

PROPERTY SERIES

Landlord's Letters

Plugging the communication gap between landlords and their tenants for successful property lettings

ENDORSED BY



Adam Church

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by Adam Church

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For convenience (and for no other reason) 'him', 'he' and 'his' have been used throughout and should be read to include 'her', 'she' and 'her'.

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CHAPTER 6

Handling notices

The nature of the lettings business is that tenants will come and go with some frequency. Sometimes landlords are lucky enough to have tenants that stay in their properties for a number of years, but, at some point during the term of the tenancy, your tenant will decide to vacate the property and will serve you notice to terminate the tenancy.

This chapter deals with how you should approach the receipt of notices to terminate from your tenant and what to do if the notice is unacceptable for any reason. Also, you will find out how mutually to agree to surrender a tenancy and what to do if you think your tenant has abandoned the property.

Notice to terminate a tenancy

In order to give you notice successfully to vacate a property, your tenant must fulfil certain obligations in order to satisfy the terms of the agreement. Some of these terms will be different for each type of tenancy and you should check your agreement to find out the terms that are relevant in your case.

First steps

When you receive a notice offering to terminate the property from your tenant you should check a few things before responding:

- Has the tenant told you the exact date he wishes to vacate?
- Has the tenant given you the proper notice period?
- Is the tenant still held under a fixed-term contract that doesn't allow termination of the tenancy for some time?
- Have all tenants given you notice **and** signed the notice letter?

By answering the above questions you will be able to establish a response to your tenant which will inform him of the next steps involved.

Note

If your tenant is held on an Assured Shorthold Tenancy Agreement, he may have rights to vacate the property on the last day of the fixed term without offering you any notice. Make sure that you keep in touch with your tenant towards the final couple of months of his agreement so that you know whether he intends to leave or not, thus giving you the chance to plan ahead.

A satisfactory offer to terminate the tenancy

If you receive a notice to terminate the property from your tenant which fulfils all of the necessary criteria, you should write to your tenant to confirm what date the final day of the tenancy will be and to advise that you are likely to require access to the property to carry out viewings.

NOTICE RECEIVED CONFIRMING TENANT'S MOVE-OUT DATE (6.1)

From this point you will need to arrange a check-out with the tenant on the final day that will allow you to go through the Inventory and Schedule of Condition to determine the return of the tenant's deposit.

In order to help the tenant to fulfil the criteria required when moving out of your property and to ensure that there are no claims against his deposit, it's useful to give the tenant clear guidelines, stating what is expected of him on the day of the check-out.

GUIDANCE NOTES FOR TENANTS VACATING A PROPERTY (6.2)

Note

You cannot ask the tenant to leave the property in a better condition than when he moved in and your tenant is not liable for fair wear and tear that may have occurred during the tenancy. When asking your tenant to carry out tasks detailed in the Guidance Notes you should always consider the standard of the property at the time the tenant took occupancy and be aware that the tenant is not obliged to improve the property.

By sending this information to the tenant you are ensuring that there isn't any confusion over the tenant's duties and you are much more likely to get the property back in a condition which is ready for reletting.

An unsatisfactory offer to terminate the tenancy

In some instances you may find that the notice offering to terminate the property that you have received from your tenant doesn't fulfil all of the obligations as stated in the tenancy agreement.

You should identify where the tenant has failed to meet the relevant criteria and respond accordingly.

Insufficient notice period

If your tenant hasn't given the proper notice period, write to him informing him of this and telling him that he can vacate on the date specified but that he will be responsible for rent up to the end of the notice period he should have given. Tell him that unless he lets you know to the contrary you will assume that he still wishes to vacate on the date specified and will be responsible for the rent to the end of the proper notice period.



INSUFFICIENT NOTICE PERIOD GIVEN (6.3)

Tenancy still in fixed term

Some tenancy agreements contain clauses that allow landlords and tenants to give notice to each other during the period of the fixed term. Usually

referred to as 'break clauses', they are often found in agreements that have had a tenant in occupation for some time and are designed to give flexibility to both parties.

If the agreement doesn't contain a break clause and your tenant wishes to surrender the tenancy during the fixed term of the agreement, normally you won't wish to agree to it. However, under the law there should be some mechanism to allow the tenant to be released from his obligations before the end of the tenancy agreement so long as your rights are not affected, and unless you provide one the tenant may be entitled to assign the tenancy to another tenant. You will not want this, so it's best to permit the tenant to end the tenancy early if he can find a suitable alternative tenant.

You should therefore write to the tenant telling him that you don't consent to him ending the agreement early, unless he is able to find a suitable replacement tenant, who must pass your referencing procedure.



NOTICE RECEIVED BUT DATE UNACCEPTABLE DUE TO FIXED TERM (6.4)

Joint tenancies

Where you have two or more tenants signed up to the same tenancy agreement, all occupants must be considered as a single unit, i.e. 'joint and severally liable'. This means that if either party wishes to vacate the property, they must **all** offer notice to terminate concurrently.

You may, however, decide to be flexible with the tenants if:

- they find a new tenant to replace the outgoing one and sign a new fixed-term contract; or
- the remaining tenant is willing to take the tenancy on in his name only.

If you receive a notice from one of the tenants in the property that informs you of his wish to terminate occupancy, you must respond to **all** of the tenants informing them of the above conditions under which the notice can be accepted.



INDIVIDUAL NOTICE ON A JOINT TENANCY (6.5)

Although it's unlikely, you may be unable to accept notice under the above conditions and you may require all the tenants to give you notice to terminate the property and vacate at the same time. You must inform them in writing of your position so they will be able to make the necessary arrangements. You need to make it clear that they are all liable for the whole of the rent until you have received the property back with vacant possession.



ALL TENANTS MUST GIVE NOTICE AND VACATE (6.6)

Change of tenants

If you're willing to allow your tenants the option of replacing outgoing tenants or taking the tenancy on in the remaining tenants' names only, it's advisable that you re-reference the tenants. If you do allow a changeover, it's best to set out the terms clearly for this to take place and supply your tenants with the necessary tools to complete the changeover.

Replacement tenants

Find out the name of the person your tenants want to move into the property and send a letter to all existing tenants advising them that you are aware that they wish to make a change to the names on the tenancy agreement.



CHANGE OF TENANT/S WITH REPLACEMENT/S (6.7)

Remember to include with this letter enough Tenancy Application Forms for **all** tenants to complete and sign as you will need to reference every tenant again before a new tenancy agreement can be signed.

You should also send with the above information a form which details what the tenants must do to satisfy the terms of this transaction. This form also states what will happen with the outgoing tenant's deposit money, and must be signed and dated by all new and existing tenants and returned to you immediately.



CHANGE OF TENANT/S FORM WITH REPLACEMENT/S (6.8)

No replacement tenants

Sometimes a tenant will wish to leave the property and those who want to remain will request permission to take the tenancy on in their names without the need for finding any replacements.

This is often a simpler transaction, as all you need to do is have all parties to be in agreement with the proposed changeover and re-reference the remaining tenants.

Write to all your existing tenants confirming the planned changes to those named on the agreement and enclose the necessary Tenancy Application Forms.

You need to make it clear that the outgoing tenant will remain liable for the rent until a new tenancy agreement has been signed by the remaining tenants.



CHANGE OF TENANT/S WITHOUT REPLACEMENT/S (6.9)

Also enclose with the above the necessary form which details what will happen to the outgoing tenant's deposit and the terms for the transaction to take place successfully. This must be signed by all of the tenants and returned immediately.



CHANGE OF TENANT/S FORM WITHOUT REPLACEMENT/S (6.10)

Note

Always re-reference your tenants (and guarantors) before the start of a new tenancy agreement. If the financial situation of the tenant changes during the course of his existing tenancy, this might affect your decision to offer him a new contract. Remember that tenants can lose their jobs or run up debts whilst they are living at your property and if you offer a new tenancy agreement to somebody who is unable to pay the rent, you risk serious financial loss.

Breaking the tenancy

There are times where it's convenient for both parties to agree to terminate the tenancy agreement outside of the terms set out in the contract and it's

possible for a landlord and tenant mutually to agree for this to take place by arrangement.

The most common reason for mutually terminating a tenancy agreement is where the landlord is selling the property and the tenant has found somewhere else to go. Alternatively, it might be your tenant who is buying a property and you have a new applicant willing to replace him quickly.

It's important that you and your tenant sign a document to state your intentions to agree to terminate the current tenancy and to release each other from any further obligations stated in the contract.



MUTUAL RELEASE OF TENANCY (6.11)

Tip

Don't commit to mutually terminating the tenancy until you have secured everything you need to facilitate a beneficial changeover. If you have to replace an outgoing tenant, make sure that all the paperwork is signed and that the replacement tenant is ready to move in.

Note

Always have a witness who can confirm what you have agreed. A witness should be present at all discussions and formal meetings regarding this matter and should be asked to sign and date all documents pertaining to the mutual release of a tenancy.

Tip

Notwithstanding any agreement reached with the tenant, you shouldn't sign any binding documentation regarding the sale of the property until you have vacant possession because if the tenant breaks his agreement and fails to vacate, this would put you in breach of contract with the purchaser and potentially liable for damages for breach of contract. It may not be possible practically to recover this from the tenant.

Abandonment

Although it's quite uncommon, tenants will sometimes vacate your property without giving you any notice or returning the keys to you or telling you where they have gone. This is known as 'abandonment'.

Unfortunately, a tenant who has abandoned your property is likely to have other ongoing issues with you and the terms of his tenancy. In many circumstances a tenant will have rent arrears, may be facing court proceedings against him in respect of financial claims or could have caused damage to your property which he cannot repair.

If you have been trying to contact your tenant in writing, by telephone and/or by email for whatever reason and you have received no reply, this is an indication that the tenant is either ignoring you or is no longer contactable with the details that you have on file. You should arrange to go to the property to carry out a routine visit to see if the tenant is still in occupation.

Note

Don't assume that you can visit the property without giving the proper notice in writing to your tenant. Although you may be anxious to check on the status of the tenant, you must not breach the terms of the tenancy agreement and your tenant's rights regarding access.

When you visit the property there are number of things to look out for that could indicate your tenant has abandoned and may give you a clue as to the last time he was in the property:

- Unopened mail piling up behind the door or in the letterbox
- Keys left behind
- Demands for payment of outstanding invoices
- Out-of-date food in the fridge
- No clothing in the wardrobes
- Old newspapers

Tip

Always take somebody with you who can independently witness the condition of the property and your findings. Complete a Property Visit Report and ask the witness to read and sign it at the property.

If at this stage you suspect your tenant to have abandoned the property, it is advisable that you should make an application to the court for possession or instruct a solicitor to act on your behalf.

Alternatively...

If it's absolutely clear that the tenant has vacated the property, i.e. he has removed all personal items and left behind his keys, you may consider posting a Notice of Abandonment to the main access points of the property, which confirms your status as owner of the property and declares your intent to reclaim possession within the stated timeframe (usually 14 days from the date of the notice) unless the tenant contacts you to advise otherwise. If you have a justified fear that the property isn't secure, you can fit a new lock, but you must state in the notice where the tenant will be able to get the keys and under no circumstances should you refuse your tenant re-entry.



NOTICE OF ABANDONMENT (6.12)

Beware!

It's possible that your tenant may have taken an extended holiday or he could be in hospital or in prison and be unable to make contact with you. In any of these instances it's unreasonable for you to retake possession. You should only consider using a Notice of Abandonment when you are absolutely sure that the tenant has left the property and is not going to return. The Notice of Abandonment isn't a legal document and is not supported by any legal framework. If you take possession of a property which hasn't been abandoned, your tenant may be able to make a civil claim against you to take back possession of the property. The tenant may also include a claim for financial damages in respect of breach of contract and in some cases you could

face criminal prosecution from the local authority for an offence under the Protection from Eviction Act 1977.

If you're considering posting a Notice of Abandonment, you should assess the risks in each case. Making a claim for possession through the courts may take longer, but if the property is repossessed by bailiffs after you have obtained an order for possession, then you are well protected against any claims. If in doubt, seek advice from a solicitor qualified in landlord and tenant law.

Don't forget...

Notices displayed in easy view of the public which state that your property is empty could be an advertisement for squatters! This is obviously less likely for an apartment within a secure building or a room in a shared house, but you should strongly consider this risk if you decide to post a Notice of Abandonment.

6.1 NOTICE RECEIVED CONFIRMING TENANT'S MOVE-OUT DATE

A. Landlord
76–89 Alscot Road, London SE1 2EA
020 7394 4040

A. Tenant
10 Alscot Road, London SE1 3EJ

Date: 1 March 2010

Dear *A. Tenant*

Re: 10 Alscot Road, London SE1 3EJ

I am writing to confirm that your offer of Notice in respect of the above-named property has been received and your final date of occupancy will be as follows:

31 May 2010

I have enclosed a set of 'Guidance Notes for Tenants Vacating a Property' to assist you in completing the required procedure and kindly request that you contact me at your earliest convenience to arrange a time to complete a check-out with you on the day.

I may require access to your property in order to carry out viewings with prospective new tenants and I will contact you in advance with any appointments.

I look forward to hearing from you.

Yours sincerely

Landlord: *A. Landlord*

6.2 GUIDANCE NOTES FOR TENANTS VACATING A PROPERTY

These notes have been designed to assist you when handing your property back to the landlord at the check-out appointment.

In order to protect your deposit against claims being made, it's advisable that you read these guidelines and take the appropriate action.

If you have any questions regarding the check-out or you require a duplicate copy of your inventory, please contact your landlord immediately.

- Ensure that the property has been left in a good, clean condition throughout and all of your personal items have been completely removed.
- All items should be returned to exactly the same position as they are listed on your Inventory.
- All windows, mirrors and glass items should be cleaned and polished.
- All woodwork, skirting, dado rails, picture rails, frames, shelving and cabinets, etc. should be cleaned and polished.
- All soft furnishings, such as carpets, curtains, rugs, bed linen, towels, throws and mattresses, etc. should be laundered/washed free of stains, ironed (where applicable) and left clean.
- All walls and ceilings should be dusted, wiped over (where necessary) and free of excessive wear.
- All kitchen appliances, including cookers, hobs, microwave ovens, toasters, washing machines, tumble dryers, etc. should be cleaned free of residues, grease and stains.
- All kitchen cupboards should be cleaned and emptied of your food and belongings.
- Fridges and freezers should be emptied of food, cleaned thoroughly, defrosted, switched off and doors left open.
- Bathrooms should be cleaned thoroughly and all sealant and grouting should be free of staining or mould.
- All light bulbs should be present and in working order.
- All picture hooks, tacks, screws, nails or other fittings installed by you should be removed and any damage made good.
- Gardens should be in a well-maintained condition for the time of year, lawns should be cut and all garden implements should be clean and in working order.

6.2 GUIDANCE NOTES FOR TENANTS VACATING A PROPERTY (continued)

- Any missing or damaged items should be replaced to match.
- Utility companies and local authorities should be contacted by you with meter readings on the final day of your tenancy.
- All mail received addressed to you after you have vacated the property will be returned to sender.

Thank you for your co-operation.

6.3 NOTICE RECEIVED BUT INSUFFICIENT NOTICE PERIOD GIVEN

A. Landlord
76–89 Alscot Road, London SE1 2EA
020 7394 4040

A. Tenant
10 Alscot Road, London SE1 3EJ

Date: 31 May 2010

Dear *A. Tenant*

Re: 10 Alscot Road, London SE1 3EJ

I am writing to confirm that your offer of Notice in respect of the above-named property has been received. However, the date that you have offered to terminate your tenancy cannot be accepted for the following reason:

You are required to give *one month's notice* to terminate your tenancy.

I therefore take this opportunity to advise you that the final day of your tenancy will be:

30 June 2010.

I have enclosed a set of 'Guidance Notes for Tenants Vacating a Property' to assist you in completing the required procedure and kindly request that you contact me at your earliest convenience to arrange a time to complete a check-out with you on the day.

I may require access to your property in order to carry out viewings with prospective new tenants and I will contact you in advance with any appointments.

I look forward to hearing from you.

Yours sincerely

Landlord: *A. Landlord*

6.4 NOTICE RECEIVED BUT DATE UNACCEPTABLE DUE TO FIXED TERM

A. Landlord
76–89 Alscot Road, London SE1 2EA
020 7394 4040

A. Tenant
10 Alscot Road, London SE1 3EJ

Date: 1 May 2010

Dear *A. Tenant*

Re: 10 Alscot Road, London SE1 3EJ

I am writing to confirm that your offer of Notice in respect of the above-named property has been received. However, the date that you have offered to terminate your tenancy cannot be accepted for the following reason:

You are currently held on a fixed-term tenancy agreement that doesn't expire until 31 July 2010 and your tenancy agreement does not contain a break clause.

If you wish to vacate before the end of the term, you will be responsible for the rent until a new tenant can be found, plus my reasonable costs. Alternatively, if you can suggest a new tenant to take your place, I will agree to the early termination of your tenancy, subject to the replacement tenant satisfying my referencing requirements and agreeing to take on a tenancy of the property for a period not less than the remainder of your fixed term.

Please let me know whether you still wish to vacate on the date given in your Notice. If you wish to propose a replacement tenant, please ask him to contact me at the above address.

Thank you for your co-operation.

Yours sincerely

Landlord: *A. Landlord*

6.5 INDIVIDUAL NOTICE ON A JOINT TENANCY

*A. Landlord
76–89 Alscot Road, London SE1 2EA
020 7394 4040*

*A. Tenant
10 Alscot Road, London SE1 3EJ*

Date: 1 March 2010

Dear A. Tenant

Re: 10 Alscot Road, London SE1 3EJ

I am writing to confirm that your offer of Notice in respect of the above-named property has been received.

As you are currently signed to a tenancy agreement that holds all tenants joint and severally liable, in this case your Notice can only be accepted on the following terms:

- Those tenants that wish to remain at the property must offer to take the tenancy on in full and agree to release those who want to leave. This is subject to conditions, however, and may involve re-referencing of remaining tenants to ensure that financial abilities to maintain the level of rent can be achieved.

Or

- You may wish to find new tenants to replace those who would like to leave and I ask that if this is the case you present new prospective tenants so that referencing procedures can take place. New tenants will only be accepted if they fulfil the required referencing criteria.

I take this opportunity to advise you that no tenants can be released from the tenancy agreement until the above has taken place and a new tenancy agreement has been signed by all parties. Note that until a new tenancy agreement has been signed, all existing tenants will remain liable for the rent **whether or not they are actually living at the property.**

Please do not hesitate to contact me should you wish to discuss this matter further.

Yours sincerely

Landlord: A. Landlord

6.6 ALL TENANTS MUST GIVE NOTICE AND VACATE

*A. Landlord
76–89 Alscot Road, London SE1 2EA
020 7394 4040*

*A. Tenant
10 Alscot Road, London SE1 3EJ*

Date: 1 March 2010

Dear *A. Tenant*

Re: *10 Alscot Road, London SE1 3EJ*

I am writing to confirm that your offer of Notice in respect of the above-named property has been received. However, I am unable to accept the offer to terminate the tenancy for the following reason:

You are currently signed to a tenancy agreement that holds all tenants joint and severally liable, which means that you must all give notice together to terminate the property.

As you are a joint tenant, unless all the tenants vacate the property at the same time, you will all remain liable for the rent under the tenancy agreement that you signed, whether or not you are actually living at the property.

Please do not hesitate to contact me should you wish to discuss this matter further.

Yours sincerely

Landlord: *A. Landlord*

6.7 CHANGE OF TENANT/S WITH REPLACEMENT/S

A. Landlord
76–89 Alscot Road, London SE1 2EA
020 7394 4040

A. Tenant
10 Alscot Road, London SE1 3EJ

Date: 1 March 2010

Dear *A. Tenant*

Re: 10 Alscot Road, London SE1 3EJ

Further to your recent correspondence, I understand that you wish to make changes to those named on your tenancy agreement.

My records show that *A. Tenant* wishes to vacate the property and that you have a replacement tenant known as *A. Tenant 2* who would like to make an application.

Please therefore find enclosed Tenancy Application Forms for all remaining and all new tenants in respect of the above.

Also enclosed is a Change of Tenant/s with Replacement/s Form which needs to be completed by all new and existing tenants.

I kindly request that you return the enclosed documents as soon as possible in order that the application can be processed.

Please do not hesitate to contact me should you wish to discuss this matter further.

Yours sincerely

Landlord: *A. Landlord*

6.8 CHANGE OF TENANT/S FORM WITH REPLACEMENT/S

Property address: _____

Current tenant/s: _____

It is hereby agreed that we, the above named, accept that the following tenant/s: _____

Wish/es to vacate the property on: _____

And for new tenant/s named: _____

To make a tenancy application.

We understand that all remaining and new tenants are required to complete an application procedure for the new tenancy and we agree that the outgoing tenant/s cannot be released from the existing contract until such time as all references have been received with satisfactory information, all rent is paid up to date, a new tenancy agreement has been signed by all tenants and this form has been signed and returned to the landlord.

A check-out cannot take place in between the tenancies and we therefore agree to acquit the outgoing tenant/s from any claims whatsoever that may arise in this and any other matters. The deposit will continue to be held in full and, if necessary, we agree to settle any balances with the outgoing tenant/s for monies that they may have paid at the commencement of the existing tenancy.

Signed by all existing tenants: _____

Signed by all tenants: _____

Date: _____

6.9 CHANGE OF TENANT/S WITHOUT REPLACEMENT/S

A. Landlord
76–89 Alscot Road, London SE1 2EA
020 7394 4040

A. Tenant
10 Alscot Road, London SE1 3EJ

Date: 1 March 2010

Dear *A. Tenant*

Re: *10 Alscot Road, London SE1 3EJ*

Further to your recent correspondence, I understand that you wish to make changes to those named on your tenancy agreement.

Our records show that *A. Tenant 2* wishes to vacate the property and that *A. Tenant 1* and *A. Tenant 3* would like to take on the tenancy in their name only.

Please therefore find enclosed a 'Tenancy Application Form' for the remaining tenants in respect of the above.

Also enclosed is a 'Change of Tenant Without Replacement Form', which needs to be completed by all of the tenants.

I kindly request that you return the enclosed documents as soon as possible in order that the application can be processed.

Please do not hesitate to contact me should you wish to discuss this matter further.

Yours sincerely

Landlord: *A. Landlord*

6.10 CHANGE OF TENANT/S FORM WITHOUT REPLACEMENT/S

Property address: _____

Current tenant/s: _____

It is hereby agreed that we, the above named, accept that the following tenant/s: _____

Wish/es to vacate the property on: _____

And that the remaining tenant/s wishes to take the property on without replacements.

We understand that all remaining tenants are required to complete an application procedure for the new tenancy and we agree that the outgoing tenant/s cannot be released from the existing contract until such time as all references have been received with satisfactory information, all rent is paid up to date, a new tenancy agreement has been signed by all tenants and this form has been signed and returned to the landlord.

A check-out cannot take place in between the tenancies and we therefore agree to acquit the outgoing tenant/s from any claims whatsoever that may arise in this and any other matters. The deposit will continue to be held in full and, if necessary, we agree to settle any balances with the outgoing tenant/s for monies that they have paid at the commencement of the existing tenancy.

Signed by all existing tenants: _____

Date: _____

6.11 MUTUAL RELEASE OF TENANCY

Property address: _____

It is hereby agreed between: _____ (the landlord)

And: _____ (the tenant)

That the tenancy agreement in respect of the above-named property which began on:

Shall be terminated on:

And that both parties will acquit each other of any claims whatsoever in respect of the previous tenancy on the following conditions:

- Rent due has been settled by the tenant up to the date of the agreement.
- The property is returned to the landlord without damage and there is no cause for the landlord to make financial claims against the tenant for breach of tenancy. (If a financial claim is to be made by the landlord, the sum shall not be limited by the amount held as deposit.)

Signed by the landlord: _____

Signed by the tenant/s: _____

In the presence of (witness): _____

Name and address of witness: _____

6.12 NOTICE OF INTENTION TO RECLAIM POSSESSION OF AN ABANDONED PROPERTY

Date: _____

Name of tenant/s: _____

Property address: _____

As landlord of this property, I/we believe that the current tenant has vacated without giving notice and I/we therefore intend to take back possession.

I/we have visited the property today and found it to be unoccupied.

The locks have been changed for security reasons and if the tenant should return within the notice period given below, keys will be available at our address.

If anyone has information relating to the tenant's whereabouts, please contact me/us before the expiry of this notice.

If the tenant does not return within the notice period given below, I/we will, as landlord/s of this property, take back possession and assume that the tenant has given up the property.

If the tenant does return within the notice period given below, he will have rights to regain entry to the property and take possession.

Name: _____

Address: _____

Tel: _____

Name of witness: _____

Signature of witness: _____

Date I/we plan to reclaim possession: _____