

Eviction

Procedure for Tenants

A brief guide to the steps a tenant
can take in case of an eviction

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Eviction procedure

General

This leaflet refers specifically to tenants; however, eviction is a procedure available to any person who wishes to regain possession of their property, whether a lease has been granted or not. An eviction order is necessary before the person requiring possession can lawfully force the removal of an occupier of his premises. This would be effected by HM Sheriff acting on the authority of the Court order.

There is very little Guernsey law relating to landlord and tenant. A landlord is generally entitled to possession of the leased premises (and may apply for an eviction order) if:

- the correct notice has been given to the tenant in accordance with the tenancy agreement
- a fixed term tenancy has come to an end
- there has been a material breach of the tenancy agreement including non-payment of rent

Eviction Process

Where the landlord is entitled to possession, for one of the above reasons and the tenant is unable to leave immediately, the tenant could try to negotiate with the landlord for an agreed extension. Remember to keep a copy of any correspondence.

Tenants should be pro-actively looking for alternative suitable accommodation and keeping records of properties considered and reasons why they are not suitable.

If the tenant is hoping to be rehoused in social housing, the tenant should not leave the rented property or agree to an eviction order without first contacting Housing to see if the tenant is eligible for such housing. If so, the tenant should register with Housing. This will avoid the tenant becoming intentionally homeless, which would disqualify the tenant from social housing. Knowledge of the tenant's position on the waiting list will assist the Court in any eviction proceedings.

If the landlord wishes to evict the tenant, the landlord will arrange for a Notice to Quit to be served on the tenant by HM Sergeant. The length of notice will be the period set out in the lease (or agreed between the parties). If there is no written lease and no such period has been agreed, the notice period will be the rental period (e.g. if the tenant pays the rent monthly, the notice period is one month). However, where the tenant is in arrears of rent, or

is in breach of some other material condition of the lease, or where a fixed term has expired, the landlord may be entitled to issue an immediate Notice to Quit.

Once any notice period has expired, and if the tenant does not leave the premises, the landlord may begin eviction proceedings.

Summons

Eviction proceedings begin by the issue of a summons through HM Sergeant. If the tenant wishes to oppose the eviction order, he or she should attend the Court on the date specified in the summons otherwise the landlord might be granted an eviction order in the absence of the tenant. If the tenant appears in Court to oppose the order, a later date will normally be set for a hearing when evidence will be heard before Jurats.

Hearing

The tenant does not need to instruct an advocate to appear at the hearing. The Court will give the tenant an opportunity to explain the circumstances. Although the landlord is normally entitled to be granted an eviction order, the tenant may ask the Court for the effect of the order to be delayed (stay of eviction) which means that although an eviction order is granted the tenant will be able to stay in the premises until the end of the period of the stay.

Stay of Eviction

The length of the stay will depend on all the circumstances including:

- whether the conditions of the tenancy, including payment of rent, had been fulfilled
- the availability of alternative accommodation
- the behaviour of the tenants or persons lodging with them
- whether the condition of the premises has deteriorated due to the fault of the tenant or any lodger (and in the latter case whether the tenant has taken reasonable steps to remove the lodger)
- whether the tenant had given notice to quit resulting in the landlord taking steps to sell or let the property or otherwise such that he needs possession
- the tenant's finances
- the availability of social housing
- the tenant's health
- whether the tenant has dependants
- any other relevant matters

Note: where the person being evicted is not a tenant but a mere occupier (e.g. a person who had been living with the tenant as a member of the household but did not have tenancy) any stay of eviction is limited to a maximum of 6 months. (There are no squatters' rights in Guernsey).

If the tenant is granted a stay of eviction, it will normally be granted subject to payment of rent and compliance with other conditions. The tenant may be evicted immediately if those conditions are not met.

The Court does have the power to vary an order for stay of eviction on application by the tenant showing a change of circumstances arising since the making of the original order. However, this would need to be a significant change of circumstances not existing at the time the order was made (e.g. the onset of a serious illness) and not simply that the tenant has not managed to find alternative accommodation within the period of the stay of eviction.

Once the eviction order is granted, and any period of stay of eviction has expired, the landlord is not entitled to enforce the eviction personally – if the tenant does not leave voluntarily, the landlord must give the eviction order to HM Sergeant, who will arrange for the tenant and the tenant's property to be removed from the premises with the assistance of the police if necessary.

Costs

The landlord will have to pay costs for issuing the Notice to Quit and the summonses and for the Court hearing and enforcement. These costs may be ordered by the Court to be paid by the tenant and could amount to several hundred pounds, but such orders are rare.

General disclaimer

The purpose of this note is to provide general guidance. While it is believed to be accurate and up to date, it is not authoritative and has no legal effect. No warranty is given that the text is free of errors and omissions, and no liability is accepted for any loss arising from its use. Users of this guidance note are encouraged to exercise their own skill and care in relation to the information contained in this guidance note and to obtain relevant professional advice.



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