

GUIDE TO LANDLORD AND TENANCY LAW IN THE TRNC

The Law governing landlord and tenancy in the TRNC is the Rent (Control Act) 17/1981 and sets out thirteen grounds on which the landlord can recover possession of the property. These are set out below. In order for a landlord to be able to recover possession of the property, one of these grounds must exist. Even where one or more of these grounds exists, an application for an eviction order must be obtained by the landlord from the court unless the tenant vacates the property of his own free will and returns possession to the landlord. It is not lawful for a landlord to re-take possession simply by entering the property and changing the locks or by force and to do so constitutes a criminal offence.

Ground (1) Delay in paying rent

If the tenant fails to make payment of rent when it falls due. Rent sent by registered post is considered as a offer to pay.

Ground (2) Substantial breaches of other obligations

If the tenant has breached a condition set out in the tenancy agreement or failed to perform his obligations under the tenancy agreement.

Ground (3) Tenant is causing nuisance to neighbouring properties

If the tenant or anyone living with the tenant is causing nuisance to the neighbouring properties or is using the property for illegal and/or immoral purposes, the landlord can acquire vacant possession using this ground.

Ground (4) Tenant's failure to repair

If the tenant or someone living with the tenant, has damaged the property wilfully or through neglect.

Ground (5) Tenant wishes to vacate the property

If the tenant has sent a notice terminating the tenancy.

Ground (6) Sub-letting without the permission of the landlord

If the tenant is sub-letting the whole or part of the property and profiting from this without the permission of the landlord then the landlord can acquire vacant possession using this ground.

Ground (7) Landlord's intention to occupy the holding for his own business or a residence

The landlord must show that he has a reasonable need to acquire vacant possession of the property for use by himself, his spouse or any children above the age of 18 within reasonable explanation. The court will take into consideration whether or not the landlord or the tenant has other property available to use.

Ground (8) Tenant is an employee of the landlord and the employment has ended

If the tenant is an employee of the landlord and the employment has ended the landlord can use this ground to acquire vacant possession of the property in order move a new employee in.

Ground (9) The landlord intends to demolish the property or carry out significant renovation work and could not reasonably do so without obtaining possession

If the landlord intends to demolish or the property or carry out significant renovation work to the property which would require the tenant to vacate the property, the landlord can claim vacant possession using this ground on the condition that he gives at least three months' notice to the tenant and can provide to the court the document showing building permission has been acquired.

Ground (10) Vacant possession is required for a development project in accordance with the law

Ground (11) The property is subject to a compulsory acquisition or nationalisation order

Ground (12) The property is needed by a local authority for a reasonable amount of time

If a local authority needs to use the property for a reasonable amount of time in order to fulfil their legal duty and the court is of the opinion that this is for public benefit the court can order that this is a ground to obtain an eviction order.

Ground (13) Reasonability and availability of Alternative accommodation

If the court believes that it is reasonable to grant the eviction order and that that the tenant has alternative accommodation available, the court can make an order on this basis.

PROCEDURE FOR EVICTING A TENANT

Can you rely on one or more of the grounds for eviction set out in the Rent (Control Act) 17/1981?

If so, please see 'STAGE 1' below

STAGE 1

Pre-commencement

Sending a legal notice to the opposite party
Collecting relevant documents and/or information
[For details please see Box 1. 'STAGE 1 Pre-commencement']
If the tenant fails to vacate, then see 'STAGE 2' below.

STAGE 2

Commencement of the action

Payment of initial retainer towards legal costs
Drafting of a simple statement of claim and filing it at the district court and serving this on the Defendant
Issuing and serving detailed particulars of claim
Defendant files defence
Filing a reply to the defence

[For details please see Box 2. 'STAGE 2 Commencement of the action']

STAGE 3

Interim matters

Directions or case management conference where directions are given by the judge
[For details please see Box 3 'STAGE 3 Interim matters']

STAGE 4

Trial

The trial takes place when the judge provides a date
[For details please see Box 4 'STAGE 4 Trial']

STAGE 5

Post-trial

Appeal, if applicable
Enforcement proceedings, if required
[For details please see Box 5 'STAGE Post-trial']

BOX 1**STAGE 1**
Pre-commencement

In most cases, the first step is to draft and serve a legal notice on your behalf to the tenant at the property address provided by you to formally terminate the Tenancy Agreement and to request vacant possession and any outstanding rent arrears (if applicable). After the service is effected the tenant will then have a set number of days to respond starting from the date of service (depending on the terms of the tenancy agreement, if applicable). The tenant is under no obligation to respond to our legal notice. If the tenant does not respond and the period for response has expired the only option will be to commence legal action against the tenant for the relevant cause of action depending on the facts of your case to try and obtain an eviction order plus rent arrears/compensation for your losses (as applicable)

If you decide to commence legal action against the tenant we will require the following documents and/or information from you:-

- Original tenancy agreement with the Stamp Duty paid (if applicable);
- Full postal address for the property at which the tenant is residing;
- Copy of title deeds, or Contract of Sale, in the name of the landlord (as applicable);
- Details and copies of any unpaid utility bills;
- Where applicable, confirmation of the months for which rent has not been paid and the total amount outstanding;
- Copy of landlord's passport or identity card; and
- Completed Power of Attorney so that we can represent you in the litigation (upon receipt of the landlord's passport or identity card copy, we will prepare this on your behalf and provide you with instructions as to how to certify this and return it to us).

**BOX 2****STAGE 2**
Commencement of the action

If we do not receive any further contact from tenant and the time period given in the legal notice for him/her to comply and/or reply to us has expired, we will have no option but to proceed with making an application for obtaining an eviction order.

The next stage is for us to issue and serve a simple statement of claim and detailed particulars of claim which is to be served on the tenant by the court bailiffs. This can take between 10-20 days to be served. Although we would be following up with the court bailiffs, this process is outside of our control. Once service has been effected, the tenant has 10 days to acknowledge service. If the Defendant fails to acknowledge service within this time, then we will then file an ex-parte application to prove the case in default and obtain judgment in the absence of the tenant. In the event that the Defendant does acknowledge service and obtains his own legal representation then he/she will have a further 14 days (maximum total 24 days from the date of service) to file a defence – although it is possible for the judge to grant the Defendant further adjournments in the event that more time is required for the Defendant to file the defence. Once the defence has been filed, we would review this on your behalf and file a reply to the defence, if required.

In terms of legal costs, in order to commence eviction proceedings we will need an initial retainer of £1000-£1500 The total costs may be in the region of £2000-£2500 or more, plus disbursements, depending on the time spent on your case.

**BOX 3****STAGE 3**
Interim matters

There will then be various directions hearings for the judge to explore the possibility of the parties reaching an out of court settlement or to review the facts and evidence and to give directions for trial.



BOX 4**STAGE 4****Trial**

At the trial, both sides will call witnesses to give evidence and the opposite party will have the opportunity to cross-examine the witnesses. Judgment may be given immediately or at a future date. As well as a decision whether or not to grant the eviction order, the judge will also decide the amount of compensation to be awarded (i.e. for rent arrears and unpaid utility bills etc).

In the event that your case is successful, the tenant may be ordered to pay your costs, but the amount awarded is at the discretion of the judge and may not cover the total amount which you have paid in costs. Further, if a costs order is made against the tenant and the tenant fails to comply and make payment, this will also be subject to enforcement proceedings as outlined in Box 5 below.

Please note that eviction proceedings can be lengthy unless the tenant leaves on their own accord once proceedings are commenced – if the tenant appoints a lawyer and defends the proceedings, the proceedings could take around a year, or possibly longer, to conclude.

**BOX 5****STAGE 5****Post- trial**

If you are granted an eviction order and/or a judgment for loss of rental income and the tenant fails to comply with order and the judgment and make payment, you would have to commence enforcement proceedings. If the tenant fails to vacate after the eviction order is made, an application is submitted for the tenant to be forcibly removed by the court bailiffs. If the tenant fails to comply with the monetary part of the judgment (i.e. any order for the payment of rent arrears/compensation/legal fees), an application for enforcement against the tenant's assets can be commenced. Initially, an application for enforcement against movable assets is filed. If the tenant has, for example, any personal effects or a car which can be seized and sold an application for this to take place can be submitted. If no movables are found, an application for enforcement against immovable property in the name of the tenant (if any) can be filed. An application for payment by instalments can be filed if it can be shown that the tenant has an income and can afford to make payment by instalments. It may not be possible to actually recover the monetary part of the judgment if the bailiffs are not able to locate the tenant or find any property in tenant's name which can be seized or if the tenant does not have sufficient income to make payment by instalments. Enforcement proceedings can also be lengthy and additional legal fees would be incurred.

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