



How to obtain possession of commercial property

As a commercial landlord, you are likely to rely on the income from rent on leased premises in order to meet all of the costs of running the premises and for income. If you are not being paid rent, or worse, if you know your property is not being looked after, or is even being damaged, then you will want to take swift action to resolve this matter. One of the options open to you as a commercial landlord with a problem tenant is to ask the court for an order to allow you to repossess your property.

‘This might be necessary if the tenant is in arrears of their rent and will not pay despite enforcement. Or it may be when a lease has ended but the tenant will not leave. It may even be that whoever is in your property has no legal right to be there, and are squatting,’ says [Sanjay Chandarana](#), dispute resolution solicitor and partner with Ingram Winter Green LLP. ‘If any of these apply, you have the option to apply to court for a possession order to regain entry to your property.’

[Sanjay](#) looks at when a possession order might be needed, and when it might be granted, and the practical steps you can take to recover possession of your property.

What does a possession order mean?

A commercial property possession order is an order granted by a court that enables a landlord to take back physical and legal possession of a commercial property (such as shops, offices, or industrial units) from a tenant.

When should I use it?

This court process can be used when you, as a landlord, need to end the tenant’s occupation of the premises. This may be due to a breach of their lease conditions, the usual being non-payment of rent, but it can also be for other persistent breaches, or at the end of a lease term where the tenant will not leave the premises. It can also be used if someone is squatting in your property.

Before making an application to court for possession, it is a good idea to explore other options for resolution. Like any court process, a possession application will involve costs and may take some time to obtain, and will inevitably cause stress and uncertainty. Depending on the situation, you might be able to negotiate a resolution with your tenant, or take part in other mediation options that are available to be used before court action.

Another option is that of forfeiture of the lease and 'peaceful re-entry'. This can only be used if it is allowed for in your lease. This means that you can enter the property and change the locks and secure the property yourself when the tenancy has ended. This is a very useful tool to recovering your property, but can only really be used if you have no resistance from a tenant, and the tenant is not physically in the property. You have to be very careful not to get into a situation where you are accused of using force or violence in re-entering the property, and this is therefore only usually used successfully when a property is empty.

If your tenant just refuses to engage and is physically in possession of the property, a court order for possession may be the only, and the quickest, way to remove them. The longer your premises is left without rental income, the more financial damage you will suffer, so you should take positive and swift action.

How do I go about obtaining possession?

It is important to ensure you have followed all the necessary pre-action protocols needed before you take any action in court. You should engage with a commercial litigation lawyer as early as possible to ensure that you have complied with all requirements before you apply to court, or you could find yourself wasting time and money.

There will be a process set out in your lease that you must follow first. For example, if your tenant is in breach of the lease which does not involve arrears of rent, your solicitor can serve a section 146 notice on them giving them reasonable time to rectify the breach first.

Your solicitor will need all of the relevant paperwork in order to make your application. This will include a copy of the lease, and all correspondence you have had with your tenant detailing breaches of the lease or rental arrears, and the demands made to rectify this before making an application to court.

The next step is an application to the court for the possession order, by completing a claim form with any supporting information and evidence, filing it at your local county court or High Court with the required fee, and ensuring your tenant is served with the issued application.

The court will set a date for a hearing. If you are lucky this might be within around eight to twelve weeks of the application, but this will very much depend on the court you use and how busy they are.

It is possible for you to obtain 'accelerated possession' where the court will deal with your application on paper, with no need for a court hearing. This is only suitable if there is no dispute with the tenant, and all you want is possession. The court will not deal with rent arrears or other breaches on paper only, and a hearing will be needed.

How soon can I get possession?

This will depend on how busy the court is, and whether the tenant defends the possession order or not. If they do, then the court will have to give them time to file a defence to the claims and provide evidence in their support.

If it is straightforward and there is no defence submitted, then it will depend on the availability of the court, but you can expect at least six weeks for this process.

What happens if the tenant does not leave, even if I have obtained a court order for possession?

Sometimes the tenant just will not leave. However, if you have obtained a court order for possession, then there is the option to apply to the court for a warrant of possession. This allows county court bailiffs or High Court Enforcement Officers to enter the premises and physically remove the tenant from the premises on your behalf if they will not leave voluntarily.

How we can help

A possession order can be a very effective way of recovering possession of your commercial property to allow it to be put back on the market and start to pay for itself again. If you think this is something that could help you, it is important the correct process is followed to ensure that recovery is as fast and easy as possible. Our specialist solicitors will work with you to make sure you can recover your premises painlessly and efficiently.

Our solicitors have many years of experience in this area. For further information and assistance, please contact [Sanjay Chandarana](#), partner in the dispute resolution team on 020 7845 7400 or email sanjaychandarana@iwg.co.uk. Ingram Winter Green LLP has offices in London.

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