

# Pushed Out of The Nest



With the economic impact of Covid-19 starting to show its teeth, many gamekeepers are facing an uncertain future in respect of their jobs. Whilst redundancies are difficult for anybody, gamekeepers usually face a double-hit as their home is often provided by the employer and tied to the job, so a notice of redundancy may well be accompanied by a Notice of Eviction.

To help you to prepare for such an eventuality we have set out below some general advice in respect of the two most commonly held residential agreements for Gamekeepers. This advice is in respect of no-fault evictions only – your Landlord may have other means of evicting you if you are at fault under the agreement, i.e. by not paying rent. Every tenancy or licence agreement will be different and so it is important to take independent legal advice should you find yourself in this situation. Knights Solicitors operate a free-of-charge legal helpline for gamekeepers, through the Gamekeepers' Welfare Trust. There are also many organisations and charities which offer free advice and assistance such as the Citizens Advice Bureau or Shelter.

## Assured Shorthold Tenancies ("AST")

ASTs are by far the most common form of tenancy agreement for rented residential accommodation. You will likely have an AST if your tenancy started on or after 28 February 1997, you do not live with your Landlord and the tenancy is not tied to your job (i.e. you are not required to live in that accommodation to better perform your duties).

If you have an AST then your Landlord must provide you with A Section 21 Notice giving you at least 2 months' notice, although this may be more depending on the terms of the AST (this notice period has been temporarily extended by the Coronavirus Act 2020 to 3 months' for S21 Notices given between 26 March 2020 and 30 September 2020). A S21 Notice must contain certain information to be valid and so the Landlord will usually use Form 6A to ensure that everything is present and correct (the use of Form 6A is a requirement for ASTs started or renewed after 1 October 2015).

You cannot be given a S21 notice in the first 4 months' of the Tenancy, and any Notice will not be valid if the Landlord:

- did not protect your deposit in a licenced scheme within 30 days after the AST started;
- did not give you the required information about the deposit scheme;
- did not give you a copy of the current gas safety certificate;
- did not give you a copy of the energy performance certificate; or
- did not give you a copy of the "how to rent" guide (if the AST started after 1 October 2015)

## Service Occupancy ("SO")

If your accommodation is tied to your work or if you live in particular house or in a particular vicinity to better perform your duties then you might have a SO. If this is the case then you will not have the protection set out above and it will be much easier for the Landlord to evict you. This is because under a SO you would only have a Licence to occupy the land and not a Tenancy. The terms of the Licence will usually be set out in your Employment Contract, and frequently the Employment Contract will have a clause stating that your Licence will end automatically upon the termination of your employment. If there is no express provision in respect of giving you notice then the Licence will end alongside your employment.

An exception to this is for Agricultural Workers, who get enhanced protection under the Rent (Agriculture) Act 1976 and the Protection from Eviction Act 1977. The protection for Agricultural Workers is broad and complex but, unfortunately, the case of *Lord Gledyde v Rapley*<sup>1</sup> provided that a gamekeeper is not an agricultural worker because his primary role is to provide birds for sportsmen to shoot; the fact that the birds might be later sold for food is purely incidental. However, if your role involves a substantial amount of agricultural work (such as forestry work, growing,

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<sup>1</sup> [1978] 2 All ER 110

keeping farm livestock or even repairing farm machinery) as well as gamekeeping duties then you might qualify for this enhanced protection and so it would be worthwhile seeking independent advice if you think this might apply to you.

### **What if you do not leave at the end of your tenancy/licence?**

If you do not move out voluntarily at the end of the Notice Period under an AST then the Landlord must issue proceedings within 6 months of giving you the S21 Notice. If you dispute that the Landlord has the grounds to use the Section 21 procedure then you should raise this as a Defence to those proceedings.

If you have a SO and you do not vacate the property when your Licence ends you still have some protection from the Protection from Eviction Act 1977, which covers all residential occupiers (except where they live with the Landlord, are under a holiday let, are a crown tenant or live in the property without giving anything in return). The Landlord does not have to give you a notice to quit (other than might be included in the terms of the Licence) but he would still be still required to obtain a Court Order before he can take any action to legally remove you. However, assuming that are not an Agricultural Worker then your only Defence against a Court Order would be that it was not a true SO and was, in fact, a Tenancy – the Court will look the facts of the case to decide this, including whether it was indeed necessary for you to live there to carry out your role. Also, accommodation under a SO will usually be rent-free (with the benefit being taken into account in your wages) and so if the Landlord is claiming additional rent from you this might be an indication that you have a tenancy and not an SO. If the Landlord asks you to pay for your continued use of the house after the Licence ends then this may also be construed as rent, thereby granting you a tenancy from that point forward.

It is important note that even with a Possession Order, the Landlord cannot use force to evict you himself and cannot gain entry to the property whilst you still occupy it. The only legal way he can legally enforce a Possession Order is through the use of a licenced Bailiff. You might, therefore, think that you can continue to occupy the house even after the Notice has expired and wait until the Landlord has applied for an Order. However, this is not advisable and you need to bear in mind that the Landlord will likely obtain an Order that you have to pay the Landlord's costs and also that you have to pay rent for that period of occupation (or in the case of an SO, compensation for your enjoyment of the house). If the Landlord has to instruct a Bailiff to evict you then he may well seek the costs of that from you too. We would, therefore, only recommend refusing to leave at the end of the Notice if you actually think you have a Defence. If you have no Defence but you need more time to find alternative accommodation then we would recommend negotiating with your Landlord in the first instance, or requesting more time from the Court if proceedings are issued. You might also be able to obtain assistance with finding alternative accommodation from your Local Authority or from a charity such as Shelter.

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In association with the Gamekeeper's Welfare Trust

### **About Knights Solicitors**

Knights Solicitors was established in 1994, initially concentrating on litigation relating to the countryside and country sports. Since then, we have maintained our focus on litigation while broadening the legal areas in which we act to include both contentious and non-contentious subjects.

Knights Solicitors operate a free of charge 30-minute legal helpline for Gamekeeper's Welfare Trust. If you need legal advice and assistance in relation to any legal matter, then contact the Gamekeeper's Welfare Trust on 0300 1213 3088 or by email to [enquiries@thegamekeeperswelfaretrust.com](mailto:enquiries@thegamekeeperswelfaretrust.com) and they will refer your matter to us.

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