

A Shelter guide

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Rent arrears

How to cope with rent arrears

Shelter

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 rent to their landlord. If you need more detailed information, you should get advice from a Shelter advice service or citizens advice bureau, or call Shelter's free housing advice helpline: **0808 800 4444** (open 8am to 8pm Mon to Fri and 8am to 5pm on weekends. Calls are free from UK landlines and main mobile networks).

Shelter's free online housing information

shelter.org.uk/advice

If you have fallen behind with your rent because there is a problem with your housing benefit claim, get help as soon as possible. If you are having problems paying your mortgage, see Shelter's free guide *Mortgage arrears*.

This guide is only an introduction to the law in England. If you live in Wales, Scotland or Northern Ireland you can contact Shelter Cymru, Shelter Scotland or the Housing Rights Service (see pages 34–35).

If you need help with finding a home, see Shelter's free guide *Finding a place to live*.

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What are rent arrears?

Tenants must pay rent to their landlords, usually every week or every month. If you are a tenant and you miss payments or don't pay it all you will have rent arrears. People often get into rent arrears because of:

- losing a job
- delays with the payment of benefits
- a reduction in benefits received
- 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, you should 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.

If you have rent arrears your landlord may take you to court and ask the court to evict you and/or order you to pay the money you owe. If you take action early you have more chance of avoiding this.

Even if you end up in court, there is often a solution. It's always best to get advice from a Shelter advice service or citizens advice bureau as soon as you know you are having problems paying the rent. But even if you haven't done this and you are being taken to court, try to get advice before the court hearing. An adviser can explain your options and help you decide what to do. They may be able to go to court with you. See 'Where to get further advice' on page 30.

Some tenants can be evicted more easily than others. For further information about your situation see 'Can my landlord evict me?' on page 14 and 'What if my landlord takes me to court?' on page 16.

What's the worst that could happen?

If you have rent arrears, your landlord may decide to do one or more of the following:

- talk to you or negotiate with you about how to pay the money you owe (see page 10)
- 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 14)
- apply to the court for a money judgment to force you to pay the arrears (see page 25).

If you don't pay off your rent arrears and end up being evicted, it can be hard to find a new place to live. Your local council may not help you if you have been evicted because of rent arrears and you were in a position to pay the rent, even if you are homeless. Some councils will 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 want you as a tenant if you've been evicted for rent arrears.

What should I do if I think I'm in rent arrears?

It's important to check with your landlord how much rent 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 rent statement from the date when the rent arrears are supposed to have started.

Rent usually only covers the amount your landlord charges for living in the property, but sometimes it may include other things like water rates or heating charges. If these charges are part of you rent and you do not pay them you could be at the risk of eviction.

Your tenancy agreement may set out what your 'rent' includes and does not include. If you are in any doubt about what the tenancy agreement means or what your landlord has said, get advice from a Shelter advice service or citizens advice bureau (see page 30). Sometimes landlords charge interest on arrears and late payments. Check whether the tenancy allows this and, if so, that the calculations are right. If the landlord is charging a high rate of interest or making you pay a penalty for late rent payments, it may be possible to challenge this.

Don't ignore phone calls or letters from your landlord as this will only make matters worse. Don't be put off even if you think your situation is hopeless. There is often a solution.

An adviser may be able to help you work out how much you owe and check whether you are entitled to any benefits and, if so, how much.

If you disagree with your landlord about what you have paid, look back through your rent book or receipts, bank statements and other information. Remember that if you pay through a bank or post office, or by posting a cheque, the date that you paid will be earlier than the date the payment was received. Explain any disagreements or mistakes to your landlord. If you aren't already doing so, make sure you get evidence of all the payments you make. If you give your landlord cash, insist on a receipt.

If you claim housing benefit you are still responsible for making sure your rent is paid, and for any arrears you have, even if your housing benefit payments are going directly to your landlord. For more information on housing benefit, see page 11.

If you are a named tenant on the tenancy agreement, you are responsible for paying the whole of the rent. If you have a joint tenancy agreement, as far as the landlord is concerned, each tenant is equally liable for paying all of the rent, however you have divided up the rent among yourselves. If one joint tenant does not pay, then the other tenants are responsible to the landlord for paying her/his share as well as their own.

How can I stop rent arrears building up?

The first thing is to make sure you are paying the current rent. If you can't afford, or will soon be unable to afford, all the rent then you will need to decide whether:

- you can reduce your other expenses
- you can increase your income – by working more or claiming benefits
- you can find a place that's cheaper
- your landlord will agree to charging a lower rent. Some tenants can be evicted quite easily (see page 14) and you may want to consider how your landlord will respond to this suggestion.

If you can afford the rent but have problems budgeting, you should think of ways to make sure the rent is paid on time. You may be able to set up a direct debit from your bank account, or at least get into the habit of paying the rent as soon as you get paid or receive your benefit. If you get housing benefit, and your landlord is not the council, it will usually be paid to you but you can ask the council to pay it directly to the landlord if you can show you have real difficulties making the payments.

Once you have worked out that you can afford the rent and can pay it regularly, you need to decide how you can pay off the arrears. Although landlords will usually start by insisting that you pay off all the arrears at once, they may agree to let you pay them off gradually as long as you can show that you will make regular payments.

If your arrears are over a certain level and you get income support, or income-based jobseeker's allowance, or income-related employment and support allowance or pension credit, and your landlord is the council or a housing association, your landlord can ask the benefits agency to deduct a small amount from your benefit every week to repay the arrears. They can do this whether or not you agree. If they aren't doing it you could ask them to as it might help you make sure the arrears are paid off.

A debt adviser can go through your finances with you to see if you can reorganise your money so you can repay the rent arrears (see page 35 for contact details). You may need to reduce your spending to prevent your arrears building up any further and to start paying off the arrears. 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. Be very careful about borrowing money or using your credit card to repay the arrears as you could make your situation worse. Always get advice from a Shelter advice service or citizens advice bureau before taking on new loan (see page 30).

You may also be entitled to claim benefits (see page 8).

Try to make an agreement with your landlord to pay off the arrears by paying something every week or month on top of your current rent. Even if your landlord doesn't agree, you can always start to pay an

amount on top of the rent each week or month to reduce the arrears. If you are negotiating with your landlord don't delay making payments until an agreement is reached. Your landlord is less likely to try to evict you if you are reducing the arrears by making regular payments. See page 10 for information on negotiating repayments 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, which can help you pay your rent. If you are working, you may also be able to get a tax credit, and if you are a pensioner, you may be able to get pension credit. You can get information about welfare benefits by contacting Jobcentre Plus on **0800 055 6688** or by visiting **www.gov.uk/browse/benefits**

If you are already claiming housing benefit 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 housing benefit 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. For more information see page 11.

Can I withhold rent because of repair or other problems?

If you have already stopped paying your rent because of repair problems in your home, get advice immediately from a Shelter advice service or citizens advice bureau (see page 30). If you are thinking of stopping paying your rent, get advice before you do so.

It is usually a very bad idea to stop paying the rent as a way to force your landlord to carry out repairs. If you are an assured shorthold tenant your landlord may take action to evict you and the fact that s/he has not carried out repairs will not stop the court making a possession order. Even if you are a tenant with long-term rights, it is dangerous to stop paying the rent because if the landlord does the repairs you may find that you have arrears that are hard to repay.

Legally, as a tenant you can argue that the landlord should pay compensation for inconvenience or damage to your health or

belongings or for the cost of repairs you have carried out. And the court can order that any rent arrears are ‘set off’ against compensation (taken out of any compensation you are awarded).

However, you would need to follow a certain procedure and would usually need a court to make an assessment of the amount of compensation your landlord should pay. See Shelter’s free guide *Getting repairs done* for more details. If you are having problems getting your landlord to do repairs, get advice as soon as possible.

What if I have other bills to pay?

Although you may have other bills and other debts, rent must be a priority because if you don’t pay it, you can be evicted. You should also work out your budget to see what you can afford, and to see whether you can make savings on non-essential spending (eg gym membership, meals out). The budgeting forms on pages 32 and 33 can help you do this.

Although catalogue and credit card payments are important, they shouldn’t come first. It’s also important to pay your utility bills (such as your gas and electricity bills) and council tax. 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 may be 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 you can pay a smaller amount each month, at least until you have paid off your rent arrears. An adviser 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. Be very careful about borrowing money from a doorstep lender, loan company or credit card company to clear your arrears. Always get advice before taking on new loan, even one that claims to reduce your debts down to a single monthly payment. They usually charge high interest rates for their services, and you will probably end up paying much more in the long run.

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 legal 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. If your landlord is a council or housing association, they must try to talk to you about your arrears and try to resolve things before going to court, even if they have already started taking legal action. This will usually involve asking you to ring them, and probably inviting you to a meeting.

Work out what you can afford to pay to reduce your arrears. Be realistic. If you are on a low income, you will not be able to afford more than a few pounds per week plus the rent for that week. However, if you are working and getting a good income, your landlord will expect you to pay more towards the arrears.

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 from a Shelter advice service or citizens advice bureau (see page 30). In most cases your landlord can't make you leave without getting a court order. And in some cases the court will only make an order if it's reasonable to do so. If you are trying to repay the arrears the court may say that evicting you isn't reasonable and may refuse to make an order.

If your landlord refuses to take your rent, you should put all the money aside and don't use it for anything else. Write to your landlord confirming that you are willing to pay off the arrears. Ideally, send your letter by recorded delivery and keep the receipt. If you phone or email her/him, send a letter as well. This way, if your landlord takes you to court you will be able to prove you were willing to pay and will have the money available.

Arrears caused by housing benefit problems

If you are in arrears because of problems with your housing benefit claim, get advice (see page 30). You may be able to stop the situation getting worse. You can also get more information from Shelter's free guide *Housing benefit*.

Has your claim been filled in properly?

Your housing benefit claim might be delayed if you don't provide all the information the council asks for. Unless you apply online you should sign and date all your forms and give them to the council as soon as you can. If the council asks for information or documents you must provide them as soon as possible and no later than one month after they ask. If you are having problems completing the housing benefit form or getting the information you've been asked for, get advice from a Shelter advice service or citizens advice bureau (see page 30).

Sometimes councils may lose the forms and papers you have given them. If possible, keep a photocopy of all your forms, and take them to the housing benefit office in person. Always ask for a receipt. You will then be able to prove that you handed them in on a particular day in case your form gets lost. If you send the form by post, send it by recorded delivery and keep the receipt. Ask the council for written confirmation that it has been received.

Interim payment

If you rent from a private landlord or a housing association, once you have made a claim, the council should make an interim payment of housing benefit 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 by you not providing the council with the information it asked for. Contact your council if you don't get this payment after 14 days, and get advice if necessary (see page 30).

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

Often housing benefit doesn't pay all the rent. There are a number of different reasons for this, which include:

- for most tenants with private landlords there is a maximum amount that can be paid according to the size of your property
- your rent includes payments for water rates or service charges which housing benefit does not cover
- you have been paid too much housing benefit in the past and repayments are being taken from your current benefit
- your income is too high to get the maximum housing benefit
- for working-age tenants with council or housing association landlords, from April 2013, your housing benefit will have been reduced if you are 'under occupying' your home. This is commonly referred to as the 'bedroom tax'. You will not have to have a spare bedroom to be classed as 'under occupying'. To see if you will be affected by the bedroom tax, use Shelter's online checker tool at tinyurl.com/bedroomtax-checker
- there are other people living with you as part of your household who should be contributing to the rent, principally adult family members. There is usually a set amount deducted for each person, depending on whether they are working or not. These are called 'non-dependent deductions'. If this is the reason, you must make sure that they give you money so that you can pay the rent.

In all cases the council should send you a letter explaining how your housing benefit has been calculated and in some cases you can appeal.

You can apply for a **discretionary housing payment** from the council to help you pay the difference between the rent and the housing benefit. But it is up to the council if it wants to pay this and it will only be for a limited period. If your housing benefit is not meeting the rent and you need advice about whether you can appeal against any of the council's decisions, see page 30. You must get advice as soon as you get the letter telling you how much housing benefit you are getting as there is a time limit for appealing.

Is your claim up to date?

If you already get housing benefit, 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 housing benefit could stop and you could be at risk of eviction due to rent arrears.

You must also tell the council about any change in your situation, such as a change in your income, or someone moving in with you. If you don't do this, you could miss out on the extra housing benefit you might be entitled to, or could get paid too much, which you would then have to pay back. In some circumstances you could also be charged a £50 'civil penalty' (see www.gov.uk/civil-penalty-changes-affect-benefits for more details).

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

This depends what kind of tenancy you have and whether the judge has to decide if it is reasonable to make a possession order (see page 23).

If your landlord is taking you to court because of arrears caused by housing benefit problems, get advice as soon as you can from from a Shelter advice service or citizens advice bureau (see page 30). You may be able to get the council to sort out your claim so you can pay off some or all of your arrears before the hearing. If your arrears are because of housing benefit problems that are not your fault, the court may refuse to make a possession order but again this depends on the type of tenancy you have.

What if I just leave?

If you decide to leave your home, 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 carry on being liable for the rent. Your responsibility to pay the rent will only end if you give proper notice or your landlord agrees to you leaving.

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 you may have to pay the rent until the end of the period you signed up for. Whatever tenancy you have, check your tenancy agreement, if you have one, to see what it says about the amount of notice you must give. You should pay rent during the notice period.

If the landlord agrees that you can move out on short notice make sure you get any agreement in writing before you leave. For more information on notice periods, see two of Shelter's free 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 evict you. Whether s/he can do this, and the steps that s/he must follow, depend on the type of tenancy you have and whether or not you live in your landlord's home.

I live with my landlord

If you rent a room in your landlord's home (for example, if 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 from a Shelter advice service or citizens advice bureau (see page 30). You may be entitled to emergency accommodation from the council. If not, then the council should still give you some help to find accommodation.

Shelter's free 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.

In most cases your landlord must give you notice and apply to the court for a possession order before you can be evicted. In some cases a possession order will only be made if there is a legal reason, called a **ground for possession**.

The steps a landlord must follow varies depending on the type of tenancy you have. 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 the guide (see pages 18 to 23).

If your landlord tries to evict you without going through the correct procedure, or does things that interfere with you using the property, such as threatening you, changing the locks, disconnecting your hot water or heating, then this is likely to be harassment and/or illegal eviction, both of which are criminal offences.

You may be able to seek a court order, which prevents the landlord from further harassment against you, and/or compensation for her/his behaviour. See Shelter's free guide *Harassment and illegal eviction* for more information. If you think your landlord is attempting to evict you illegally, get advice immediately from a Shelter advice service or citizens advice bureau (see page 30).

In a very limited number of situations, people who don't live with their landlord can be evicted without a court order. This could be the case if:

- you live in the same building as your landlord and you share living accommodation such as a bathroom, living room or kitchen with a member of your landlord's family
- 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 provided by the council or housing association
- you were given accommodation while making a claim for asylum.

If one of these situations applies to you and your landlord is trying to evict you, get advice immediately (see page 30).

What if my landlord takes me to court?

In most cases if you did not pay the rent, the legal action your landlord would take would be to make a **claim for possession**. Your landlord will usually ask the court to make both a **possession order** and a **money judgment**. The possession order means that court bailiffs could evict you and a money judgment means that you are ordered to pay all the rent that you owe (plus the costs of the legal action). If a money judgment is made, this means you will have a 'judgment debt' which will affect your credit rating.

- If you are an **introductory tenant** of a council, you will get notice that it intends to evict you and you can ask for a review. You should ask for a review because this will give you the chance to explain to the council why you have arrears and how you are going to repay them. If you don't ask for a review or the council decides to evict you after a review, the judge will almost certainly make a possession order and you will be evicted. In very exceptional cases, it may be possible to argue that the council are acting unlawfully and that the court should not make an order.
- If you are an **assured shorthold tenant** with a housing association, you may have the right to a review of the decision to evict you but this will depend on your housing association's policy.
- If you are a **secure** or **flexible tenant** of the council, the judge must decide that it is reasonable for you to be evicted. The judge can refuse an order, or make an order that will give you time to repay the arrears. However, it's still important to get advice from a Shelter advice service or citizens advice bureau (see page 30), especially if the council is making other allegations, for example, antisocial behaviour.

- If you are an **assured tenant** (which includes many housing association tenants), the judge usually has to evict you if you owe eight weeks' rent or more. It is very important to reduce the arrears to less than eight weeks before the hearing. This will give the court the power to allow you to stay and to pay off the arrears over time.
- If you are an **assured shorthold tenant** your landlord can apply to evict you even if you have done nothing wrong. Most tenants with a private landlord are assured shorthold tenants.

If you are an **assured shorthold tenant** the landlord can apply for a possession order without there being a court hearing. S/he can only do this if there is a written tenancy agreement and the landlord is only asking the court to make a possession order (and not claiming for the rent owed). The first thing you will receive from the court is a form called a 'summons', which means your landlord has started court action. You will be given the chance to put your side of the story to the court. The forms you get will contain a standard 'reply form' which you should fill in and return to the court.

If your landlord wants the court to make an order that you pay the rent you owe at the same time, there will be a hearing. Although, your landlord could apply for a possession order without a hearing and apply separately for a money judgment.

Whatever type of tenancy you have you may need further advice (see page 30). An adviser may be able to help you to negotiate with your landlord or the council's housing benefit department. S/he may even be able to represent you in court.

I am a council or housing association tenant

If you are a secure, flexible or assured tenant of a social landlord (councils and housing associations) the landlord must follow a certain procedure, known as the **Rent Arrears Protocol**, when there are rent arrears. Your landlord must:

- contact you about the arrears as soon as possible
- help you with any housing benefit problems
- give you special help if you are under 18 or 'vulnerable'

- try to reach an agreement with you about how you can repay the arrears
- agree not to start court proceedings if you keep to an agreement to pay off your arrears.

As well as following these steps, a social landlord should always behave reasonably and treat you fairly. In very exceptional cases if you are a tenant who does not have long-term rights (eg an assured shorthold tenant or an introductory tenant) you may be able to argue that your social landlord is acting so unreasonably or unfairly that the eviction would be unlawful. These cases are extremely rare and you will need advice if you plan to use this argument in court (see page 30).

I am a private tenant

Most private landlords must serve a written notice on the tenant before court proceedings are started. Depending on the type of tenancy you have the notice will be called a:

- notice to quit
- section 21 notice
- notice of seeking possession.

Receiving a notice doesn't necessarily mean you will have to leave. For more information see Shelter's free guide *Private tenancies*.

What things must happen before an eviction?

Step 1: Written notice

Unless you share your landlord's home, the landlord must first give you written notice if s/he wants you to leave. There are some very limited exceptions to this rule (see pages 15 to 16). 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 your 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.

Sometimes assured shorthold tenants get a ‘section 21 notice’ requiring possession right at the start of the tenancy. This means that no further notice is needed, although usually your landlord will let you know when s/he wants you to leave. A section 21 notice lasts indefinitely, unless you are granted a new fixed-term tenancy. Therefore, the landlord can rely on a section 21 notice years after it was served.

Most other types of notices only remain valid for 12 months. Your landlord does not have to apply to the court as soon as the notice period ends but 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.

It is important to check whether the notice you are served with is valid, and you may need to get advice from a Shelter advice service or citizens advice bureau (see page 30). 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.

If you are an introductory tenant of a council, the notice will tell you that you have a right to ask for a review and the time limit for doing this. It is important to ask for a review as this is your chance to persuade the council not to start possession proceedings. If you have an introductory tenancy and you get a written notice, get advice immediately (see page 30). If possession proceedings are started it is very difficult to avoid a possession order being made.

In exceptional circumstances, it may be possible to challenge the way the council has treated you. You may be able to argue that your social landlord is acting so unreasonably or unfairly that the eviction would be unlawful. These cases are extremely rare and you will need advice if you plan to use this argument in court (see page 30).

If you are a secure, flexible or assured tenant of a social landlord your landlord must follow the Rent Arrears Protocol (see page 17) and take

steps to try to avoid evicting you. This applies even after your landlord has served notice. Your landlord must still try to help you and try to make an agreement for you to repay the arrears if possible. Always keep in contact with your landlord and explain the problems you are having with paying your rent.

Step 2: Grounds for possession

If you are an assured shorthold tenant (which includes most private tenancies that started on or after 15 January 1989) your landlord will need a court order to evict you but may not have to prove a ground (a legal reason) for possession. An assured shorthold tenancy is normally granted for a fixed-term of six or 12 months and can be renewed. You do not have to leave just because the fixed-term has expired, however, even if you pay off your arrears, the landlord can get a court order to evict you at the end of the fixed term 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 from a Shelter advice service or citizens advice bureau (see page 30).

For most other types of tenancy, a landlord must prove a ground for possession to the court. The most common ground is rent arrears. 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 when the notice was served and at the date 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 and may 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 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 court will send you a copy of your landlord's claim form. The papers you get from the court will tell you:

- the grounds (reasons) on which your landlord wants to evict you
- the address of the property
- the amount of rent you owe
- the time and date of the court hearing
- 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** which you should fill in and return to the court within 14 days.

However, if you are an assured shorthold tenant the claim form may be different. There may be no information about rent arrears and no hearing date, see page 17.

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 that your landlord has written on her/his application for a possession order. It also has space for you to provide information about your personal and financial circumstances. You can also include any claims you wish to make against the landlord (known as **counterclaims**) such as harassment, or not carrying out repairs. Depending on the type of tenancy you have, this may help the judge decide whether or not it is reasonable to evict you.

If you think you have a counterclaim, get advice from a Shelter advice service or citizens advice bureau as soon as possible (see page 30).

On the defence form there is space for you to make an offer to pay 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 offer an amount that you will be able to afford every week/month. This is because missing just one payment may mean your landlord can apply 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. Be realistic. If you are on a low income, offer a few pounds per week plus the rent for that week, but if you are working and getting a good income, you should offer larger amounts.

Fill in and return the defence form to the court within 14 days. If for any reason you are unable to return it to the court within 14 days, send it as soon as you can. 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 much more likely to make a possession order requiring you to leave the property.

If you need advice or help with filling in the defence form, go to a Shelter advice service or citizens advice bureau (see page 30).

Step 6: The hearing

It is important for you to go to the hearing so you can 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, photos of repair problems in your home, housing benefit delays, and evidence of your finances, such as wage slips and bank statements. If you have missed rent payments be prepared to explain why. Get to court early, if you arrive late, the court may already have made a possession order.

Hearings do not take very long, and can be over in a matter of minutes. Most county courts will have advisers on duty on the day of the hearing. This service may be called something like the **court desk scheme** or the **duty scheme**.

The scheme can provide you with a free specialist adviser on the day of your hearing who can help represent you in court.

To find out if a scheme is available in your area, use the Ministry of Justice's online court finder at <http://tinyurl.com/courtfinder> to find details of the county court where your case is being heard, and contact the court to ask if they have advisers on duty.

However, not all courts will have an adviser available when you need them - try to get advice before you go to court. You can also take an adviser, friend or family member with you into the courtroom, to help you. If you would like them to speak on your behalf, ask the court usher or judge if this is allowed.

Even if your landlord tells you that you don't need to attend the hearing, it's 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.

The hearing will be in private, which means that members of the public can't sit in court. However, it may take place in one of the big court rooms. 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 as children may not be allowed to go into the court room.

What orders can the court make?

There are several types of order 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 **dismissing** or **striking out** your landlord's claim. The judge could do this if, for example, s/he thought your landlord had not followed the proper procedure.

The judge can also postpone (delay) the date of your hearing, usually to give you more time to prepare your case or if you are waiting for housing benefit to come through. This is called an **adjournment**. Your case could also be adjourned if you only owe a small amount of arrears,

or if there are other special circumstances which mean 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 (eg 14 days). They can also be made on condition that you pay off a certain amount of your arrears each week or month. If the terms of an adjournment are broken, or after the fixed period of time, 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.

If you are defending the claim, or bringing a counterclaim, the court may give case **management directions**. These set out the steps that must be taken before the case can be heard. Usually you will have to file (send to the court) a detailed defence and/or counterclaim. It is always best to do this before the first hearing and get advice from a Shelter advice service or citizens advice bureau (see page 30). But if you aren't able to provide a detailed defence and/or counterclaim, the court may order you to do this within a certain time after the first hearing.

Normally, the judge deals with the case at the first hearing and unless it is dismissed or adjourned, a **possession order** will be made. This can either be an **outright order** or a **conditional order**. See below for information about these types of orders.

Once the order has been made, the court will send you written confirmation of it in the post. This will explain what the judge ordered and give any relevant dates (such as when you have to leave your home), or what you need to do next. If you do not understand what the order means, get advice immediately from a Shelter advice service or citizens advice bureau (see page 30).

What is a conditional order for possession?

Unless you have large arrears, or you are an assured shorthold tenant or an introductory tenant, the court will often make an order for possession that is conditional. This means that if you stick to the conditions set by the judge, the landlord will not be able to evict you. In rent arrears cases the conditions will be that you pay your current rent plus an amount towards the arrears every week or every month.

There are two kinds of conditional possession orders. If the order is a **suspended order** this means that if you miss a payment, the landlord can apply to the court for a bailiff's warrant to evict you. If the order is **postponed**, and you miss a payment, the landlord can apply to the court for a date to be fixed when you have to leave. After this, the landlord can apply for a bailiff's warrant. For information about bailiff's warrants see page 27.

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 tenant or an introductory tenant, or you have large arrears.

Under an outright order you will usually be given 14 days to leave. However, if you can show that there are exceptional reasons why you need longer, eg if you have health problems, or you will find it particularly difficult to find new accommodation, you may be allowed up to six weeks, but no more.

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. Even on the date on the order when you are supposed to leave the landlord cannot force you out but must apply for a bailiff's warrant.

If you get an outright possession order and your landlord gets a bailiff's warrant, you may still be able to stop or delay the bailiffs. See 'Can I stop the bailiffs from coming?' on page 28.

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 an order that you must 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 the future. Some letting agents also do credit checks so you might have difficulty finding somewhere else to live.

Court costs

Unless the case is dismissed, you will usually be ordered to pay your landlord's court costs, even if a possession order is not made. This can include the costs of the application to the court, and also the costs of any legal representation (such as solicitor's fees) your landlord may have paid. These can be several hundred pounds, or more if there are a number of court hearings.

If you think you should not pay your landlord's costs because the action has been brought unfairly, you should explain this to the judge at the hearing. Get advice about this from a Shelter advice service or citizens advice bureau if you are not sure (see page 30). If you are unsuccessful, you should ask for time to pay off the costs after you have paid off any arrears.

Can I ask the court to change the order?

If a conditional 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, the court can change the order.

Always tell your landlord if you think you can't keep to the conditions and see if s/he will agree to the conditions being changed.

You have to apply to the court to get the conditions changed, and you will need to fill in an application form (an **N244**) and explain why you think the order should be changed. A fee is payable, although some people on a low income are exempt. The form is available from the court offices or can be downloaded from the 'Forms' section at www.justice.gov.uk. Include your case number on the form. If you need help or advice about filling in the form go to a Shelter advice service or citizens advice bureau (see page 30).

If an outright possession order was made, 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 28).

What if I didn't go to court?

If you didn't go to the hearing and the court makes an order for possession you can apply to the court to have the order set aside. To do this you must act quickly as soon as you find out about the order, you must have had a good reason for not going to court and you must be able to show that it would have made a difference if you had been there. For example, if you are a secure tenant and the court has made an outright order when it would probably have made a conditional order. If it would have made no difference, for example if you are an assured shorthold tenant, the court will not set the order aside.

If you need help or advice about any part of the court process, go to a Shelter advice service or citizens advice bureau (see page 30).

When do I have to leave?

Even if an outright possession order is made by the court, you don't have to actually leave the property straight away. Your landlord has to get a bailiff's warrant first. 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 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 send a form to the court. The court will then 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, the court should send you a letter giving you the date and time set for the eviction.

Can I stop the bailiffs from coming?

Once you receive a bailiff's warrant it may still be possible to stop or delay the bailiffs from coming by applying to the county court without delay. The judge will make a decision, based on your personal and financial circumstances, about whether to stop the bailiffs. You will need to explain why you didn't keep to the conditions set by the court and how you will make sure you pay regularly in the future. Even if you can 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 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 s/he sends 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 immediately apply to suspend (stop) the warrant. 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.

How do I apply to stop the bailiffs?

You will need to fill in an application form (an **N244**) which is available from the court offices or can be downloaded from the 'Forms' section at www.justice.gov.uk. A fee is payable, although some people on low incomes are exempt.

Include your case number on the form. Complete the form yourself if you can, or get advice from a Shelter advice service or citizens advice bureau if you have time (see page 30). Take two copies of the completed

application form, any evidence that supports your case such as copies of 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. It must be before the date set for the eviction. Before leaving the county court office check where the hearing will take place. It is very important to attend the hearing or you will stand very little chance of success.

Be sure to immediately tell your adviser, if you have one, and your landlord the date, time and place of the hearing.

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. You should get advice about alternative housing options immediately from a Shelter advice service or citizens advice bureau (see page 30). It may be possible for you to apply to the council as a homeless person. Councils have duties to house certain groups of people.

If you lost your home due to 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). However, this will depend on your particular circumstances. Shelter's free 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. 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).

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. However, if you resist being evicted they are likely to call the police who may arrest you for a breach of the peace. 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.

Can I move back in?

You cannot just move back in after the bailiffs have carried out the eviction. You may be able to apply to the court after the eviction in exceptional circumstances. If the court sets aside the possession order or the warrant you will be able to move back in.

The warrant may be set aside if there was a problem with the way the eviction happened. This could include being given incorrect information by your landlord, or by the court, which prevented you from applying to the court before the eviction took place. It may also include a social landlord not following its own policies in the way they evicted you. If you think this may be the case, get advice immediately from a Shelter advice service or citizens advice bureau.

Where to get further advice

This guide is only an introduction to the law. If your situation isn't covered or fully explained here you can contact an adviser to discuss your situation.

An adviser may be able to help by:

- explaining the rights you have as a tenant
- explaining complicated legal matters
- going to court with you.

You can get advice from a local Shelter advice service, a citizens advice bureau, by visiting [shelter.org.uk/advice](https://www.shelter.org.uk/advice) or by contacting Shelter's free housing advice helpline on **0808 800 4444**.

Help from a solicitor

If you decide to see a solicitor, you may be entitled to public funding, often referred to as **legal help** and **legal aid**. If you are eligible for legal help you can get free legal advice. If you are also eligible for legal aid, the Government pays your legal costs, although you may have to make a contribution.

However, many solicitors do not offer legal help or legal aid. You can get details of solicitors who do from Civil Legal Advice (**0845 345 4345**). There is a 'means test'. You will qualify for legal help if you are on certain benefits or you have a low income. If you qualify and your income is above a certain level you may have to pay a contribution. To qualify for legal aid you must also have a good chance of success in court, your solicitor will be able to advise you about this. To check if you're eligible for legal aid visit www.gov.uk/check-legal-aid

If you do not qualify for legal aid, a solicitor may be willing to do a first interview with you for a fixed fee, but following that, the fees can get expensive. if you need to find a solicitor, you can use the Law Society's database at www.lawsociety.org.uk/find-a-solicitor

Budgeting forms

Income per month	£
Wages/Partner's wages	
Housing benefit	
Child benefit	
Tax credits	
Income support/JSA	
Pension/Pension credit	
Other benefits	
Child maintenance	
Student loans	
Other	
Total	

Outgoings per month	£
Rent payments	
Pension/Life insurance	
Electricity	
Gas	
Water rates/charges	
Council tax	
Insurance	
TV licence	
Phone/Internet/TV	
Mobile phone	
Credit card	
Student loans	
Hire purchase/other loans	
Travel to work	
Car	
Childcare costs	
Child maintenance payments	
Food	
Toiletries	
Clothes	
Cigarettes	
Alcohol	
Going out	
Holidays	
Other (eg gym membership)	
Total	

Contact Shelter

You can call our **free** housing advice helpline. Calls to Shelter and Shelter Scotland are free from UK landlines and main mobile networks. We can provide minicom or interpreting services.

The cost of calling Shelter Cymru will depend on your landline and mobile provider and your contract with them.

Shelter

 **0808 800 4444**

Mondays–Fridays: 8am–8pm
Weekends: 8am–5pm

Shelter Cymru

 **0845 075 5005**

Mondays–Fridays: 9am–5pm

Shelter Scotland

 **0808 800 4444**

Mondays–Fridays: 9am–5pm

For online information about your housing rights and details of local advice services, visit:

- shelter.org.uk/advice
- sheltercymru.org.uk
- shelterscotland.org

Advice UK

☎ 0300 777 0107
mail@adviceuk.co.uk
www.adviceuk.org.uk

Association of Residential Letting Agents (ARLA)

☎ 0845 250 6001
www.arla.co.uk

Citizens Advice

☎ 08454 04 05 06
www.citizensadvice.org.uk

Civil Legal Advice

☎ 0845 345 4345
emailhelp@civillegaladvice.org.uk
<https://claonlineadvice.justice.gov.uk>

Court service

www.hmcourts-service.gov.uk/HMCSCourtFinder/FormFinder.do

Debt Advice Foundation

☎ 0800 043 4050
www.debtadvicefoundation.org

Department for Work and Pensions

www.dwp.gov.uk

Gov.uk (the Government's public services website)

www.gov.uk
Find a legal adviser:
www.gov.uk/find-a-legal-adviser
Eligibility for legal aid:
www.gov.uk/check-legal-aid

Housing Rights Service (NI)

☎ 028 9024 5640
www.housingrights.org.uk

Jobcentre Plus

To make a claim for benefits:
☎ 0800 055 6688
www.gov.uk/browse/benefits

To apply for a NI number:

☎ 0300 200 3505
www.gov.uk/national-insurance

Law Centres Network

info@lawcentres.org.uk
www.lawcentres.org.uk

Law Society

www.lawsociety.org.uk/find-a-solicitor

Leasehold Advisory Service

☎ 020 7383 9800
info@lease-advice.org
www.lease-advice.org

Ministry of Justice

www.justice.gov.uk

National Debtline

☎ 0808 808 4000
www.nationaldebtline.co.uk

StepChange

☎ 0800 138 1111
www.stepchange.org

The Money Advice Service

☎ 0300 500 5000
www.moneyadviceservice.org.uk

We help over a million people a year struggling with bad housing or homelessness – and we campaign to prevent it in the first place.

We're here so no-one has to fight bad housing or homelessness on their own.

Please support us at shelter.org.uk

Until there's a home for everyone

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shelter.org.uk

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