

Harassment and illegal eviction

This factsheet examines the law on harassment and illegal eviction. It explains what acts may constitute harassment and illegal eviction, and who is protected by the law. It then explains the practical steps the occupier can take to protect her/himself, and the civil and criminal remedies that may be available to occupiers who have been subjected to harassment or illegal eviction.

For information about harassment and other forms of antisocial behaviour that is not intended to make an occupier leave her/his accommodation or refrain from exercising her/his rights, see Harassment and antisocial behaviour: 3. For an introduction to the related legislation that may be relevant to particular situations (eg where violence has been used against persons or property), see Harassment and antisocial behaviour: 1. For information about domestic violence, see Relationship breakdown: 9.

In this factsheet, the term 'occupier' is used to refer to both tenants and licensees for the sake of simplicity, except where stated otherwise.

What is harassment?

This section explains the law on harassment as defined by the Protection from Eviction Act 1977. For information on other types of harassment (which could also be perpetrated by a landlord) see Harassment and antisocial behaviour: 3.

Harassment is defined in the Protection from Eviction Act 1977 as:

- acts likely to interfere with the peace and comfort of those living in the property, or
- persistent withdrawal of services that are reasonably required for the occupation of the premises.

The Protection from Eviction Act 1977 creates two separate offences of harassment:

- The first offence can be committed by any person if it can be shown that s/he had an intent to cause an occupier to leave all or part of the property or refrain from exercising any right or remedy in respect of the premises.¹
- The second can only be committed by a landlord or her/his agent. This offence is committed if it can be shown that the landlord or her/his agent should have known or had reasonable cause to believe that her/his action(s) was likely to have this effect.²

For both offences it is necessary to prove both the act and either

- the intention, or
- the reasonable cause to believe.

It is not sufficient to merely show that the act was committed. The key elements of the definition of harassment are explained below.

Acts likely to interfere with the peace and comfort of those living at the property

This may include acts such as:

- forcing occupiers to sign agreements that take away their legal rights, or
- removing or restricting essential services such as hot water or heating, or failing to pay bills so that these services are cut off, or
- constant visits to the property, particularly if this occurs late at night or without warning, or
- entering the accommodation when the occupier is not there, or without her/his permission, or
- stopping the occupier from having guests, or
- persistently offering the occupier money to leave, or
- intentionally moving in other tenants who cause nuisance, or
- harassment because of gender, race, disability or sexuality.

The acts could be committed against the occupier or any member of her/his household. Although the legislation refers to 'acts', one act could be sufficient.

Persistently withdrawing or withholding services that the occupier reasonably requires for the occupation of the premises

This may include the disconnection of services such as electricity, hot water, heating, or any other essential services. For an act or acts to be considered to be persistent, there must be some element of 'deliberate continuity'.³ However, a single act that affects an occupier over a period of time (eg cutting off supplies of

electricity for an extended period) should be regarded as persistent withdrawing of services.

Forcing the occupier to leave all or part of the property

This may include forcing the occupier to give up occupying the common parts, one room or the whole of the premises. It does not include giving up the accommodation temporarily while repair works are completed.

Forcing the occupier to refrain from exercising the legal rights and remedies associated with their tenancy

This could include forcing the occupier to sign an agreement that reduces her/his rights, or to give up the accommodation temporarily during repairs without the provision of any alternative accommodation. The occupier might be prevented from exercising rights such as reporting disrepair to an environmental health officer or going to a rent officer to get a fair rent registered.

Defence to harassment

For either offence of harassment, a mistake of fact (for example where the person committing the act of harassment honestly and reasonably believed the occupier was not a residential occupier) may be a defence to the charge.⁴

For the second offence only, if the landlord or agent can show that s/he had reasonable grounds for carrying out the acts or withdrawing/withholding the services in question, s/he has a defence to the charge.⁵ This might include situations where the water authority is carrying out emergency works and requires the supply to be cut off temporarily. Provocation by an occupier would not be considered a reasonable ground, but may result in the reduction of any damages awarded.⁶

What is illegal eviction?

This section gives information on what constitutes illegal eviction.

The majority of occupiers cannot be evicted unless specific legal procedures have been followed. The exact procedures vary according to the particular type of tenancy or licence agreement the occupier has. See factsheets in the Security of tenure section for more information. Action taken by a landlord or any other person to deprive an occupier of access to all or part of their accommodation without following the correct legal procedures constitutes illegal eviction.⁷

Before deciding whether a person has been evicted illegally it is necessary to check whether any legal action has been taken to end the tenancy or licence and whether the legal procedures have been followed correctly.

An illegal eviction can take place:

- by force (eg being physically removed from the property), or
- by the locks being changed while the tenant is out, or
- by being denied re-entry, or
- by the occupier being deprived of access to a part of the premises which s/he is entitled to occupy (such as locking a toilet door or blocking access to a living room).

Any person, and not just the landlord or her/his agent, can commit the offence of illegal eviction.⁸ Illegal eviction may not be permanent, ie an illegal eviction can take place for a short period of time or if the occupier is subsequently reinstated in the accommodation.

If the landlord has obtained a court order for possession against the tenant, and s/he subsequently engages a bailiff in executing the order for possession, this does not constitute an illegal eviction and will not be an offence under the Protection from Eviction Act 1977. However, where a landlord who has obtained an order for possession resorts to self-help to take possession of the premises her/himself, without involving a bailiff, s/he may be guilty of unlawful eviction.⁹ If this happens, the tenant may claim damages under section 28 of the Housing Act 1988.

In relation to excluded occupiers, although there is no requirement for a court order, the landlord must give reasonable notice, otherwise s/he may still be found guilty of harassment and illegal eviction. Once the period of reasonable notice has expired, the excluded occupier is protected from 'violent eviction', other than 'reasonable force' during an eviction by the landlord¹⁰

Defence to illegal eviction

If a person charged with illegal eviction can prove that s/he believed (or had reasonable cause to believe) that the tenant was not residing in the property, s/he has a defence.¹¹ The matter of whether that belief was held and what is reasonable cause for that belief to be held depends on the facts of the case and the behaviour of both parties.

Harassment and illegal eviction law

This section gives details of the law that covers harassment and illegal eviction.

All types of occupier have rights in relation to their accommodation, which vary according to their occupation status. These include:

- the right to occupy the accommodation, and
- the right to 'quiet enjoyment' of the accommodation, and
- the right to exclude other people from the accommodation (this does extend to licensees. See Security of tenure: 2 for information about the distinction between a tenancy and a licence).

If any person attempts to deny an occupier these rights, s/he may be guilty of harassment and/or illegal eviction. There are various Acts that protect residential occupiers from illegal eviction and harassment that is intended to force the occupier to leave:

- The Protection from Eviction Act 1977 makes harassment and illegal eviction separate criminal and civil offences. It enables occupiers to seek damages and/or injunctions from the civil courts if they have been subjected to harassment or illegal eviction.
- The Caravan Sites Act 1968 gives similar protection to park home occupiers.
- The Housing Act 1988 enables tenants to claim damages via the civil courts if they have been unlawfully evicted or forced to leave due to harassment.
- The Criminal Law Act 1977 protects all occupiers (including those excluded from other protection) from violence during the course of an eviction.
- The Housing Act 1985 enables local authorities to take control of houses in multiple occupation (HMOs) if the health, safety, or welfare of occupiers is at risk due to harassment.

There are also a number of Acts relating to other forms of harassment, antisocial behaviour, violence, and/or environmental nuisance that may be relevant in particular circumstances. See Harassment and antisocial behaviour: 1 for an overview of this legislation.

Occupiers' rights vary depending on their housing status. In order to establish what type of security of tenure a tenant has, readers should refer to the Security of tenure factsheets.

Harassment and illegal eviction outside the private rented sector

Illegal eviction and harassment are most common in the private rented sector, but other occupiers (such as local authority or housing association tenants, mortgagors or park home residents) can also be subjected to illegal eviction and/or harassment.

It is unlikely that harassment by a public sector landlord or mortgage provider would occur, but advisers may come across an illegal eviction. This may take place if, for instance, a local authority or mortgage provider fails to follow the correct legal procedure before taking possession of a property (such as boarding up a property that appears to have been abandoned prior to the right to occupy being properly ended by a court order). In one case, a local authority was successfully prosecuted by one joint tenant who contended that by accepting less than the minimum notice from the other joint tenant, the tenancy had not been ended properly and the eviction was therefore illegal.¹²

Protection under the Protection from Eviction Act 1977

The Protection from Eviction Act 1997 protects residential occupiers. Breaches of the Act can give rise to a civil action and be a criminal offence (see Civil action on page 12 and Criminal action on page 16).

A **residential occupier** is defined as a person who has a legal right to occupy accommodation as a residence, or to restrict other people from gaining possession of the accommodation.¹³ This means that most tenants and licensees and members of their household are residential occupiers for as long as they remain in lawful occupation. Any tenant or licensee is protected while their contract (written or verbal) is still in effect. If the contract has ended or been brought to an end by a valid notice, then the protection will usually not end as most occupiers are protected further by the fact that a court order is required before they can be legally evicted. See factsheets in the Security of tenure section for more information about these requirements.

For most occupiers, it is necessary for the landlord to give a minimum of 28 days notice, and obtain a court order for possession after the period of notice has expired. The occupier only ceases to be a residential occupier within the meaning of the Protection from Eviction Act once the court order has been obtained and has come into force. If a suspended possession order is in place, the occupier only ceases to be a residential occupier once the terms of the suspended order are breached.

Landlords of some occupiers, known as **excluded occupiers**, are not required to obtain a court order by the Protection from Eviction Act. See below for more information.

Excluded occupiers

An occupier will be excluded from taking action under the Protection From Eviction Act 1977 if:¹⁴

- accommodation is shared with the landlord, or

- the landlord lives in the same building and accommodation is shared with a member of the landlord's family (as defined in section 113 of the Housing Act 1985). This does not apply if the building is a purpose built block of flats, or
- the tenancy or licence was granted as a temporary expedient to a trespasser, or
- the letting was for the purposes of a holiday only, or
- no rent was payable, or
- the accommodation is a hostel and the landlord is a local authority or certain other public bodies, or
- the accommodation is provided by the National Asylum Support Service (NASS).¹⁵

Landlords of excluded occupiers are not required to give notice to quit and/or get a court order, but can still be found guilty of harassment or illegal eviction if they fail to give 'reasonable notice' of the eviction. Excluded occupiers are also protected from violence (other than 'reasonable' force) being used during an eviction under the Criminal Law Act 1977 (see page 8). They may also have a cause of action under the Protection from Harassment Act 1997 (see Harassment and antisocial behaviour: 3 for more information) or other legislation relating to violence (see Harassment and antisocial behaviour: 1 for more information). See Security of tenure: 9 for more information about the rights of excluded occupiers.

Other occupiers not covered by the Protection from Eviction Act 1977

Trespassers such as squatters are not covered by a contract and have no rights of occupation. They are therefore not normally classed as residential occupiers.

Tenants of mortgagors, once the landlord's lender has obtained a possession order, have no rights of occupation and are not protected unless the tenancy predates the mortgage. This also applies to **illegal subtenants**. See Security of tenure: 8 for information about the rights of tenants of mortgagors and Security of tenure: 23 for more information about the rights of subtenants.

Protection under the Caravan Sites Act 1968

Park home residents who have a contract with the owner of a protected site are not covered by the Protection from Eviction Act but may be protected under the Caravan Sites Act 1968. This applies to all occupiers of park homes who:

- live on a protected site (one which requires a site licence, or would if it were not owned by the local authority), and
- have a residential contract with the park owner (this includes agreements under the Mobile Homes Act 1983).¹⁶

Harassment is defined in the Act, as amended by the Housing Act 2004, as action that interferes or is likely to interfere with the peace and comfort of the occupier,

or the persistent withdrawal of services or facilities reasonably required for the occupation of the caravan on the site. These acts must be carried out with in the knowledge that they are likely to cause the occupier to abandon the caravan, remove it from the site, or to refrain from exercising any right in relation to the caravan.¹⁷

Park home occupiers covered by the Act are protected from eviction during the period of their contract and after their contract expires unless a court order for possession has been obtained.¹⁸ Occupiers are protected against the acts of site owners and their agents.

Offences under the Act are both civil and criminal offences, and action can be brought in the same way as action under the Protection from Eviction Act 1977 (see Civil action on page 12 and Criminal action on page 16). See Security of tenure: 18 for more information about park home occupiers.

Protection under the Criminal Law Act 1977

Occupiers (including those who are not protected by the Protection from Eviction Act 1977 or the Caravan Sites Act 1968) are protected from violent eviction under the Criminal Law Act 1977. Even if the landlord has a right to possession of the premises (eg s/he has obtained a court order against a residential occupier), this does not give the landlord lawful authority to use or threaten violence.¹⁹ Offences under the Criminal Law Act 1977 are criminal offences and action is therefore brought in the magistrates' court (see Criminal action on page 16). The Act makes it illegal for a person 'without lawful authority' to use violence against someone else to secure entry to premises.²⁰ It is also an offence to **threaten** to use violence in any way. The following elements must be satisfied before there is an offence:

- **Premises.** The definition of premises includes any building or structure and its ancillary land. It also includes moveable structures that are converted for residential use (eg caravans or houseboats). However it does not cover land alone.²¹
- **Violence.** Violence is not defined by the Act, but it can be directed against the person or the premises and must be either intentional or reckless.
- **For the purpose of securing entry to the premises.** Although this must be the objective it is not essential that the entry is achieved, and the reason for the desired entry is not relevant.
- **Someone on the premises at the time who is opposed to the entry.** This could be a tenant, a licensee, or a trespasser. If the landlord waits until trespassers are not on the premises, then there will be no offence.
- **The person using violence must know there is someone there.** If the intruder suspects that there is someone there they should first take steps to check the accuracy of their suspicion.

If the person using violence, or trying to carry out the eviction, is a displaced residential occupier (someone who occupied the premises immediately before a trespasser) or a protected intending occupier (an owner or tenant who has not yet moved in) then s/he or her/his representatives may use 'reasonable force' to exclude a trespasser.²² Security of tenure: 20 gives more information about displaced residential occupiers and protected intending occupiers.

Although the provisions of the Criminal Law Act 1977 cover **trespassers**, the Act also contains an offence of failing to leave accommodation after having been requested to leave by or on behalf of a displaced residential occupier or a protected intending occupier.²³ This only applies to trespassers who entered the accommodation as a trespasser and not those who became trespassers due to the end of a tenancy or licence. For more information on trespassers, see Security of tenure: 20.

Protection for houses in multiple occupation (HMO) occupiers under the Housing Act 1985

Under the Housing Act 1985, local authorities have various powers in relation to houses in multiple occupation (HMOs). HMOs are defined as houses that are occupied by more than one household (eg a house split into bedsits). Where the health, safety or welfare of the tenant or tenant's household is seriously at risk due to inadequate management, overcrowding, bad conditions, or harassment, local authorities have the power to take control of HMOs using a control order.²⁴ See Housing conditions: 10 for more information about HMOs.

Case law²⁵ has established that it is also possible for a local authority to make a compulsory purchase order where occupiers of an HMO are subjected to harassment or illegal eviction. More information about compulsory purchase orders can be found in Housing conditions: 7.

Practical steps

This section considers the practical steps that occupiers experiencing harassment or illegal eviction can take.

There are certain things that occupiers can do which may make it easier to tackle harassment or illegal eviction. These include:

- reporting the events to the local authority's tenancy relations officer (TRO) or an advice centre
- keeping a diary, notes and photographs detailing all events that take place. Evidence will be important if it is necessary to go to court

- reporting any harassment, violence, or threats to the police in case police evidence is needed later
- asking the landlord to put all communications in writing and keeping copies
- having somebody else with them to give support and act as a witness whenever they have dealings with their landlord or landlord's agent
- getting together with other occupiers by joining or setting up an association.

Occupiers could also consider writing to the landlord saying that if the harassment continues, they may be forced to take legal action to:

- prevent further harassment, and/or
- get reinstated at the property, and/or
- claim damages for occupation at another address.

Occupiers could do this themselves or could report events to an advice centre, solicitor or tenancy relations officer (see Assistance from the local authority, below) and ask them to contact the landlord on their behalf. Copies of all correspondence to or from the landlord should be kept.

Self-help remedy for illegal evictions: forcing re-entry

In some situations it may be possible for an illegally evicted occupier to regain possession by forcing a re-entry (eg by breaking a window and changing locks) if s/he feels it is safe to do so. However, if there is someone inside the property who opposes the entry, s/he may be committing an offence under the Criminal Law Act 1977 (see page 8) **unless** s/he can show that s/he is a displaced residential occupier. See Security of tenure: 20 for details of who is a displaced residential occupier.

If an evicted occupier decides to try to regain occupation in this way, it may be advisable for her/him to have a tenancy relations officer and/or the police in attendance, so as to provide assistance in case of a confrontation with the landlord. However, if an occupier uses this remedy s/he must be aware of the risk of committing the offence of criminal damage.²⁶

Assistance from the local authority

If an occupier is threatened with homelessness (see Homelessness: 2), is in priority need (see Homelessness: 6) and did not become threatened with homelessness intentionally (see Homelessness: 7), the local authority has a duty to take reasonable steps to ensure that accommodation does not cease to be available.²⁷ This could include a **tenancy relations officer** (or other officer) negotiating with a landlord to reinstate or refrain from harassing a tenant. See page 11 for more information about the role of tenancy relations officers.

To help occupiers whose supply of gas, water and/or electricity has been disconnected or who have been threatened with disconnection, local authority environmental health departments can arrange for the supply to be reconnected or intervene to prevent disconnection. The local authority can do this even if no harassment or illegal eviction has taken place, where money for bills is clearly included in the rent and the landlord has failed to pay them.²⁸

Tenancy relations officers (TROs)

Many local authorities employ tenancy relations officers (TROs) to deal with cases of harassment and illegal eviction and to prosecute landlords where necessary (for information on local authorities' powers to prosecute see Criminal action on page 16). There is no legal requirement for local authorities to have a TRO service; sometimes staff from the environmental health department, legal department or the housing department take the role of tenancy relations officers. However, the Department for Transport, Local Government and the Regions (DTLR) recommends that local authorities take a strategic approach to harassment and illegal eviction, and encourages local authorities to have at least one officer designated to take on the role of a TRO.²⁹

A TRO may be able to stop the harassment or persuade the landlord to reinstate an occupier at an early stage by explaining the law to the landlord either by telephone, letter, or visit. TROs may also 'caution' the landlord, under the Police and Criminal Evidence Act 1984, that s/he may be committing an offence and may be prosecuted. Some local authorities operate an out-of-hours TRO service.

The TRO may try to settle the dispute between the landlord and the occupier without any prosecution. Where it is clear that an offence has been committed and the occupier wants a prosecution, the TRO can prosecute on behalf of the local authority.

Legal remedies

This section looks at legal remedies for harassment and illegal eviction.

If negotiations with the landlord to stop the harassment or prevent an eviction have failed, occupiers could consider pursuing a remedy using the courts. It is possible for occupiers to:

- obtain an injunction to stop the harassment and/or to get reinstated after an illegal eviction, and/or
- claim compensation (damages) for what they have suffered, and/or
- prosecute their landlord and/or apply for a warrant of arrest, and/or
- ask the local authority to prosecute their landlord in the criminal courts.

These options are explained below. An occupier can pursue a civil claim for damages in a county court at the same time as the landlord is prosecuted under criminal law in a magistrates' court.

Advisers should be aware that there may be many reasons why an occupier may not wish to pursue a legal remedy. It may be that the occupier, after what s/he has suffered, no longer wishes to continue to occupy the property. At the conclusion of any legal proceedings the occupier will be very likely to have the same landlord. Similarly, if an occupier has limited security of tenure, this may influence her/his decision about whether to pursue court action.

Civil action

Harassed and/or illegally evicted occupiers can use the civil court (county court) to get an **injunction** to stop the harassment and/or to be reinstated in their home and to get **damages** as compensation for their landlord's actions. An occupier will normally need a solicitor or a housing advice worker experienced in court work to help her/him to take action in the county court. To be successful in the civil courts, the occupier has to prove her/his case on the **balance of probabilities**.

In one case, the landlord of an assured shorthold tenant who threatened the tenant with violence, smashed the tenant's belongings up and then tried to get the tenant to drop the case, was sentenced to two years in prison.³⁰

In another case where a landlord harassed the tenant for rent arrears, assaulted the wife, evicted the tenants without obtaining a warrant and then took the tenant's belongings to sell in order to recover rent arrears, damages were awarded. The judge awarded £1,500 for the harassment leading up to the eviction; £2,500 for the actual eviction and the time spent out of the actual property, and £1,250 in aggravated damages, to reflect the landlord's conduct.³¹

Injunctions

A landlord can be forced to stop harassment or illegal eviction by way of a county court injunction. An injunction is a court order requiring someone to do (or refrain from doing) something. Thus an injunction can order the landlord to stop the harassment or allow the occupier to re-enter her/his home. An injunction can be either an **interlocutory injunction** (an interim measure to prevent further harassment and/or antisocial behaviour during proceedings) or a **final injunction**.

Procedure

Normally a county court judge will not grant an injunction unless proceedings have been started.³² The adviser or a solicitor would therefore need to start

proceedings for damages and/or an injunction by issuing a claim. These set out the case of the occupier (claimant). Once the claim has been issued, an occupier seeking an urgent order will be able to take out an application for an immediate hearing and file a draft of the injunction being sought so that the judge knows what s/he is being asked to do.³³ The advice worker or solicitor will have to prepare witness statements for each witness to explain what has happened.

Normally two days notice must be given of the hearing to enable the landlord to attend. However, in emergencies an injunction may be obtained without notice to the landlord in what is known as an 'application without notice'.³⁴

If the judge grants an injunction in response to an application without notice, it will usually last for a few days or a week. This gives time for the defendant (landlord) to be served with a copy of the order and for both sides to return to court to decide whether the injunction should remain in force until the hearing. If a landlord refuses to comply with an injunction s/he can be fined and/or imprisoned for contempt of court.³⁵

Damages

Awards of damages are unlimited in a county court and are usually in two parts: general damages and special damages. In some cases it may also be appropriate for an occupier to claim aggravated and/or exemplary damages:

- **general damages** are for physical injury, loss of occupation, general inconvenience, and suffering
- **special damages** reflect the value of specific items of property that may have been destroyed or damaged eg clothing or other belongings thrown away after an eviction, or damage to furniture, or other damage that a price can be put on, such as any extra cost of alternative accommodation
- **aggravated damages** are for especially severe suffering, outrage or indignation at the way a person has been treated
- **exemplary damages** can only be awarded in tort cases (see page 15) and only where the landlord's conduct has been calculated to make a profit.

Damages under section 27 of the Housing Act 1988

Under section 27 of the Housing Act 1988, a tenant can claim damages if s/he is unlawfully evicted or has to leave because of harassment. However, if a tenant is unlawfully evicted but then reinstated before the date on which final court proceedings take place, s/he will not be entitled to section 27 damages.³⁶ This will not be the case if reinstatement is offered but it is not reasonable for the tenant to return to the accommodation.

The level of damages awarded under section 27 can be high. Damages are calculated as the difference in the value of the property with and without the tenant living there. For the purposes of the valuation it is assumed that:

- the landlord is selling her/his interest on the open market to a willing buyer, and
- neither the tenant nor a member of her/his family wishes to buy it, and
- it is unlawful to carry out any substantial development of any of the land or to demolish the whole or any part of the building on that land.

For example, the courts have valued the value of a statutory tenancy under the Rent Act 1977 as 25 per cent of the freehold value of the accommodation.³⁷

However, if the occupier is an assured shorthold tenant, the damages will not be high. In one case,³⁸ the damages were assessed at £500 due to the occupier's lack of security of tenure. The damages are likely to be even less if the occupier has only basic protection.

The landlord has a defence to the claim for damages if s/he reasonably believed that the tenant had ceased to reside in the premises at the time s/he was deprived of occupation **or** (in cases of harassment) s/he had reasonable grounds for her/his actions.

The court may reduce the amount of damages because of unreasonable conduct by the tenant prior to the harassment or illegal eviction³⁹ **or** because before the proceedings were begun, the landlord offered to reinstate and it was unreasonable for the tenant to refuse that offer. The tenant does have the right to refuse an offer of reinstatement if s/he has a good reason, such as fear of violence. In one case,⁴⁰ the Court of Appeal held that where a tenant's room was wrecked and the landlord merely handed over a key and invited the tenant to resume occupation, this did **not** amount to reinstatement for the purposes of section 27.

Examples of level of damages awarded

- £8,800 was awarded to an assured tenant who returned from holiday to find the accommodation let to other people. The landlord subsequently threatened forcible eviction. The damages included £6,750 under section 27 of the Housing Act 1988 and £2,050 for breach of quiet enjoyment.⁴¹
- Assured tenants who were threatened with violence and then illegally evicted (causing one to make a suicide attempt) were awarded £10,586 which included £3,000 aggravated damages, £2,000 for breach of quiet enjoyment, and £4,000 for unlawful eviction.⁴²
- An assured tenant who was served with an invalid notice and then illegally evicted was awarded £7,764, which included £750 compensation via criminal

proceedings (see page 16), £3,500 for trespass to goods and breach of quiet enjoyment, £1,500 aggravated damages, and £1,500 exemplary damages.⁴³

- An assured shorthold tenant had a six-month tenancy. She shared the property with two other occupiers. The landlord excluded her from the property and removed her belongings. Damages were assessed at common law at £500 for the inconvenience, discomfort, and stress caused by the eviction.⁴⁴

Causes of action

In order to take a case in the civil court it is necessary to show that the complaint falls within the specific categories that are recognised in common law as a basis for taking action. There are two broad categories, **breach of contract** and **tort** (which means a civil wrong). Within each of these categories, there are different causes of action, which are explained below:

Breach of contract

Where two people enter into a contract and one party does not do what s/he agreed to do, then the other party can take an action for breach of contract. The law will attempt to put them in the position s/he would have been in if the contract had not been breached. The following causes of action are available:

- **Breach of contract:** tenancy agreements and licence agreements are contracts. Any violation of a contract gives the victim the right to take action in the civil courts. For example, a promise to supply electricity is broken if the supply is deliberately disconnected. Regulated, assured, and assured shorthold tenants still count as having a contract while they are in occupation even if the landlord has served a valid notice
- **Breach of 'covenant for quiet enjoyment':** it is an implied term of all tenancies (there is also a similar term applied in licences)⁴⁵ that the occupier must be able to use the premises without interference. Acts of harassment or illegal eviction would clearly break this covenant.

Tort

A tort is a civil wrong. An action in tort arises where someone does something to another person, which it is considered in law that they should not do. Damages are designed to put the person back in the position which they would have been in had the act not taken place. The following causes of action are available:

- **Breach of section 3 of the Protection from Eviction Act 1977:** a landlord must obtain a court order to evict all tenants and licensees (apart from excluded occupiers) under section 3 of the Protection from Eviction Act 1977
- **Trespass to land:** trespass is entering someone's premises or land without permission or being invited but not leaving when requested. Any lawful occupier, other than an excluded occupier whose contract has expired, can use this cause of action

- **Nuisance:** this is any continual or recurring act that unreasonably interferes with the use or quiet enjoyment of premises. Any lawful occupier other than an excluded occupier with an expired contract can use this cause of action
- **Trespass to goods and conversion:** trespass to goods is unlawfully interfering with someone's property. Conversion is the civil equivalent of theft: taking an occupier's property without permission. Any owner of the goods can use this cause of action
- **Breach of section 27 of the Housing Act 1988:** this makes unlawful eviction or harassment that leads to eviction a civil offence. It can be used by any residential occupier (residential occupier is defined in the same way as in the Protection from Eviction Act 1977)
- **Assault:** any act that puts the victim in immediate fear of being physically attacked. Any occupier can use this cause of action.

Criminal action

The Protection from Eviction Act 1977 makes harassment and illegal eviction criminal offences. Civil action will probably bring the speediest remedy for the occupier, but successful criminal proceedings can be a long-term deterrent for landlords. Criminal action may also be more appropriate in urgent cases (eg those involving violence), and may be preferable if the client is not eligible for help with legal costs. The existence of a proven criminal offence can also enhance the effectiveness of a civil action. Prosecution for other offences (such as theft, or attempting to pervert the course of justice) can also take place at the same time.⁴⁶ To secure conviction, the case must be proven beyond all reasonable doubt.

Landlords are normally prosecuted by local authorities (at no cost to the occupier), although individuals and the police can also prosecute. In many cases, local authorities employ tenancy relations officers to do this work (see page 11). For an individual occupier to prosecute her/his landlord, s/he would have to go to the magistrates' court, explain what happened in order to establish that an offence may have occurred, and ask for a summons to be issued. However, for the following reasons, it may not be advisable for an occupier to bring a private prosecution:

- help with legal costs is not available
- the case must be proved 'beyond reasonable doubt'
- the landlord has the right to ask to be tried in the crown court before a judge and jury and this is an expensive and lengthy procedure
- the court has no power to grant an injunction to reinstate an evicted occupier
- if the landlord is acquitted, the occupier could be ordered to pay the landlord's legal costs, which might be significant.

The police rarely bring prosecutions under the Protection from Eviction Act 1977, but they should do so for offences under the Criminal Law Act 1977 (see page 8 and Security of tenure: 20) or where there has been an assault or threats.

Under the Protection from Eviction Act 1977, local authorities are given the power to prosecute landlords.⁴⁷ Advice workers should encourage local authorities to use all of their powers to assist a harassed or illegally evicted occupier, including the prosecution of the offender. The Local Government Ombudsman has severely criticised authorities that have failed to do so.⁴⁸

Procedure

Criminal proceedings are begun in the magistrates' court for the area in which the offence was committed. Proceedings can be heard in the magistrates' court or in the crown court. A local authority will present the information to the court, which will issue and serve a summons and set a date for a hearing. However, this may be adjourned more than once because of the absence of a witness or shortage of time.

For a prosecution to be successful, there has to be strong evidence to support the charge, and the occupier will have to go to court as a witness (the occupier's evidence is crucial). Other witnesses (eg an advice worker who may have tried to persuade the landlord to reinstate the occupier) should attend so that as much evidence as possible is available to the court.

As part of a prosecution, the local authority can apply for compensation on the occupier's behalf, but any damages awarded in this way are deducted from any damages received as a result of a civil action.⁴⁹ The maximum compensation is £5,000 per conviction.

If the landlord is convicted in the magistrates' court, s/he can be fined up to £5,000 and/or sent to prison for up to six months. The crown court can impose any fine and/or imprison for up to two years.

Warrant of arrest

In serious and urgent cases the local authority can apply for a warrant for the arrest of the perpetrator.⁵⁰ The police carry out the arrest and the offender is brought before the magistrates. The offender will normally ask for bail (as the alternative is to be remanded in custody) and the local authority can ask for 'bail conditions' that the court can impose. These could include the reinstatement of the occupier and a restriction on the landlord approaching the premises in order to avoid further harassment. However, because warrants for arrest are only granted in serious cases, an occupier who wants to be reinstated after an illegal eviction must normally obtain an injunction from a county court.

Further reading

Quiet enjoyment; David Carter and Andrew Dymond; LAG, 6th Edition 2002.

¹ s.1(3) Protection from Eviction Act 1977.

² s.1(3A) Protection from Eviction Act 1977.

³ R v Abrol [1972] Crim LR 318, CA.

⁴ R v Phekoo [1981] WLR 117, CA.

⁵ s.1(3C) Protection from Eviction Act 1977.

⁶ s.27(7) Housing Act 1988.

⁷ s.1(2) Protection from Eviction Act 1977.

⁸ s.1(2) Protection from Eviction Act 1977.

⁹ Haniff v Robinson 26 HLR 386, CA [9 June 1992].

¹⁰ s.6 Criminal Law Act 1977.

¹¹ s.1(2) Protection from Eviction Act 1977 and s.3(4) Caravan Sites Act 1968.

¹² Wandsworth LBC v Osei-Bonsu [1998] CA 12 October.

¹³ s.1(1) Protection from Eviction Act 1977.

¹⁴ s.3A Protection from Eviction Act 1977.

¹⁵ s.3A(7A) Protection from Eviction Act 1977 as amended by para 73 Sch.14 Immigration and Asylum Act 1999.

¹⁶ s.1 Caravan Sites Act 1968.

¹⁷ s.3(1)(c) Caravan Sites Act 1968, as amended by s.210 Housing Act 2004.

¹⁸ s.3(1) Caravan Sites Act 1968.

¹⁹ s.6(2) Criminal Law Act 1977.

²⁰ s.6(1) Criminal Law Act 1977.

²¹ s.12 Criminal Law Act 1977.

²² s.6(3) Criminal Law Act 1977.

²³ s.7 Criminal Law Act 1977.

²⁴ s.379 Housing Act 1985.

²⁵ R v Secretary of State for the Environment, ex parte Kensington & Chelsea RLBC [1987] 19 HLR 161.

²⁶ s.1 Criminal Damage Act 1971.

²⁷ s.184(1) Housing Act 1996.

²⁸ s.33 Local Government (Miscellaneous Provisions) Act 1976.

²⁹ 'Harassment and unlawful eviction of private sector tenants and park home residents – a good practice guide', DETR, 2000.

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- ³⁰ R v Khan [2001], CA 29 March 2001.
- ³¹ Daramy v Streeks Lambeth County Court, 15 November 2006, Legal Action, June 2007
- ³² Civil Procedure Rules 25.2(2).
- ³³ Civil Procedure Rules Practice Direction 25 para. 5.3.
- ³⁴ Civil Procedure Rules 25.3(1).
- ³⁵ Part 23 of the Civil Procedure Rules and Order 29 rule 1 of the County Court Rules 1981.
- ³⁶ s.27(6) Housing Act 1988.
- ³⁷ Murray v Lloyd, The Times, 27th June 1989.
- ³⁷ Melville v Bruton [1996] EGCS 57, Court of Appeal.
- ³⁹ s.27(7) Housing Act 1988 and Wandsworth LBC v Osei-Bonsu [1998] CA 12 October.
- ⁴⁰ Tagro v Cafane and Patel [1991] 23 HLR 250, Court of Appeal.
- ⁴¹ Abbott v Bayley [1999], in Legal Action May 1999, on appeal 32 HLR 72, Court of Appeal.
- ⁴² Lord and Haslewood-Ogram v Jessop [1999] in Legal Action August 1999.
- ⁴³ Silva v Coelho [1998] in Legal Action March 1998.
- ⁴³ Melville v Bruton [1996] EGCS 57, Court of Appeal.
- ⁴⁵ Smith v Nottinghamshire CC [1981].
- ⁴⁶ R v Khan [2001] CA 29 March.
- ⁴⁷ s.6 Protection from Eviction Act 1977.
- ⁴⁸ Isles of Scilly, 86/B/852 (failure to investigate); LB Lewisham 89/A/1581 (failure to prosecute); LB Tower Hamlets 89/A/1230 (failure to consider powers).
- ⁴⁹ ss.35 and 38 Powers of Criminal Courts Act 1973.
- ⁵⁰ s.1(b),(3) and (4)(a) Magistrates Courts Act 1980.