that week/month. Whatever you agree, get it confirmed in writing or make a note of the date and time of the conversation for your records. An advice centre may be able to help you negotiate with your landlord.

What if my landlord won't take the money?

If you are having problems with your landlord and s/he doesn't want you to pay back the arrears, but insists you have to leave, get advice. You may still be able to stay. Your landlord can give you notice to leave, but only the courts can order you to leave (unless you live in your landlord's home or you live in certain types of hostel). See page 9 for more information on what happens if your landlord asks you to leave.

If your landlord refuses to take your rent, you should put all the money aside (in a separate bank account if possible) and don't use it for anything else. Write to your landlord confirming that you are willing to pay off the arrears. Ideally, send this letter by recorded delivery or by fax, and keep a receipt. If your landlord takes you to court, you can then prove that you were willing to pay her/him back and that you have the money available. The court may decide that it is not reasonable to evict you.

Arrears caused by housing benefit problems

If you are in arrears because of problems with your housing benefit (HB) claim, get advice. You may be able to stop the situation getting worse. Get advice from a housing aid centre or citizens advice bureau straight away to see what can be done. See the Shelter guide 'Housing benefit' for more information about HB and how it is calculated.

Has your claim been filled in properly?

Your HB claim might be delayed if you don't provide all the information the council asks for. You should sign and date all your forms and provide all the information the council asks for as soon as possible, and no later than four weeks after they ask. If you are having problems completing the HB form, get advice.

You may also have problems with HB payments if the council loses your application form. If possible, keep a photocopy of your forms, and take them to the HB office in person. Always ask for a receipt. You will then be able to prove that you handed the form in on a particular day in case your form gets lost. If you send the form by post, ask for written confirmation that it has been received. Ideally, send the form by recorded delivery.

No payment after 14 days?

If you rent from a private landlord or a housing association, once you have made a claim, the council must normally make an **interim payment** of HB within 14 days (sometimes called a **payment on account**). The only reason that payment can be delayed beyond this is if the delay is caused because you did not provide the council with the information it asks for. An interim payment will allow you to pay off some of the arrears and may stop your landlord from trying to evict you. Contact your council if you don't get this payment after 14 days, and get advice if necessary.

What if my housing benefit doesn't cover all of the rent?

If your HB doesn't cover all your rent because the council thinks your rent is unreasonably high, or the property is too large for your household, you may be able to appeal. If you do this, your claim will be reassessed and the amount of HB you get may change. It is worth getting advice to check that the council has calculated your HB correctly. An adviser can also check whether you can appeal. You

8 should act quickly as there are time limits for asking for an appeal.

If you can't afford to pay the difference between your rent and your HB, it may be possible for you to apply for an extra payment from the council. This is called a **discretionary housing payment** (DHP). The council will decide whether you should get one based on your particular circumstances. Your local housing advice centre or citizens advice bureau can help you apply and may be able to help you convince the council that you should get a payment.

Is your claim up to date?

If you already get housing benefit, then the council will usually send you a renewal form at regular intervals. It is very important that you complete the renewal form and send it back in time, with all the information the council is asking for. If you don't do this, then your HB could stop and you could be at risk of eviction due to rent arrears.

It is also important that you tell the council about any change of circumstances in your situation, such as a change in your income, or someone moving in with you. If you don't update your claim, you could miss out on the extra HB you might be entitled to, or could get paid too much, which you would then have to pay back.

Can the court evict me if the arrears were caused by HB problems?

If your landlord is taking you to court because of arrears caused by housing benefit problems, get advice as soon as you can. It may be possible to persuade the council to sort out your claim so you can pay off some or all of your arrears before the hearing. If you have arrears caused by HB, whether the judge decides to evict you may depend on the type of tenancy you have and whether your landlord is using any other legal reasons (or grounds) to evict you. For example:

- if you are an **introductory tenant**, the judge has no choice but to evict you if the case goes to court. You must sort out any problems with your HB claim before the hearing or you will lose your home
- if you are a **secure tenant**, the judge may decide that it is not reasonable to evict you if your arrears are caused by HB delays. However, it's still important to get advice, especially if the council is also using any other grounds
- if you are an **assured tenant** (which includes most housing association tenants), the judge usually has to evict you if you owe eight weeks' rent or more. If you can get an HB payment to reduce your arrears to less than eight weeks' rent, you can probably keep your home
- if you have an **assured shorthold tenancy** (which includes most private tenants), your landlord can try to evict you because of the arrears **or** because your tenancy has come to an end. The rules are different depending on what grounds s/he is using, so it's very important to get advice.

Whatever type of tenancy you have, contact your nearest housing aid centre or citizens advice bureau. They can help you negotiate with your landlord and the HB department at the council. They may also be able to represent you in court. See page 10 for more information on court action.

What if I just leave?

If you decide to leave your home, then it's important to tell your landlord that you are leaving, and give her/him the correct written notice, to avoid increasing any arrears that you currently have. If you simply move out, you will still need to end the tenancy by giving the correct notice, and may still be responsible for paying the rent until the end of

the notice period. For most tenancies, you will have to give at least four weeks' notice. If you have a fixed term tenancy, you may need to give more notice, and will often be responsible for paying the rent until the end of the fixed term.

Check your tenancy agreement, or get advice at a housing aid centre or citizens advice bureau if you are not sure how much notice you need to give. If you don't pay this rent, then your landlord can usually take you to court for the amount that you owe. S/he can do this even after you have left the property.

For more information on notice periods, see the Shelter guides 'Council tenancies', 'Housing association tenancies' and 'Private tenancies'.

Can my landlord evict me?

If you have rent arrears, your landlord may be able to have you evicted. Whether s/he can do this, and the steps that s/he must follow to evict you, depend on the type of tenancy you have and whether you live in your landlord's home or not.

On rare occasions, the landlord may use bailiffs to take your goods and sell them to recover the money you owe. If this happens, or is about to happen, you should get advice straight away, as there are special procedures that the landlord and the bailiffs must follow.

I live with my landlord

If you rent a room in your landlord's home (for example, you are a lodger), s/he can ask you to leave and does not have to go to court in order to evict you. Your landlord only has to give you 'reasonable notice', which could be as little as a few days, or even less. However, it is a criminal offence for your landlord to use physical force to remove you from the property.

If you live with your landlord and s/he has asked you to leave, get advice about your housing options straightaway. You may be entitled to emergency accommodation from the council. If not, then the council should still give you help to find accommodation. Get independent advice from a housing aid centre or citizens advice bureau, or contact Shelterline, a free 24 hour service, on 0808 800 4444. The Shelter guide 'Homeless? Read this' gives more information on getting help from the council and finding emergency accommodation.

I don't live with my landlord

If you don't live with your landlord, s/he can normally only evict you by following a special legal procedure and getting a court order. However, in a small number of situations, people who don't live with their landlord can be evicted without one. This could be the case if:

- you live in the same building as your landlord or a member of her/his family, and you share living accommodation such as a bathroom, living room or kitchen
- you moved into your home as a squatter, even if you now have a temporary tenancy
- you live in holiday accommodation
- you don't pay any rent or licence fee for your accommodation
- you live in a hostel or other temporary accommodation.

If one of these situations applies to you and your landlord is trying to evict you, get advice immediately.

If your landlord tries to evict you without going through the correct procedure, or takes actions which affect your use of the property, such as:

- threatening you
- changing the locks
- disconnecting your heating or hot water

10 then this is likely to be harassment and/or illegal eviction, both of which are criminal offences. You may be able to seek an order from court which prevents the landlord from further harassment against you, and compensation for her/his behaviour. See the Shelter guide ‘Harassment and illegal eviction’ for more information. If you think your landlord is attempting to evict you illegally, get advice immediately.

If your landlord wants to evict you, s/he must usually have a legal reason to do so. This is called a **ground for possession**. For all tenancies, there is a ground for possession because of rent arrears. See page 11 for more information.

The procedure a landlord must follow varies slightly depending on the type of tenancy you have and how much you owe. In most cases s/he will have to give you a certain amount and type of **notice** and go to court to get a **possession order**. This is called a **hearing**.

The general procedure that is used for most types of tenancy is described below. Each step of the procedure is explained in more detail later in this guide.

What if my landlord takes me to court?

If you are an assured shorthold tenant (which includes most private tenants) there will only be a court hearing if you request one. You can request a hearing on the forms which the court sends you about the eviction. If you are not sure what type of tenancy you have, see the Shelter guide ‘Private tenancies’ or get advice.

For other types of tenancy, if you have built up rent arrears and your landlord wants to evict you, in most cases s/he must give you a written notice to inform you that court action will be taken after a certain date (see ‘I live with my landlord’ above for exceptions). This

is usually called a **notice of proceedings, notice to quit** or a **notice of seeking possession** (see page 11). It doesn’t necessarily mean you will have to leave.

Once the date on the notice has passed, your landlord can apply to the county court for a court order. This is called applying for a possession order. Your landlord will normally ask the court to evict you from the property (see page 12). The exact procedure that your landlord has to follow in order to evict you will vary depending on the type of tenancy you have. Even if you don’t have a written tenancy agreement, a verbal contract is just as binding as a written one. If you are not sure what sort of tenancy you have, check your tenancy agreement (if you have one), or get advice.

The court will inform you that your landlord is seeking possession of the property and tell you the date of the court hearing so that you have the opportunity to attend. The main documents you should receive are the **claim form** and the **particulars of claim**. These documents are prepared by the landlord and outline why s/he is seeking possession of the property you live in.

In addition to these documents you should receive **notes for the defendant** which gives you details of the procedure involved and tells you what action you need to take. You should also receive a **defence form**, which you can use to respond to the landlord’s claim for possession. See page 12 for more information about the defence form. It is very important that you return the defence form within 14 days. If you do not, you can still defend your claim but you may be liable to pay costs for any delay caused. A housing aid centre, housing solicitor or citizens advice bureau may be able to help you complete a defence form.

If you are an assured shorthold tenant (which includes most private tenants) there will only be a hearing if you request one. If you are not sure what type of tenancy you have, see the Shelter guide ‘Private tenancies’ or get advice.

The hearing will then take place and the court will make a **judgment**. There are several different types of judgment the judge can make. Even if your landlord gets a possession order, it may be a **suspended order** on terms, which means that as long as you keep to certain conditions (eg paying back a certain amount on a regular basis) you will not be evicted (see page 14).

If the courts decide that you should be evicted, the landlord can then apply to the courts for a **bailiff's warrant**. If this happens, get advice immediately. The bailiff's job is to ensure the property is handed back to the landlord. You will be informed of the date of the bailiff's appointment, but could be given very little notice. You will have to leave on this date and remove all of your belongings, unless you apply to the court to stop the bailiffs from coming and the court agrees to this (see page 16).

Step 1: Grounds for possession

If you are an assured shorthold tenant (which includes most private tenancies that started on or after 15 January 1989) it may not be necessary for your landlord to prove a ground for possession. An assured shorthold tenancy is normally for six or 12 months and can be renewed. Even if you pay off your arrears, the landlord can evict you at the end of your tenancy without a ground for possession. If you are not sure whether your landlord has to prove a ground for possession in order to evict you or what sort of tenancy you have, get advice.

For most other types of tenancy, a landlord must prove a ground for possession to the court. One of the most common grounds for possession is rent arrears. In theory, any tenant can be evicted if the landlord can prove that rent arrears exist, unless you are able to prove that the grounds that your landlord is relying on are not true, or that there are special reasons which mean that it would be unfair.

In some cases, the judge has to consider whether granting possession to the landlord is reasonable. These are called **discretionary grounds**. In other cases, if the landlord can prove that a certain amount of rent arrears existed both at the time the notice was served and at the time of the hearing, the judge usually has no option but to make an order for possession. These are called **mandatory grounds**.

Landlords can apply for possession using more than one ground if they wish to and can prove that there is more than one reason for evicting you. The landlord must state clearly on the notice what grounds s/he is relying on, and give details of your arrears and any other reason.

Step 2: Written notice

Unless you live in your landlord's home, s/he must first give you written notice if s/he wants you to leave. There are specific legal requirements about how much notice must be given and what the notice should say. The rules vary depending on the type of tenancy you have and the reason why the landlord wants the property back. For some tenancies, a minimum of two weeks' notice must be given, but it can be up to two months.

Your landlord can serve a notice by sending it to you, or sometimes by attaching it to the property. In court, it will be up to your landlord to prove that s/he served the correct notice, and that you were given the correct amount of time.

It is important to check whether the notice you are served with is valid (a housing advice centre or citizens advice bureau can check this for you). If you can show the court that your landlord didn't serve you with the correct notice, it could stop or delay your landlord from evicting you.

Most notices remain valid for 12 months, so your landlord does not have to apply to court as soon as the notice period ends. However,

12 if s/he doesn't apply to the court for a possession order within 12 months, s/he will normally have to give you a new notice if s/he wants to evict you. The only exception to this is if your landlord is evicting you because your assured shorthold tenancy has ended, in which case s/he does not have to prove a ground.

If you are an **introductory tenant** (for example, if you have a one year 'trial' tenancy with the council) and you have rent arrears it is important that you contact the council as early as possible to see if you can persuade the council not to apply to court. Once you have received a notice it is still possible to request a review and you may be able to come to an agreement with the council. When the case goes to court it is very unlikely that an eviction could be prevented, although it may be possible to ask for a delay in exceptional circumstances. If you have an introductory tenancy and you get a written notice, get advice immediately.

Step 3: Your landlord applies for a court order

If, when the notice period runs out, you have not paid off the arrears or come to any agreement with your landlord to prevent her/him from taking further action, your landlord can apply to the county court for a possession order. Your landlord must fill in a claim form, pay a fee and provide evidence to the court such as a copy of your rent account and your tenancy agreement. This evidence is put into a document known as the **particulars of claim**.

Step 4: You get a claim form

The next thing that happens is that you will receive the landlord's claim form. The papers you get from the court will tell you the grounds on which your landlord wants to evict you. They should contain, amongst other things, the following information:

- the address of the property
- the amount of rent you owe
- the date when the hearing will take place, if one is to take place
- a case number (make sure you include this number in all correspondence to the court, so they can find your file).

There will be a **defence form** attached to the summons which you should fill in and return to the court within 14 days (see below).

Step 5: You send in the defence form

The defence form is an opportunity for you to tell the court if you disagree with anything which your landlord has written on her/his application for a possession order. It also has space for you to provide information about your personal circumstances and your financial situation. You should also include any claims you wish to make against the landlord (known as counterclaims) such as disrepair to the property or harassment by the landlord. Depending on the type of tenancy you have, this may help the judge to decide whether or not it is reasonable to evict you.

Fill in and return the defence form to the court within 14 days. You may be able to prove that you are having serious financial or other problems, or that your arrears were caused or made worse by late HB payments. If you do not return the defence form within 14 days, you should still do so as soon as possible. You should also turn up to court for the hearing even if you have not returned the defence form beforehand. If you don't return the defence form and don't turn up to court the judge is likely to assume that what your landlord is saying is correct and is more likely to make a possession order requiring you to leave the property.

On the defence form there is also a space for you to make an offer to pay off the arrears, either in a lump sum, or in weekly or monthly instalments. If you offer to pay in instalments,

it is important that you only offer an amount that you will definitely be able to afford every week/month. This is because missing just one payment would mean that your landlord will usually be entitled to apply immediately for a bailiff's warrant to evict you. If you agree to pay a smaller amount each week/month there is less chance that this will happen, and you can always pay more if and when you can afford to. See 'What is a suspended order for possession?' on page 14 for more information about how this type of arrangement can be made.

In some cases, it may be possible to ask the court to take other issues into account when making a decision. This is called a **counterclaim**. For example, you may be able to show that you have had to replace damaged belongings, pay extra bills or even have developed health problems because your landlord has refused to carry out repairs s/he is responsible for. The court can decide to reduce or clear your arrears if it thinks you have had to pay for things that weren't your responsibility, and it may decide not to make a possession order. Get advice if you are in this situation.

If you need help filling in the defence form, contact a housing aid centre or citizens advice bureau. If for any reason you are unable to fill in the reply form and return it to the court within 14 days it will still be worth doing so after the 14 days have passed.

Step 6: The hearing

It is important for you to attend the hearing so you have the opportunity to put your side of the case to the judge to help her/him make a decision about whether to evict you or not. Bring along any supporting evidence you have, such as evidence of rent payments, housing benefit delays or photos of repair problems in your home, and evidence of your finances, such as bank statements and wage slips.

Even if your landlord tells you that you don't need to attend the hearing, it's still important to go along. If you don't attend, the judge will make a decision in your absence, and is more likely to make a decision in your landlord's favour. If you are ill, get a message to the court explaining why you can't attend to see if the case can be adjourned (delayed) until you are well.

Hearings do not take very long, and can be over in a matter of minutes. Some county courts run a scheme that means there may be an expert such as a solicitor or housing adviser at the court who can help you to put your case to the judge. It is always worth asking to see the **duty advocate** when you arrive at the court, even if you have already got advice from elsewhere.

At the hearing, the judge will be present along with the landlord and/or landlord's representative and you and/or your representative. Possession hearings are usually quite informal, but you may want to take along a friend for moral support. It is best not to take children if you can avoid it.

What judgments can the court make?

Depending on the type of tenancy you have and the ground on which your landlord is applying for possession, there are several types of judgment that the judge can make.

The judge may decide to refuse to hear your landlord's application for possession if it is clear that it has been brought incorrectly. This is called **striking out** your landlord's claim. The judge could do this if, for example, s/he thought your landlord had not followed the proper possession procedure.

The judge can also put back the date for the hearing of your case, usually to give you more time to prepare your case or if you are waiting for housing benefit to come through. This is

14 called an **adjournment**. Your case could also be adjourned if there is only a small amount of arrears, or if there are other special circumstances which mean that it would not be reasonable for the judge to make an order for possession that day.

Adjournments can be made on an indefinite basis or for a fixed period of time. They can also be made on condition that you pay off a certain amount of your arrears each week/ month. If the terms of an adjournment are broken, or after the fixed period of time expires, your landlord can ask for the case to be brought back to the court when there will be another hearing to consider the possession claim.

Unless the possession action is struck out or adjourned, the judge will make an **order for possession**. This can either be an **outright order** or a **suspended order**. See below for more information about these types of order.

The court can also order you to pay the rent arrears and any court costs. This is called a **money judgment** (see below).

Once the judgment has been made, the court will send you written confirmation of it through the post. This will explain what type of judgment was made, and give any relevant dates (such as when you have to leave), or what the conditions of a suspended order for possession or adjournment are. If you do not understand what the judgment means, get advice immediately.

What is a suspended order for possession?

Unless you have very large arrears, or you are an assured shorthold or introductory tenant, the court will usually make a suspended order for possession. A suspended order allows you to stay in your home as long as you pay the existing rent payments and an agreed amount off the arrears every week or month.

If you fall behind with even one payment, you will have broken the terms of the suspended order. In most cases the landlord can apply

immediately to the court for a bailiff's warrant to evict you (see page 15). However, in some cases, when the court makes a suspended order it will say that the landlord cannot apply for a warrant without a further court hearing. If you do not know whether the court decided this, check your suspended possession order, or get advice.

What is an outright order for possession?

An outright possession order is when the court decides that the property should be given back to the landlord on a certain date. In most cases, the court will not make an outright possession order unless you are an assured shorthold or introductory tenant, or you have very large arrears.

The court will usually order you to leave the property within 14 days of the hearing, but this can vary in many cases. If you can show that there are exceptional reasons why you should be allowed to stay, for example if you have health problems, or you will find it particularly difficult to find new accommodation, you may be allowed to stay for up to 56 days. This would give you some extra time to find somewhere to live. If the court believes that the property should be given back to the landlord sooner, for example if the amount of arrears you have are very high, the court may say that the landlord can apply for a bailiff's warrant immediately.

If you get an outright possession order and your landlord gets a bailiff's warrant, then you may be able to stop or delay the bailiffs. See 'Can I stop the bailiffs from coming?' on page 16. If you can't stop the bailiffs, then you will need to start looking for somewhere else to live. See 'I can't stop the bailiffs, what now?' on page 16.

What is a money judgment?

As well as a possession order, it is also likely that the judge will make a money judgment at the hearing. This means that the court can order you to pay both the rent arrears and

your landlord's court costs. Your landlord can apply to the court for a money judgment even if you have already left the property.

If the court makes a money judgment against you, it will affect your credit rating. You could find it difficult to borrow money or get credit from banks, mortgage lenders or credit card companies in future. Some letting agents also do credit checks so you might have difficulty finding somewhere else to live.

Court costs

Unless you can show that your landlord was wrong to make an application to the court in the first place, it is likely that you will have to pay your landlord's court costs, even if no possession order is made. This can include the costs of the application to the court, and also the costs of any legal representation (such as solicitors' fees) your landlord may have paid for. These can be expensive.

If you think that you should not pay your landlord's costs because the action has been brought unfairly, you should ask the judge to make no order for costs at the end of the hearing. Get advice about this if you are not sure. If you are unsuccessful, you should ask for time to pay off the costs after you have paid any arrears.

Can I ask the court to change the order?

If a suspended order for possession is made, and you are not happy with the conditions, or are worried that you will not be able to stick to them, perhaps due to a change in your circumstances, get advice. You may be able to apply to the court to get the conditions changed. You will need to fill in an application form which is available from the county court offices, and explain why you think the order should be changed. The judge will look at your application form, and may agree to another hearing if s/he thinks you have a good reason.

A housing aid centre or citizens advice bureau can help you fill the form in.

If you have an outright possession order, and your landlord applies for a bailiff's warrant, you may still be able to apply to the court to suspend the warrant. See page 16 for more information about this.

When do I have to leave?

Even if an outright possession order is made by the court, you don't have to physically leave the property straight away. Your landlord has to get a **county court bailiff's warrant** first. Even at this stage, depending on your tenancy type, you may still be able to pay off the rent arrears, or make an agreement with your landlord that may avoid the bailiffs turning up.

County court bailiffs are employed by the court. They are not the same bailiffs as those used to collect debts such as council tax and credit card debts.

Your landlord can only apply for a bailiff's warrant after an outright possession order takes effect, or if you have broken the terms of a suspended possession order (for example, by missing a payment towards your arrears).

To get a bailiff's warrant, your landlord must complete a form and send it to the court. If your landlord's application for a warrant is successful, the court will set a date for the bailiffs to come to remove you and your possessions from the property. Your landlord does not have to inform you that s/he is applying for a bailiff's warrant, and there is no court hearing. However, you will usually know that this has been done as the court office or the bailiffs normally send a letter, or visit your property, informing you of the date and time that they will evict you.

Once you receive a bailiff's warrant it may still be possible to stop or delay the bailiffs from coming by applying straightaway to the county court. The judge will make a decision, based on your personal and financial circumstances, about whether to stop the bailiffs. Usually, this will only be done if you can offer to increase your payments towards the arrears, or if you can pay a lump sum. The court will only allow this if it believes you can afford to increase your payments because your financial circumstances have improved (for example, if your income has increased). If you are able to pay off all the arrears before the bailiffs arrive, you still have to apply to the court for the original order to be cancelled. Paying all your arrears off will not automatically stop the bailiffs.

It is also possible for your landlord to cancel the bailiff's appointment, so it may be worth trying to negotiate directly with her/him. If your landlord agrees, ask her/him to confirm this in writing, and ask for a copy of the letter they send to the court applying for the warrant to be withdrawn. If your landlord won't give you a copy of the letter, check with the court that your landlord has withdrawn the warrant. If s/he has not done so, then to protect yourself you should still apply to suspend the warrant immediately. On the form, say that your landlord has agreed to withdraw the warrant.

If your landlord does not agree to withdraw the warrant, do not be put off. It is the court who decides whether or not you will be evicted, not your landlord. Your landlord may ask you to pay more than you can afford, but you should only agree to pay what you can realistically manage. Otherwise, you may get into more arrears and face eviction again. The court will be less sympathetic if you apply to set aside a warrant for a second time, unless there are very good reasons.

You will need to fill in a special application form which is available from the court offices. Include your case number on the form. An advice centre might be able to help you complete the form. Take two copies of the completed application form, any supporting evidence such as bank statements and details of your income, and the notice of the warrant to the county court office. You will be given a day and time to come back and see the judge. This could be on the same day or the day after you apply. Before leaving the county court office check where the hearing will take place. It will usually be in the place where the office is but some courts have other buildings some distance away. It is very important to attend the hearing, or you will stand very little chance of winning.

Be sure to immediately tell your adviser and your landlord the date, time and place of the hearing. You should also send your landlord a copy of the application form with the hearing date on it and a copy of any supporting evidence or documents.

I can't stop the bailiffs, what now?

If your landlord has got a bailiff's warrant to remove you from your home and you can't stop the eviction going ahead, you will need to find somewhere else to live. If it looks likely that you will not be able to stop the eviction from going ahead, get advice about alternative housing options immediately. It may be possible for you to apply to the council as a homeless person. Councils have duties to house certain groups of people. However, if you lost your home because of rent arrears, the council may consider that you have become homeless deliberately and may only have a duty to help you for a very short time (usually 28 days). The Shelter

guide 'Homeless? Read this' gives more information about the council's duties towards homeless people.

What happens when the bailiffs come?

The bailiff's job is to ensure the property is handed back to the landlord. This means that everyone in the property will be evicted. Once the bailiffs have arrived, it will not be possible for you to stay in your home, or return to it except in exceptional circumstances (see below). Make sure you have packed all your belongings and made arrangements for your pets before the bailiffs come.

How much notice the bailiffs give you will depend on the court procedures for the area in which you live, and on how busy the bailiff's office is. The bailiffs usually only give short notice (eg a few days). Occasionally the court or bailiffs do not notify people about the warrant. You could, without warning, have bailiffs turn up at your home to evict you. When the bailiffs come, you will have to leave.

However, county court bailiffs have to follow particular rules about how they can treat you. They are not allowed to use physical violence or unreasonable force in removing you or your belongings from the property. If you think the bailiffs have broken the rules, you can make a complaint to the county court, but only after the event.

After the bailiffs have been, a carpenter or locksmith will usually be asked to secure the property to prevent you from getting back in. It's important that you don't leave anything behind, as your possessions may be disposed of and your pets rehomed.

Sometimes landlords call the police to have people removed from the property if there's likely to be a breach of the peace. The police won't intervene unless really necessary.

Can I move back in?

It is only possible for tenants to move back into the property they have been evicted from in very limited circumstances. This is called **reinstatement**. Reinstatement is rare but it might be possible if your landlord got the possession order or bailiff's warrant by fraud, if the correct court process was not followed or if your landlord or the court have been guilty of **oppression**. Oppression is a complicated legal concept which may have occurred if your landlord or the court has deliberately made it difficult for you to defend yourself from the eviction, for example by withholding information. Get advice if you think this might apply to you.

Organisations

Shelter Housing Aid Centres (for details contact Shelter, 88 Old Street, London EC1V 9HU. 020 7505 2000)
www.shelter.org.uk

Shelterline (emergency housing help 24 hours a day)
0808 800 4444 (freephone/minicom)

Shelternet, online information about practical solutions to common housing problems. The site can also help you to find your nearest advice agency.
www.shelternet.org.uk

Shelter Scotland, 4th floor, Scotiabank House, 6 South Charlotte Street, Edinburgh EH2 4AW.
0131 473 7170.
www.shelterscotland.org.uk

Shelter Cymru (Wales), 25 Walter Road, Swansea, West Glamorgan SA1 5NN.
01792 469400.
www.sheltercymru.org.uk

Housing Rights Service, 72 North Street, Belfast BT1 1LD.
028 9024 5640.
www.housing-rights.org.uk

Federation of Information Advice Centres, 12th floor, New London Bridge House, 25 London Bridge Street, London SE1 9ST.
020 7407 4070.
www.fiac.org.uk

Law Centres Federation, Duchess House, 18-19 Warren Street, London W1P 5DP.
020 7387 8570.
www.lawcentres.org.uk

Citizens Advice, Myddleton House, 115-123 Pentonville Road, London N1 9LZ.
020 7833 2181.
www.citizensadvice.org.uk

National Debtline, The Arch, 48-52 Floodgate Street, Birmingham B5 5SL.
0808 808 4000.
www.nationaldebtline.co.uk

Other guides from Shelter:

- Homeless? Read this
- Finding a place to live
- Council tenants' rights
- Housing association tenancies
- Private tenancies
- Mortgage arrears
- Housing Benefit
- Young people
- Private tenancies: paying a deposit
- Private tenancies: paying your rent
- Harassment and illegal eviction
- Private tenants' rights to fire safety
- Gas safety for tenants
- Housing for refugees and asylum seekers

Individual copies of these guides are available free to members of the public.

For a complete list of publications and more information about Shelter contact: Shelter, 88 Old Street, London EC1V 9HU. Telephone 020 7505 2000. Website: www.shelter.org.uk. Or contact your nearest Shelter centre:



Contact Shelterline **0808 800 4444** (freephone) for:

SEPHS394

- 24 hour national housing help
- Minicom for deaf callers
- Language line for non-English speakers

Visit www.shelternet.org.uk for online housing information.

Shelter

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