

An Introduction to Housing Act Possession Claims

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Procedure and timings in possession claims



- Claim Form N5 (N5B for accelerated procedure)
- Particulars of Claim N119 (N120 for mortgaged residential premises)
 - Must be filed and served with the Claim Form (CPR r.55.4)
- Defence Forms must be served with the Particulars of Claim (CPR r.7.8)

Claims other than trespassers

- Hearing date will be not less than 28 days after issue (CPR r.55.5(3)(a))
- Defendant must be served with Claim Form and Particulars of Claim not less than 21 days before hearing (CPR r.55.5(3)(c))

Accelerated Possession Procedure

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- CPR r.55.11 – r.55.19
- Accelerated possession claim: allows landlords to obtain possession order **without a hearing**
- Applies only to s.21 HA 1988 claims i.e. claims to recover possession against **assured shorthold tenants** after service of two months notice

Accelerated Possession Procedure

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- All conditions listed in r.55.12(1) must be satisfied:
 - Tenancy is an AST in accordance with the Housing Act 1988 s.19A or s.20(1)(a) to (c);
 - AST entered into on or after 15 January 1989;
 - AST did not immediately follow an assured tenancy which was not an AST;
 - Tenancy is subject to a written agreement or follows a tenancy where there was a written agreement;
 - S.21 notice has been served;
 - The only purpose of the proceedings is to recover possession – no other claim may be made (except for costs).
- If Defendant wishes to oppose the claim / seek postponement of possession, must file defence within 14 days after service of claim form (Form N11B)

Tenancies under Housing Act 1988

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- A tenancy under which a dwelling house is let as a separate dwelling is an assured tenancy provided that:
 - The tenant (or each of the joint tenants) is an individual
 - The tenant (or at least one of the joint tenants) occupies the dwelling as his only or principal home
 - The tenancy does not fall within one of the exceptions in Part 1 of Schedule 1 to the Act:

Tenancies under Housing Act 1988

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- Tenancies entered into before commencement of the Act (15 January 1989)
- Tenancies under which the annual rent exceeds £100,000
- Tenancies at a low rent / no rent
- Business tenancies i.e. tenancies to which Part II of the Landlord and Tenant Act 1954 applies
- Tenancies of licensed premises
- Tenancies of agricultural land or agricultural holdings
- Lettings to students

Tenancies under Housing Act 1988

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- Holiday lettings
- Resident landlords
- Crown tenancies
- Local authority tenancies
- Accommodation for asylum seekers
- Transitional cases

Tenancies under Housing Act 1988

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S.5 HA 1988: security of tenure

(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), or

(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.**

Tenancies under Housing Act 1988



S.5 (continued)

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

then [...] 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.**

Tenancies under Housing Act 1988

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S.7 HA 1988:

(1) The court shall not make an order for possession of a dwelling-house let on an assured tenancy **except on one or more of the grounds set out in Schedule 2 to this Act;**

but nothing in this Part of this Act relates to proceedings for possession of such a dwelling-house which are brought by a **mortgagee**, within the meaning of the Law of Property Act 1925, who has lent money on the security of the assured tenancy.

Tenancies under Housing Act 1988

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Schedule 2: grounds for possession

- Grounds 1 to 8 are mandatory (s.7(3) HA 1988)
- Grounds 9 to 17 are discretionary (s.7(4) HA 1988): court may make an order for possession if it considers it reasonable to do so

Possession using a s.8 notice

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S.8 HA 1988: Notice of proceedings for possession

(1) The court shall not entertain proceedings for possession of a dwelling-house let on an assured tenancy unless—

(a) the landlord or, in the case of joint landlords, at least one of them has served on the tenant a notice in accordance with this section and the proceedings are begun within the time limits stated in the notice [...]; or

(b) the court considers it just and equitable to dispense with the requirement of such a notice.

Possession using a s.8 notice

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- Note s.7(6) HA 1988: during the term of a fixed-term tenancy the landlord must establish Ground 2, 8, 10 to 15 or 17 and *“the terms of the tenancy [must] make provision for it to be brought to an end on the ground in question”*
- S.8 notice must be served on the tenant in the prescribed form (Assured Tenancies and Agricultural Occupancies (Forms) Regulations 1997/194)
 - Specify the ground(s) relied upon
 - State that proceedings will not begin earlier than the date specified in the notice
 - State that proceedings will not begin later than twelve months from the date of service of the notice

Possession using a s.8 notice

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Claiming possession using a s.8 notice on grounds of arrears of rent

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.

Possession using a s.8 notice

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Ground 10

Some rent lawfully due from the tenant—

(a) is unpaid on the date on which the proceedings for possession are begun; and

(b) except where subsection (1)(b) of section 8 of this Act applies, was in arrears at the date of the service of the notice under that section relating to those proceedings.

Possession using a s.8 notice

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Ground 11

Whether or not any rent is in arrears on the date on which proceedings for possession are begun, the tenant has persistently delayed paying rent which has become lawfully due.

Possession using a s.21 notice



- S.21 HA 1988 provides an additional means of obtaining a possession order in respect of an assured **shorthold** tenancy ('AST')
- The s.21 notice must be in writing but there is no prescribed form
- Cannot validly give a s.21 notice if the applicable requirements in relation to the protection of the deposit have not been complied with (tenancy deposit schemes)
- Note that re. tenancies falling within s.19A HA 1988, the tenant is permitted a minimum period of occupation of six months (s.21(5))

Possession using a s.21 notice

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Fixed term ASTs: s.21(1)

- AST must have come to an end and there be no further assured tenancy in existence (except an assured shorthold periodic tenancy, including a statutory periodic tenancy)
- Landlord has given not less than two months' notice in writing stating that he requires possession
- The notice may be given on or before the day that the tenancy comes to an end, but the notice period cannot determine prior to the expiry of the fixed term

Possession using a s.21 notice



Periodic ASTs: s.21(4)

- S.21 notice must specify a date after which possession is required. That date must be:
 - (i) the last day of a period of the tenancy;
 - (ii) not earlier than two months after the date the notice was given;
 - (iii) not earlier than the earliest day on which the tenancy could be brought to an end by a notice to quit given on the same date as the s.21 notice.
- Is not necessary to specify a calendar date: *Lower Street Properties Ltd v Jones* [1996] 2 EGLR 67
- The requirement that a date be specified **after** which possession is required has caused difficulties:

Possession using a s.21 notice

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- “At the end of a period of your tenancy” means the same thing as “after” and the notice will be valid: **Notting Hill Housing Trust v Roomus** [2006] EWCA Civ 407
- “On the last day of a period of your tenancy” will invalidate the notice: **McDonald v Fernandez** [2003] EWCA Civ 1219
- The following formula approved by the Court of Appeal in **Roomus**:

“I give you notice that I require possession of the dwelling-house known as [address] after the day on which a complete period of your tenancy expires next after the end of two months from the service of this notice”

Tenancy Deposit Schemes

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- Since 6 April 2007, landlord must place any deposit taken in respect of a shorthold tenancy in a tenancy deposit scheme
 - Housing Act 2004 ss. 212 – 215 (as amended by Localism Act 2011)

- Landlord must:
 - Deal with the deposit in accordance with an authorised scheme (s.213(1));
 - Comply with the initial requirements of an authorised scheme within 30 days of the receipt of the deposit (s.213(3));
 - Provide the prescribed information to the tenant within 30 days of the receipt of the deposit (s.213(6)).

Tenancy Deposit Schemes

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- Tenant may apply to the county court if:
 - S.213(3) or s.213(6) has not been complied with; or
 - He has been notified by the landlord that a particular authorised scheme applies but has been unable to obtain confirmation from the scheme administrator.
- Tenant may make such an application to the court where his tenancy has ended (s.214(1A)) (reversing the decision in **Gladehurst Properties Limited v Farid Hashemi** [2011] EWCA Civ 604; see [19] of **Superstrike Ltd v Rodrigues** [2013] EWCA Civ 669 [2013] 1 WLR 3848).

Tenancy Deposit Schemes

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- Where the tenancy is extant the court must on such an application:
 - Either order the person holding the deposit to repay it to the applicant, or to pay it into an authorised custodial scheme within 14 days of the date of the order (s.214(3); and
 - Order the landlord to pay to the applicant a sum of money not less than the deposit and not more than 3 times the deposit within 14 days of the date of the order (s.214(4)).

Tenancy Deposit Schemes

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- Where the tenancy has ended the court:
 - May order the person holding the deposit to repay all or part of it to the applicant within 14 days of the date of the order;
 - And must order the landlord to pay to the applicant a sum of money not less than the deposit and not more than 3 times the deposit within 14 days of the date of the order (s.214(4)).

Prescribed Information

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- Housing (Tenancy Deposits) (Prescribed Information) Order 2007/797, article 2
- Parliament regards the landlord's obligation to provide the prescribed information as being of equal importance to his duty to safeguard the tenant's deposit: *Suurpere v Nice* [2012] 1 WLR 1224 per Cox J
 - Reference to the following template for the prescribed information:
<http://www.depositprotection.com/documents/prescribed-information-template.pdf>
- The proper test is whether there has been substantial compliance with article 2 of the Housing Order (*Ayannuga v Swindles* [2012] EWCA Civ 1789)

Some key provisions to bear in mind

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- Section 48 Landlord and Tenant Act 1987
- Section 47 Landlord and Tenant Act 1987
- Section 167 Commonhold and Leasehold Reform Act 2002
- Section 81 Housing Act 1996
- Section 5(1) Protection from Eviction Act 1977
- Section 2 Protection from Eviction Act 1977
- Section 89 Housing Act 1980

Some key provisions to bear in mind



Section 48 Landlord and Tenant Act 1987

- If a landlord fails to provide the tenant with an address in England and Wales at which notices may be served any rent or services charges are treated as not due at any time before the landlord complies with this section
- The notice must be in writing (*Rogan v Woodfield Building Services Ltd* [1995] 1 E.G.L.R 72)
 - Where the address of a landlord within England and Wales is stated without qualification in the written tenancy agreement, s.48 is satisfied
- The landlord should serve the notice prior to commencing a claim
- Interest will not accrue until the section has been complied with
- Note that a section 48 notice must be served prior to a section s.8 notice being served (*Marath v MacGillivray* (1996) 28 H.L.R 484)

Some key provisions to bear in mind



Section 47 Landlord and Tenant Act 1987

- Written demands from a landlord to a residential tenant for sums due under the lease must contain an address at which notices may be served on the landlord. Any part of the amount demanded which consists of a service or administration charge shall be treated for all purposes as not due at any time before the landlord provides an address for service
- The landlord should serve such a notice prior to commencing the claim
- Interest will not accrue until the section has been complied with

Some key provisions to bear in mind

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Section 167 Commonhold and Leasehold Reform Act 2002

- A landlord of a long lease of a dwelling may not exercise a right of re-entry or forfeiture for non-payment of rent, services charges or administration charges unless the unpaid amount exceeds the prescribed amount (£350.00) or has been payable for more than a prescribed period (3 years)
 - Rights of Re-entry and Forfeiture (Prescribed sum and Period) (England) Regulations 2004/3086

Some key provisions to bear in mind

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Section 81 Housing Act 1996

- A landlord may not, in relation to premises let as a dwelling, forfeit the tenancy for non-payment of a service charge or an administration charge unless:
 - It is finally determined by the appropriate tribunal, an arbitral tribunal or a court that the amount is payable; or
 - The tenant has admitted that it is so payable.

Some key provisions to bear in mind

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Section 5(1) Protection from Eviction Act 1977

- A notice to quit for premises let as a dwelling is invalid unless it is in writing, contains the prescribed information and gives not less than four weeks notice
- For prescribed information see: Notices to Quit etc. (Prescribed Information) Regulations 1988/2201

Some key provisions to bear in mind



Section 2 Protection from Eviction Act 1977

- While any person is lawfully residing in premises let as a dwelling any right of re-entry or forfeiture can only lawfully be exercised by court proceedings
- Premises let as a dwelling include premises in mixed business and residential use (*Pirabakaran v Patel* [2006] EWCA Civ 685)

Some key provisions to bear in mind

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Section 89 Housing Act 1980

- The court will not postpone the giving up of possession for more than 14 days (or 6 weeks if the court is satisfied that exceptional hardship would be caused)
- Does not apply where court had power to make the possession order only where it considered it reasonable to do so



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