



Andy Gale

The discretionary grounds most likely to be seen by Housing Options Services

For discretionary grounds even if evidence for the ground used is proven then the Court does not necessarily have to grant possession

Grounds 9-18 are discretionary

A number are linked to rent arrears or a breach of tenancy conditions

Council Housing Options Services are likely to see tenants presenting having been served a Section 8 notice based on more than one discretionary ground

A court will decide if it is reasonable to grant possession and even if granted can delay possession by up to 6 weeks

A Housing Options Service providing evidence of support to a tenant to resolve the problem may help a tenant to remain

The test of “reasonableness” /1

For discretionary grounds a court is concerned with the test of “reasonableness”.

Will it be reasonable to grant possession after balancing the landlord’s claim and position with the tenant’s circumstances?

Key factors include:

- The severity of the breach
- The tenant's conduct and
- The proportionality of eviction

The test of “reasonableness” /2

Even if the landlord is able to evidence the ground a Court will consider other factors in deciding if it is reasonable to evict including:

- Reasonableness: The core test is whether eviction is reasonable under the circumstances.
- How severe is the issue relied on – severity of the ASB or extent of the rent arrears
- The tenant’s actions to try and resolve the problem – for example have they tried to pay off the arrears even though they are still in arrears
- Is there an impact on anyone else? – There may be severe impact on neighbours of any ASB for example.
- Is there a financial impact on the landlord? – for example a landlord may have defaulted on their mortgage
- What will be the impact of eviction on the tenant and any family members?
 - They could become homeless
 - Education of children could be severely impacted.
 - A tenant could lose their job.
 - Impact on mental health?

The discretionary grounds most likely to be seen by Housing Options Services – G10 and 11

Ground 10 – Any rent arrears and Ground 11 – Persistent rent arrears

Notice period for both is 4 weeks

Likely evidence that a Landlord may need to provide to the Court:

- How much rent has been paid
- The extent of the arrears
- Number of occasions rent paid late
- Any correspondence regarding late payments

Ground 13 - Deterioration of Property

2 weeks notice required

Likely evidence that a Landlord may need to provide to the Court and therefore how a council's Housing Options Service can help a tenant defend a claim if the evidence has not been provided:

- Specific areas/items damaged
- Nature and extent of deterioration
- How deterioration was caused
- Dates
- Photographic evidence
- Cost of repairs if known

Ground 14 – Anti Social Behaviour

No notice required

“Where the tenant or anyone living in or visiting the property has been guilty of behaviour causing, or likely to cause, nuisance or annoyance to the landlord, a person employed in connection with housing management functions, or anyone living in, visiting or in the locality of the property”.

Likely evidence that a Landlord may need to provide to the Court and therefore how a council's Housing Options Service can help a tenant defend a claim if the evidence has not been provided:

- Description of behaviour/incidents
- Dates and times
- Persons affected
- Witness statements
- Police reports or crime reference numbers
- Conviction details if applicable
- Any correspondence with tenant about behaviour

Ground 15 - Deterioration of Furniture

2 weeks notice required

Likely evidence that a Landlord may need to provide to the Court and therefore how a council's Housing Options Service can help a tenant defend a claim if the evidence has not been provided:

- Items of furniture affected
- Nature and extent of deterioration
- How deterioration was caused
- Dates
- Photographic evidence
- Cost of replacement/repair

Ground 17 – False Statement

2 weeks notice required

The tenancy was granted due to a false statement made knowingly or recklessly by the tenant or someone acting on their instigation.

Likely evidence that a Landlord may need to provide to the Court and therefore how a Council's Housing Options Service can help a tenant defend a claim if the evidence has not been provided:

- The false statement made
- When and to whom it was made
- How it was material to granting the tenancy
- Evidence that statement was false
- Evidence tenant knew it was false or was reckless