

## Section 8 claims



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## What we will cover

- Grounds of possession
- Section 8 notices
- The hearing
- Possession orders
- COVID
- Tips and tactics

## Housing Act 1988, s.5

(1) An assured tenancy cannot be brought to an end by the landlord except by

(a) obtaining

- (i) an order of the court for possession of the dwelling-house under section 7 or 21, and**
- (ii) the execution of the order,**

(b) obtaining an order of the court under section 6A (demotion order),

(c) in the case of a fixed term tenancy which contains power for the landlord to determine the tenancy in certain circumstances, by the exercise of that power,

...

**and, accordingly, the service by the landlord of a notice to quit is of no effect in relation to a periodic assured tenancy**



## Housing Act 1988, s.5

(1A) Where an order of the court for possession of the dwelling-house is obtained, **the tenancy ends when the order is executed.**

(2) If an assured tenancy which is a fixed term tenancy comes to an end otherwise than by virtue of

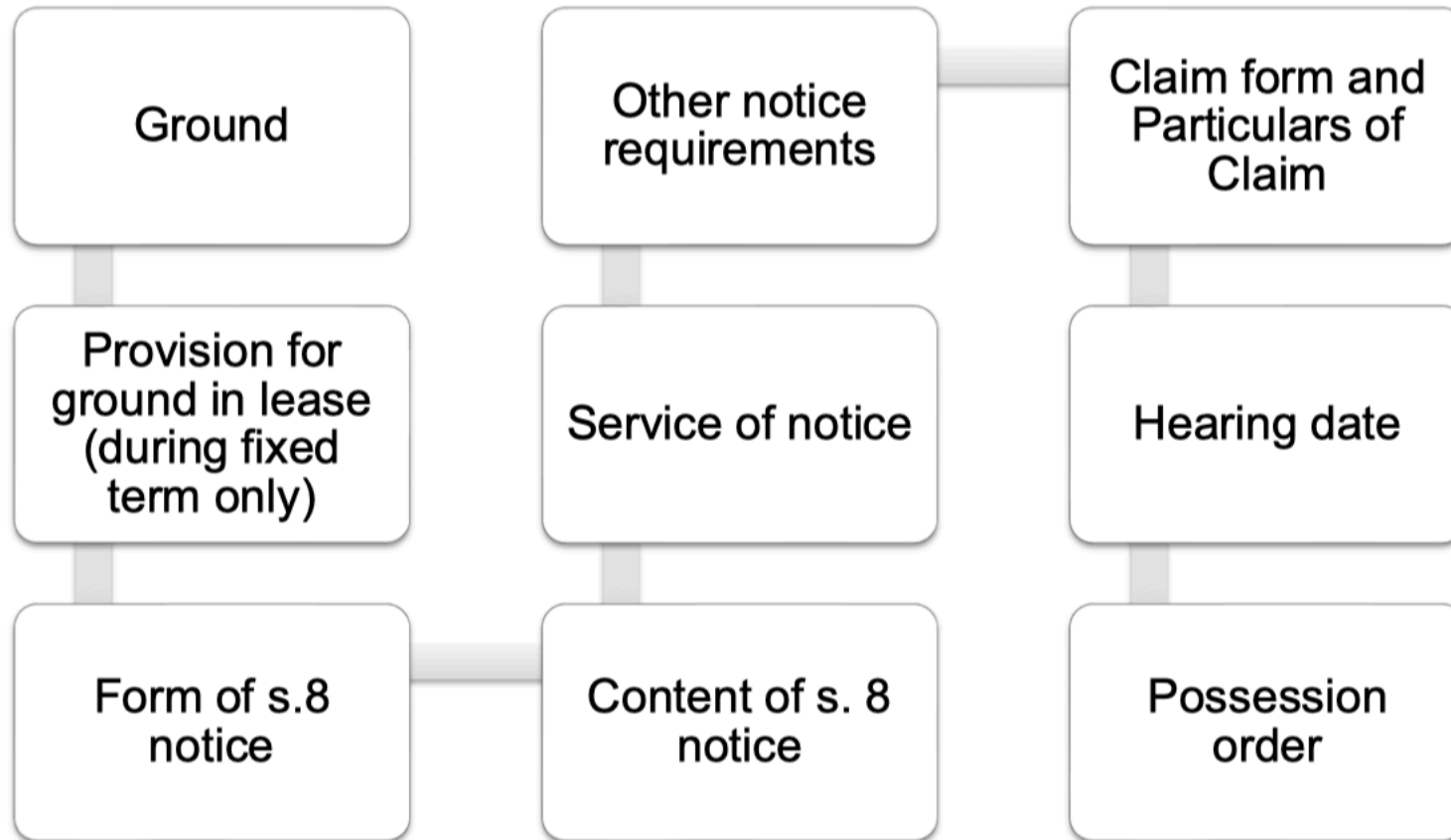
(a) an order of the court of the kind mentioned in subsection (1)(a) or (b) or any other order of the court

(b) a surrender or other action on the part of the tenant, or

(c) the giving of a notice under section 33D of the Immigration Act 2014,

**then, subject to section 7 and Chapter II below, the tenant shall be entitled to remain in possession of the dwelling-house let under that tenancy and, subject to subsection (4) below, his right to possession shall depend upon a periodic tenancy arising by virtue of this section.**

## Route to a possession order



# Housing Act 1988, Schedule 2



## Mandatory Grounds – Schedule 2, Part I

1. Landlord wants to move back into the property

2. Property is being repossessed by a mortgage lender

3. Out of season holiday let

4. Property has been let by a student or educational institution

5. Property is required by a minister of religion

6. Landlord intends to redevelop/demolish the property

7. Tenant has died (tenancy has passed on by will or intestacy)

7a. Serious anti-social behaviour

7b. No right to rent in the UK

8. Serious rent arrears at the time of serving the notice and possession proceedings

## Discretionary Grounds – Schedule 2, Part 2

9. Alternative accommodation available

10. Rent arrears at the time of serving notice and possession proceedings

11. Persistent late payment of rent

12. Breach of tenancy agreement (other than rent arrears)

13. Deterioration in the condition of the property

14. Nuisance/annoyance/illegal/immoral use of property

14a. Domestic abuse (social housing only)

14ZA. Rioting

15. Deterioration of the furniture belonging to the landlord

16. Employee of the landlord

17. False statement

## Ground 8

Both at the **date of the service of the notice** under section 8 of this Act relating to the proceedings for possession and **at the date of the hearing**

- (a) if rent is payable weekly or fortnightly, at least eight weeks' rent is unpaid;
  - (b) if rent is payable monthly, at least two months' rent is unpaid;
  - (c) if rent is payable quarterly, at least one quarter's rent is more than three months in arrears;  
and
  - (d) if rent is payable yearly, at least three months' rent is more than three months in arrears;
- and for the purpose of this ground 'rent' means rent lawfully due from the tenant.

## Ground 8: Tips

- Plead Ground 8 along with Grounds 10 and 11 in case tenant pays enough before hearing to get around Ground 8.
- Consider whether the tenancy agreement has a set-off clause.
- Section 48, Landlord and Tenant Act 1987.
- Think ahead to possible counterclaims: disrepair, deposit, fitness for human habitation
- Bring a witness (landlord or managing agent) to hearing to orally update evidence on the outstanding rent arrears.



# Practical consequence of relying on mandatory rather than discretionary ground

## Section 9: Extended discretion of court in possession claims

**(1) Subject to subsection (6) below, the court may adjourn for such period or periods as it thinks fit proceedings for possession of a dwelling-house let on an assured tenancy.**

(2) On the making of an order for possession of a dwelling-house let on an assured tenancy or at any time before the execution of such an order, the court, subject to subsection (6) below, may

**(a) stay or suspend execution of the order, or**

**(b) postpone the date of possession,**

**for such period or periods as the court thinks just.**

...

**(6) This section does not apply if the court is satisfied that the landlord is entitled to possession of the dwelling-house**

**(a) on any of the grounds in Part I of Schedule 2 to this Act; or**

**(b) by virtue of subsection (1) or subsection (4) of section 21 below.**

## What about seeking possession within the fixed term of the tenancy – Section (7)(6) and that little bit extra

- Grounds Limited: 2, 7A, 7B, 8 or 10 – 15.
- Terms of the tenancy must make provisions for the tenancy to be brought to an end on that Ground.
- Landlord is not exercising right of forfeiture. This means no section 146 notice required and provisions for automatic relief do not apply: ***Artesian Residential Investments v Beck*** [1999] 3 All ER 113

**No  
Notices  
Or  
Signs  
Allowed**

## Section 8 Notice

- Prescribed form: Schedule 1 to the Assured Tenancies and Agricultural Occupancies (Forms)(England) Regulations 2015 as amended by Assured Tenancies and Agricultural Occupancies (Forms) (England) (Amendment No.2) Regulations 2016 - last changed in December 2016 – found online and referred to as Form 3
- Must contain:
  1. Ground + sufficient details of the circumstances
  2. Proceedings will not begin earlier than certain date
  3. Proceedings will not begin later than 12 months from date of service of notice

## Section 8 Notice (Cont'd)

- Flexibility: court can dispense with notice where just and equitable to do so and alter/add grounds (s.8(1)(b) and 8(2)).
- BUT not in respect of grounds 7A, 7B or 8.

# Timings – Service of notice - Mandatory Grounds

| Ground  | Modified notice period: 26 March 2020 - 28 August 2020 | Modified notice period: 29 August 2020 - 31 May 2021   | Modified notice period: from 1 June 2021  | Return to pre Coronavirus Act 2020 notice period |
|---|--|--|---|--|
| 1: Landlord wants to move in  | 3 months   | 6 months   | 4 months  | 2 months   |
| 2: Mortgage repossession  | 3 months   | 6 months   | 4 months  | 2 months   |
| 3: Out of season holiday let  | 3 months   | 6 months   | 4 months  | 2 weeks  |
| 4: Let to student by an educational institution                                 | 3 months   | 6 months   | 4 months  | 2 weeks  |
| 5: Property required for use by minister of religion                            | 3 months   | 6 months   | 4 months  | 2 months   |
| 6: Demolition / redevelopment   | 3 months   | 6 months   | 4 months  | 2 months   |
| 7: Death of tenant  | 3 months   | 3 months   | 2 months  | 2 months   |
| 7a: Serious anti-social behaviour   | 4 weeks (periodic tenancy)                             | 3 months   | 4 weeks (periodic tenancy)  | 4 weeks (periodic tenancy)                       |
|   | 1 month (fixed term tenancy)                           |  | 1 months (fixed term tenancy)   | 1 month (fixed term tenancy)                     |
| 7b: No right to rent in the UK  | 3 months   | 3 months   | 2 weeks   | 2 weeks  |
| 8: Serious rent arrears at time of service of notice and possession proceedings | 3 months   | (a) 4 weeks where arrears are at least 6 months<br><br>(b) 6 months where arrears are less than 6 months | a) 4 weeks where arrears are at least 4 months<br><br>b) 4 months where arrears are less than 4 months<br><br>From 1 August 2021- 2 months where arrears are less than 4 months | 2 weeks  |

# Timings – Service of notice - Discretionary Grounds

| Ground   | Modified notice period:<br>26 March 2020 - 28 August 2020  | Modified notice period:<br>29 August 2020 - 31 May 2021  | Modified notice period:<br>from 1 June 2021   | Return to pre<br>Coronavirus Act 2020<br>notice period |
|--|--|--|---|--|
| 9: Alternative accommodation available   | 3 months   | 6 months   | 4 months  | 2 months   |
| 10: Some rent arrears at the time of service of notice and possession proceedings 3 months | (a) 4 weeks where arrears are at least 6 months<br><br>(b) 6 months where arrears are less than 6 months | (a) 4 weeks where arrears are at least 4 months<br><br>b) 4 months where arrears are less than 4 months<br><br>From 1 August 2021- 2 months where arrears are less than 4 months |   | 2 weeks  |
| 11: Persistent late payment of rent  | 3 months   | (a) 4 weeks where arrears are at least 6 months<br><br>(b) 6 months where arrears are less than 6 months   | a) 4 weeks where arrears are at least 4 months<br><br>b) 4 months where arrears are less than 4 months<br><br>From 1 August 2021- 2 months where arrears are less than 4 months | 2 weeks  |

# Timings – Service of notice - Discretionary Grounds (Cont'd)

| Ground   | Modified notice period: 26 March 2020 - 28 August 2020 | Modified notice period: 29 August 2020 - 31 May 2021                    | Modified notice period: from 1 June 2021                               | Return to pre Coronavirus Act 2020 notice period                       |
|--|--|---|--|--|
| 12: Breach of tenancy agreement  | 3 months   | 6 months  | 4 months   | 2 weeks  |
| 13: Tenant deteriorated property   | 3 months   | 6 months  | 4 months   | 2 weeks  |
| 14: Nuisance/annoyance, illegal/immoral use of property                                      | 3 months   | None - proceedings may be commenced immediately after service of notice | None- proceedings may be commenced immediately after service of notice | None- proceedings may be commenced immediately after service of notice |
| 14A: Domestic abuse (social tenancies only – where victim has permanently left the property) | 3 months   | 2 weeks   | 2 weeks  | 2 weeks  |
| 14ZA: Rioting  | 3 months   | 2 weeks   | 2 weeks  | 2 weeks  |
| 15: Tenant has deteriorated furniture  | 3 months   | 6 months  | 4 months   | 2 weeks  |
| 16: Employment   | 3 months   | 6 months  | 4 months   | 2 months   |
| 17: False statement  | 3 months   | 2 weeks   | 2 weeks  | 2 weeks  |

## One more thing – notice requirements

### Landlord and Tenant Act 1987, s.48

(1) A landlord of premises to which this Part applies shall by notice furnish the tenant with an address in England and Wales at which notices (including notices in proceedings) may be served on him by the tenant.

**(2) Where a landlord of any such premises fails to comply with subsection (1), any rent, service charge or administration charge otherwise due from the tenant to the landlord shall (subject to subsection (3)) be treated for all purposes as not being due from the tenant to the landlord at any time before the landlord does comply with that subsection.**

## How do I make a claim?

- Part 55
- N5 Claim form
- N119 Particulars of Claim – attach key documents
  - tenancy agreement and notice
- Claim Form and Particulars must be filed and served together: CPR 55.4

## Claim Form and Particulars of Claim

- Identify the land;
- State whether claim relates to residential property;
- **State the ground, including statutory ground (if applicable);**
- Full details of tenancy agreement;
- Details of every person who occupies the property to best of landlord's knowledge;
- Details of any alleged conduct.



## Particulars of Claim – Rent Arrears

- If ground relates to rent arrears:
  - (1) Amount due at start of proceedings;
  - (2) In schedule form, dates and amounts of all payments due for past two years before issue or from date of default;
  - (3) Daily rate of rent and interest;
  - (4) Any previous steps to recover the arrears with full details of any court proceedings;
  - (5) Details about tenant's circumstances, e.g. social security benefits.

## Hearing Date

- Hearing date will not be less than 28 days from issue of claim form;
- Defendant must be served with Claim Form and Particulars not less than 21 days before hearing date;
- Time periods can be shortened by the court;
- W/S must be served at least two days before hearing: CPR55.8(4).

## What should the order state?

- Order should state on its face whether it was made on a mandatory or discretionary ground: ***Diab v Countrywide Rentals*** 1 plc (2001), unreported.
- Money judgment : rent + interest + rent at daily rate

## Costs

- Statement of costs – N260
- Fixed costs may apply – CPR r.45.1(2)(d):

"(d) the claim is for the recovery of land, including a possession claim under Part 55, where one of the grounds for possession is arrears of rent, for which the court gave a fixed date for the hearing when it issued the claim and judgment is given for the possession of land (whether or not the order for possession is suspended on terms) and the defendant

(i) **has neither delivered a defence, or counterclaim, nor otherwise denied liability;** or

(ii) has delivered a defence which is limited to specifying his proposals for the payment of arrears of rent"

- Fixed costs = fixed commencement costs (usually £69.50) + court fee + £57.25

## “I beg for some grace, m’Lord” – mandatory grounds

Housing Act 1980, s.89

(1) Where a court makes an order for the possession of any land in a case not falling within the exceptions mentioned in subsection (2) below, the giving up of possession shall not be postponed (whether by the order or any variation, suspension or stay of execution) to a date later **than fourteen days** after the making of the order, unless it appears to the court that **exceptional hardship** would be caused by requiring possession to be given up by that date; **and shall not in any event be postponed to a date later than six weeks after the making of the order.**

## Application to set aside CPR 39.3

(3) Where a party does not attend and the court gives judgment or makes an order against him, the party who failed to attend may apply for the judgment or order to be set aside.

(4) An application under paragraph (2) or paragraph (3) must be supported **by evidence**.

(5) Where an application is made under paragraph (2) or (3) by a party who failed to attend the trial, the court may grant the application only if the applicant –

**(a) acted promptly when he found out that the court had exercised its power to strike out or to enter judgment or make an order against him;**

**(b) had a good reason for not attending the trial; and**

**(c) has a reasonable prospect of success at the trial.**

# Thank you for listening

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