



Palmerslaw

Fixed rate services for residential landlords

Moving forward
together >

Palmers Law's property specialists have used their experience in working with residential landlords to design a series of fixed rate services to provide legal support at key stages of a letting, enabling landlords to manage key issues more cost efficiently and predictably.

Our fixed rate packages cover:

- **inception:** starting the tenancy
- **collection:** dealing with rent arrears
- **possession:** recovering possession of your property.

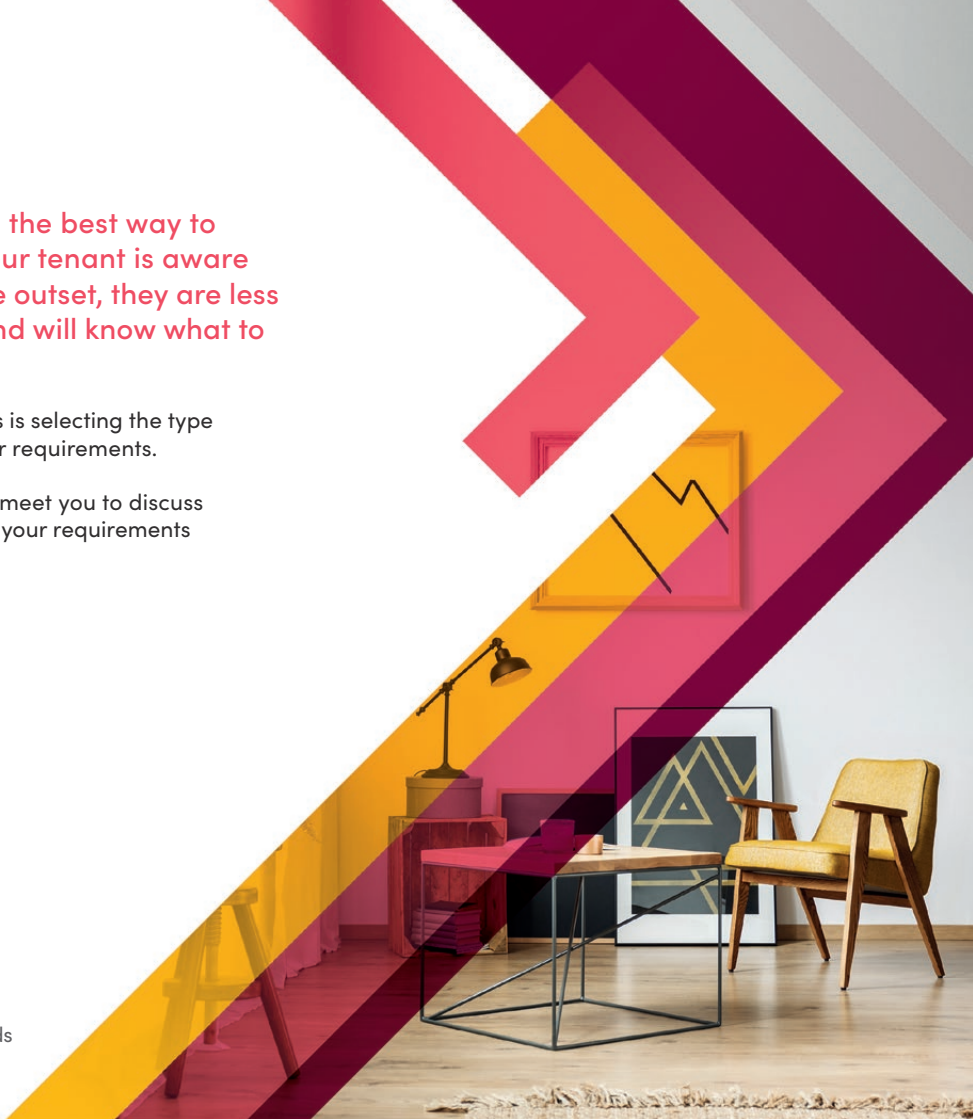


Inception

Getting things right from the start is the best way to prevent problems in the future. If your tenant is aware of what is expected of them from the outset, they are less likely to create difficulties later on and will know what to expect should they fall into arrears.

A well-drafted tenancy agreement is crucial, as is selecting the type of letting that best suits your property and your requirements.

Under our fixed rate scheme, we will normally meet you to discuss in detail the options available to you, based on your requirements and the legal framework governing lettings.



What we need from you

At a meeting lasting 30 minutes to an hour, we can take your full instructions regarding what you need. To ensure we provide the best service, we will need from you certain information and documents.

These are:

- Full details of the tenant
- Full property details
- The rent to be charged
- The rent days (i.e. the days of the month when rent is paid) and the commencement date
- Insurance details. Where a property is let out, insurers will sometimes refuse to provide cover or restrict cover for the property and/or its contents
- The property's energy performance certificate (EPC)
- The property's gas safety check record (sometimes known as a gas safety certificate)
- Evidence that the electrical wiring and appliances at the property are safe (sometimes called an electrical safety certificate)
- Information about deposits, deposit schemes and statutory information (SI)
- Schedules of condition and inventories
- Your existing mortgage conditions. Sometimes your mortgage provider will place limits upon what can be done with a rental property
- Property documentation. Your title deeds might restrict how you can deal with the property – such as a ban on letting it out, and might also list prohibited activities or actions.

We will use the meeting to ascertain whether there are any restrictions placed on the property by your mortgage lender, insurer or under your freehold or leasehold interest. We will advise on how to deal with those issues, and how properly to reflect them in your tenancy agreement.

We can help you obtain copies of the appropriate title papers if you do not have them readily available.

Collection

Our fixed fee debt collection service will help you to resolve rent arrears issues through:

- issuing of proceedings in the County Court for recovery of arrears, followed by execution through an attachment of earnings order, seizing goods etc
- insolvency proceedings
- taking the first step to recover possession under section 8 or section 21 of the Housing Act 1988 or otherwise, as may be appropriate
- advice in relation to direct payment from local authorities, if appropriate.

What we need from you

- A schedule of arrears
- A copy of the tenancy agreement
- If a deposit has been taken, details of the deposit holder, statutory information and documents served on the tenant.

We can help you to decide upon the most appropriate way of recovering arrears of rent.

This may be through:

- taking an initial step towards possession of the premises under section 8 of the Housing Act 1988 (early possession of property during a fixed term tenancy for breach of tenancy, e.g. rent arrears)
- under section 21 of the same Act (to regain possession of a property at the end of an AST)
- through the more usual forms of debt collection.

We will discuss with you the pros and cons of each approach in order to select the most appropriate route.

Possession

If you are going through this difficult time in a tenancy, we can explain and advise on the different types of possession action that may be necessary before the property is returned to you.

Many tenancies benefit from legal protection which impact on how and when you can take back your property.

Some types of tenancy are specifically excluded from protection – such as where a landlord is in residence. However, identifying whether or not an order is needed is not straightforward and can prove very costly if mistakes are made.

Fines and penalties will apply if a tenant is wrongfully evicted.

Before court officers retake possession, the law normally requires:

- the service of a notice to quit/notice of intention to begin proceedings
- a court order.

We can help you to ensure that the notice you serve is correctly drafted. Errors can delay a claim for possession by many months and require re-service of the notice.

An improperly served notice will have no effect. It is crucial that the tenancy agreement is checked and general law considered, to make sure that the appropriate method of service – whether by post, leaving at the premises or personal service – is used.



What we need from you

- A schedule of arrears (if arrears is the ground relied upon) or details of the breach of the tenancy agreement or evidence of any previous notice given if other statutory grounds are relied upon
- A copy of the tenancy agreement
- If a deposit has been taken, it is wise to check whether the correct statutory information and details of notice have been given.

In all housing cases where a deposit has been taken, it is important to ensure that this has been protected through an appropriate government-authorised scheme.

Failure to do so can lead to a penalty of up to three times the deposit taken and would prevent a landlord from taking recovery proceedings under section 21 of the Housing Act, until the deposit has been returned. Changes to the law in 2015 mean that even older types of tenancy now require any deposit taken to be properly protected and proper notices given.

Once a proper notice is served on a tenant, a decision must be taken as to the most appropriate way of regaining possession.

Two types of common possession action are covered under our fixed rate scheme – traditional possession proceedings and accelerated possession proceedings.

Enforcement

After obtaining a Possession order, if the tenant does not vacate the property by the date in the order, the next stage is to take enforcement action (i.e. bailiff eviction).

Traditional possession proceedings

These can be taken when the notice served expires, which can be between 14 days and two months from the date of service, depending on the ground relied upon.

Under this approach, you can claim for any rent arrears and any damage to the property as well as possession. However, you will have to attend court on at least one occasion (the return date) to give evidence regarding the grounds on which you are seeking possession.

There is no guarantee under many of the grounds for obtaining a possession order at court at the decision-making stage. If, however, you rely on section 21 or a mandatory ground under section 8 of the Housing Act is proved at court then the court must make a possession order. An example of a mandatory ground is where at least eight weeks of rent arrears exist at the time of service of the notice and at the time of the hearing.

If the tenant makes a payment to reduce the arrears between service of the notice and the date of the hearing, the court has a choice as to whether or not to grant possession – so – whether to allow you to take back your property.

As well as making judgments relating to rent arrears, the court has a number of other powers available. It can demote a tenancy (i.e. an assured tenancy could become an assured shorthold tenancy) and also make orders preventing objectionable conduct by the tenant or allowing access to the property.

In some circumstances it may be more appropriate to use traditional possession proceedings, but they are more expensive and can take longer to reach a conclusion.



Accelerated possession proceedings

This type of action is only available if:

- you are able to rely upon the ground under section 21 of the Housing Act,
- you have a written tenancy agreement,
- you have both properly protected any deposit that you took and still hold and you served the required statutory information about the deposit scheme used.

The Court will normally make decisions by reading and considering the papers and without needing a full hearing.

It is important to ensure that you can rely upon section 21 before starting proceedings. You must give at least two months' notice of your intention to begin proceedings and while they are intended to be quicker than the traditional route, this is likely to mean that another two months of arrears will build up.

The court does not have power to make a judgment in relation to the payment of arrears and can only award possession and limited costs. However, if you are able to rely upon section 21 this is a mandatory (i.e. compulsory) ground for possession and the court must make an order in your favour.

The only discretion the court would have would be to allow a further six weeks for the tenant to leave in the event that they were able to show exceptional hardship.

One word of warning is in relation to section 21 and the taking of deposits: if the appropriate notice has not been given, unless the deposit is repaid to the tenant this ground cannot be relied on.

Under changes introduced in 2015, if the tenant has complained of disrepair before service of the notice, and this not been resolved or remedied by the landlord, then section 21 may not be available.

We recommend that before notice is served relying upon section 21 alone, we review your case in order to consider whether other notices should be served, with or instead of a section 21 notice.

What we need from you

Whichever method of possession proceedings you wish to follow, we will require the same documents from you, in order to consider with you your overall objectives and the likelihood of an order being given. We will need:

- a complete copy of your tenancy file
- if a deposit has been taken, we will require the statutory information and copies of any other documents you may have been required to give to the tenant
- full details of any breach or a schedule of arrears (if traditional possession proceedings are being contemplated)
- copies of the notice to bring the tenancy to an end and details as to the service of this.

As with all of our letting-related work, if these documents are not readily available we can seek to obtain copies on your behalf or deal with the re-service of any papers that may be necessary.



A glossary of useful terms

AST	Assured shorthold tenancy
EPC	Energy performance certificate
ESC/GSC	Electrical safety certificate/gas safety certificate
SI (statutory information)	The information that must be given to the tenant when a deposit is taken
Rent schedule	A list of the rent payments in date order as they fell due and the payments made by the tenant together, with a running balance
Tenancy file	<p>All paperwork regarding the let property, typically including:</p> <ul style="list-style-type: none">- the tenancy agreement- an inventory- a schedule of condition or photographs of the pre-let condition- rent demands- correspondence and previous notices served- deposit information and the statutory information as served- repairs and maintenance paperwork, including gas safety check records, electrical safety certificates and energy performance certificates- correspondence with the tenant- all previous notices served.

If you have any queries or would like more information about our fixed rate services or other services for residential landlords, please contact us.

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