



# Residential Possession Proceedings

## Briefing note for Landlords of Assured Shorthold Tenancies

### Introduction

- 1 This briefing note is in respect of residential tenancies that are 'assured shorthold tenancies' and is designed to offer an explanation of possession proceedings and requirements. In relation to tenancies granted from 6th April 2007 it assumes that the landlord has complied with the requirements of the tenancy deposit rules so that possession can indeed be obtained under the shorthold procedures
- 2 Landlords should note that any eviction other than through the 'due process' exposes a Landlord to the possibility of criminal prosecution and/or significant compensation claims for unlawful eviction. 'Harassment' does not only mean direct acts to exclude a tenant from rented property but indirect matters, eg turning off the electricity supply
- 3 The first stage requires the proper service on the tenant of the required notice(s). We will advise you separately on this. Different notices have different periods for their expiry
- 4 Assuming the tenant remains in occupation when the notice expires, then possession proceedings will be needed to recover possession
- 5 With assured shorthold tenancies and providing correct notices have been served properly, the Landlord will recover possession. However, a valid notice must be served. If we have any concerns in this respect we will let you know separately. It is however worth bearing in mind the following points:

- ⊕ The reality is that often the service of notice can cause further problems regarding the payment of rent. There is nothing we can do to prevent this. There are sadly cases where tenants in such circumstances obviously feel that they have nothing to lose by so doing as they are going to have to move out anyway. Although it is likely that the legal liability to pay rent continues, it may be difficult to enforce that against a tenant particularly if either not earning or with moderate means. Regrettably therefore in the majority of cases, recovery of rent arrears is unlikely to be achieved and pursuing it may not be a cost effective exercise

- ⊕ Similarly any costs order obtained is unlikely to be cost effective in terms of seeking to enforce. Furthermore, such costs orders as obtained rarely reflect the true costs of the work undertaken as they are on occasions restricted by Court 'scales'
- ⊕ Having said all this, if you hold a deposit or guarantee the effect might be different. It is of course as well the case that 'short term' losses may well be outweighed by the 'long term' gain of obtaining possession. You as clients of course make your own commercial decisions in this respect

### Accelerated procedure

- 6 This procedure cannot be used if the basis for the possession claim is rent arrears and you are seeking a money judgment in relation to rent arrears. In other words, it can only be used if you are proceeding for possession based on the expiry of a 2 month 'shorthold notice' and for a possession order alone. You also have to have had a written tenancy agreement. As highlighted above, commercial considerations might be such that this is sensible as it almost always will be cheaper and quicker in recovering possession
- 7 Our normal recommendation would be to use the accelerated procedure. This hopefully will avoid the need for a hearing and thereby save expense. We make a written application on your behalf. A Court fee is required and we would ask you please to provide that on account prior to issue. Our covering letter sets out the cost of the Court fee
- 8 The proceedings are then served but after service the tenant has 14 days to respond to the Court. If the tenant does not respond then we make a request for the possession order which the Judge is required to look at within the following 14 days

- 9 Assuming the paperwork is all in order then in that situation; a possession order will be made - see below
- 10 If the tenant responds to the Court, then we will evaluate that. In many cases any 'defence' put in will probably not be a valid defence. If that is our opinion we will so state to the Court and if the Judge agrees, again a possession order will be made without hearing
- 11 However, if it is felt by the Judge any issue needs further consideration then a hearing will be arranged
- 12 Assuming however a possession order is made, then the law requires this to be 14 days in cases under the accelerated procedure. The Court's discretion however permits a period of up to 6 weeks if it feels there is exceptional hardship

## The alternative procedure

- 13 We will tell you if you have to use this procedure. You will need to if you are basing your claim for possession on rent arrears and/or want a money judgment. Also if there was no written tenancy agreement
- 14 We will apply to the Court on your behalf. The Court will list a hearing typically around 6 weeks after issue and, if in Exeter, on a Tuesday morning
- 15 We will attend the hearing on your behalf. Your attendance is likely to be required
- 16 In the majority of such cases it is likely that a possession order will be obtained on that first date but the Court has a block list and literally only minutes to consider it. If not done previously the tenant can obtain 'free' legal advice from a Duty Solicitor. If therefore there are either arguable issues or a potential defence, the case will be adjourned. We will advise you further on this if likely

- 17 Hopefully, however, on that first occasion a possession order will be made plus a money judgment. We will write to you separately regarding enforcement of any money judgment including costs. Please, however, bear in mind what we say at the outset on that issue
- 18 This procedure from experience tends to take longer and as well involves more expense as there is always a hearing

## Enforcement of possession order

- 19 Either way the possession order when it expires and if the tenant is still in occupation has to be enforced through a request for a Bailiff's warrant. We can submit this for you. There is further Court fee which we would need please to have from you. The Bailiff typically issues a date around 3 weeks later. You or someone on your behalf would have to make arrangements to attend at the premises, although from experience in most cases, the tenant leaves by then and so the Bailiff's attendance may not be needed. In the circumstances when you recover possession you may view it as a sensible precaution to change the locks to the property

## Additional issues

- 20 From experience, most possession cases proceed relatively smoothly along the lines of the above. You should however note that on occasions a District Judge may take a different view on certain matters from that which we are expecting
- 21 More especially there are options for the tenant to seek more time. Again in the majority of cases further applications do not follow but there is no method by which we can normally prevent such further applications being made nor indeed can we necessarily persuade the Court to avoid the tenant being successful. Such further work has an impact on costs and if it arises we will let you know

Please do not hesitate to speak to us if you wish clarification on any of these matters  
 This information is for general use only and is not case specific. You are recommended to seek legal advice regarding your particular case