

Pre-Action Plan: Managing arrears and avoiding possession claims

Introduction

Increases in the cost of living have put considerable pressures on tenant and landlord finances in recent times. Some tenants may be finding it challenging to pay all of their rent due to the increased costs of basic necessities such as food and utilities.

Many landlords and tenants have come to an agreement on the rent in these cases. This helps ensure the tenancy can be sustained. In other cases, the landlord may be able to help the tenant by signposting them to other forms of support such as debt advice or discretionary housing payments that can help the tenant avoid falling further into debt.

These golden rules are designed to help both landlords and tenants find a way to work through this period, giving both peace of mind and the confidence to continue the tenancy into the future.

What are the golden rules for dealing with rent disputes?

1. Communicate:

If rent cannot be paid in part or full, tenants and landlords should discuss the situation as soon as reasonably possible. It is important for landlords to be flexible and have a frank and open conversation with their tenants at the earliest opportunity, to allow both parties to agree a sensible way forward. It is important that landlords try to understand:

- the cause of the arrears;
- the tenant's general financial situation; and
- what ability there is for a payment plan to repay arrears.

2. Establish:

Whether the tenant may be considered vulnerable, such as disabled or a single parent. If the tenant is in the vulnerable category, local authority housing options teams can also give advice and support to help sustain the tenancy.

3. Signpost:

Landlords should point the tenant to organisations that may be able to provide support or advice on benefit entitlement and debt management. Your local council can also offer help and advice, including funding to help pay your rent, called discretionary housing payments (DHP). Other organisations include: ·

Citizens Advice– 0344 411 1444 ·

Shelter - 0808 800 4444

Stepchange - 0800 138 1111

4. Agree:

Seek to agree an affordable payment plan, based on the tenant's circumstances, where this information has been shared. Guidance for tenants and landlords on how best to manage conversations about arrears is available from the NRLA and other partners **here**.

The tenant may also be able to speak to qualified debt advisor and enter into a 'Breathing Space' debt moratorium while an affordable payment plan is arranged. During this time, the landlord may not take action to enforce the debt and the tenant must work with a debt advisor to agree a realistic repayment plan. Further information on this is available **here for NRLA members** or on the **Gov.uk site**.

5. Be clear:

Landlords should provide clear rent statements for 3-month periods (or 13 week periods, if rent is paid weekly), showing any temporary reductions in rent or deferred payments.

6. Consent:

Where the tenant is claiming benefits, explore seeking consent for payment of any housing element to the landlord. As a last resort, you can also request deductions to repay arrears - but neither you nor the tenant can choose how much is deducted as they are automatically calculated. This could lead to higher deductions than a tenant feels they can afford. You can find out more by ringing the Universal Credit Helpline – or the tenant can arrange by speaking to their work coach or UC advisor.

More information on alternative payment arrangements can be found [here](#).

7. Guarantors:

If there is a guarantor in place, actively involve them in discussions with tenants regarding payment of rent. Bear in mind that the financial situation of guarantors may also have changed.

8. Mediate:

If you cannot initially agree, an independent mediator could help resolve your differences without the time/cost of taking a possession case to court.

Information on mediation is available [here](#).

9. Record:

Landlords should keep copies of all documentation and a record of all contact with the tenant, and provide the information to the court should proceedings be necessary.

Landlords should not issue notice without fully exploring the above options and tenants should actively engage with their landlords.

If agreement cannot be reached

If an agreement on a way forward cannot be reached, resulting in a new claim for possession being considered or an existing claim in progress being reactivated, it is essential that landlords and tenants **continue to try** to discuss the level of arrears, the tenant's financial situation and repayment of arrears.

Steps to take before notice is issued (including under Section 21 and Section 8, ground 8)

1. The landlord should write to the tenants outlining the reasons possession is being sought. If possession is for arrears, then this arrears pre-action plan should be followed. A failure to do so could result in your case being adjourned, which could delay it.
2. Both parties should consider whether it is possible to resolve issues between them through discussion and negotiation, rather than formal legal proceedings (alternative dispute resolution). If there is a guarantor, they should also be notified.
3. The landlord should consider any representations received before proceeding with a claim.
4. Where the tenant is currently in a Breathing Space Debt Moratorium the landlord must not serve a Section 8 notice.
5. Landlords must keep copies of all documentation and a record of all correspondence or contact with the tenant, throughout the pre-action process, and provide the information to the court should proceedings be necessary.

If payment of rent is resumed by the tenant, or the tenant's circumstances have changed and a reasonable plan to repay arrears is agreed, then the landlord should postpone issuing new court proceedings, or reactivating an existing claim, whilst the tenant meets the terms of such an agreement.

Should the tenant break the terms of the agreement, the landlord should inform the tenant if they intend to start or resume proceedings. It is important that both landlord and tenant, fully engage in the court process thereafter.