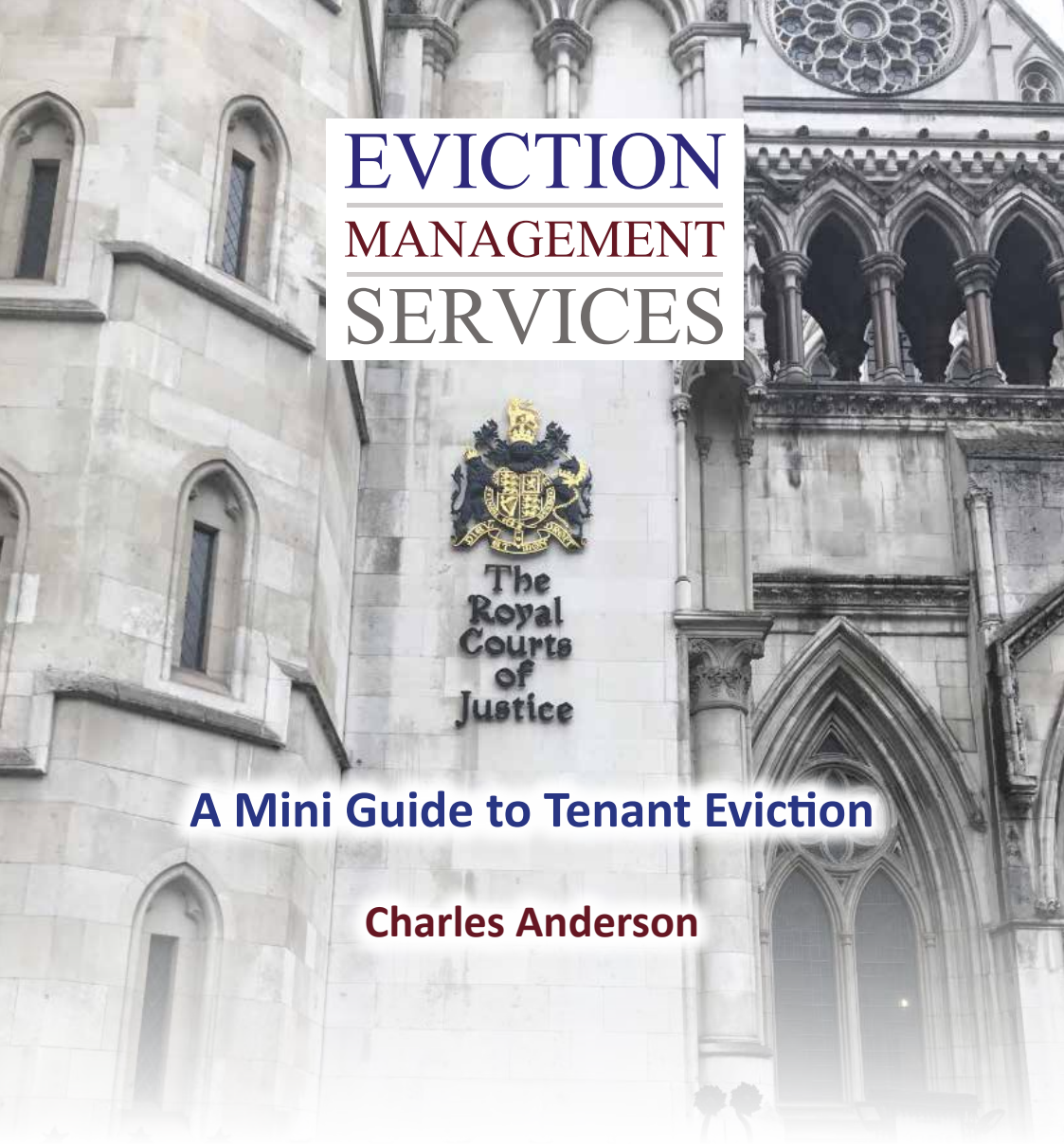
EVICTION MANAGEMENT SERVICES



A Mini Guide to Tenant Eviction

Charles Anderson

Mander Cruickshank Solicitors

Introduction – by Charles Anderson

I started Eviction Management Services in August 2015 whilst working as a freelance consultant in the social housing sector. I had become quite despondent about my lot. I was bored and, although I was freelance, I was becoming demotivated with the service sector that I'd worked in for around 20 years.

At one of my previous freelance assignments, I'd been tasked to review a local authority housing department, draw up an improvement and implementation plan and then manage the team whilst a new manager was recruited. It was here that I soon realised how unfair life could be for a typical landlord. Homelessness Officers would approach me with copies of notices that landlords had served on their defaulting tenants and we would routinely advise the landlord that they were invalid without giving too much away. I realised what a valuable service private landlords provide to local authorities and the community at large, and, as a landlord with a small portfolio myself, I could feel the pain of landlords who were not receiving rent and yet were still having to service mortgages whilst finding a way to fund possession proceedings. I won't say it was an epiphany, but I soon realised I could change my own direction of travel whilst earning a living and also helping landlords in trouble.

To date, Eviction Management Services has assisted around 3000 landlords nationwide to help them secure possession of their properties. In that time, we haven't lost a single case – partly, I believe, because we work on an honest and ethical basis and won't go ahead with possession proceedings if we feel it is not possible to secure possession. I believe we provide an excellent service to landlords, and this is borne out by customer reviews on Facebook, LinkedIn, and on our Google My Business profiles.

This mini guide to tenant eviction is not intended to be anything other than an 'eye opener' for anyone who may become involved with evicting a tenant at some point in the future. I am not seeking to train anyone on the eviction process with this guide. The information here is mostly from my own knowledge and my own observations of the legal process, and as such, is definitely not intended as legal advice. Should you need any help dealing with an eviction, it's important that you speak to a specialist who can give you professional advice on the best course of action to take, based on your individual circumstances.

It's also important to note that, whilst this information is correct at time of print (October 2019), we operate in an ever-changing legal environment which means that even the most up-to-date information can soon become outdated. Please always make sure you're referencing the latest information, and if you're unsure about anything, please feel free to get in touch – you'll find my contact details at www.evictionmanagementservices.co.uk.

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1. Why would you want to evict a tenant?

Despite some of the stories we hear, I have yet to meet a landlord that had no reason for wanting to evict a tenant. The hype around so called 'abuse of the section 21 notice' has been blown out of all proportion in my opinion, maybe due to simple lack of understanding.

In the days when I worked as a Local Government Officer managing Homelessness and Housing Services, we had to report on various categories of homelessness. One of these was the number of households becoming homeless as a result of the termination of an assured shorthold tenancy (AST). The problem with this, however, was that although a homelessness officer would be obliged to look a little deeper as to the reasons why an AST was being terminated, the statistics did not require the reason for this to be reported in any meaningful way.

I suspect that the reporting of this particular statistic nationwide, one of the top three reasons for homelessness in the England and Wales, has had a part to play in the misunderstanding of the use of section 21 notices.

The real reasons may well be that many landlords have found that using section 21 to evict a tenant in serious rent arrears, or that has breached their tenancy in some other way, is far easier than grappling with the intricacies of litigation through the section 8 process.

Many landlords will be aware that there is now talk of doing away with section 21 notices altogether. It will be interesting to see whether the powers that be will keep to their promise of reforming the section 8 process to make it less wieldy.

Since 1st October 2015 there has been a raft of new legislation and regulations, some of which have had a serious impact on a landlord's ability to serve a section 21 notice that will stand up to scrutiny in the County Court.

The first major change was the Deregulation Act 2015, which was partly enacted on the 1st October 2015, and then the remainder on 1st October 2018.

Most landlords will now be aware that after 1st October 2015, when a new tenancy is granted it is a legal requirement to provide the following items:

- Energy Performance Certificate (EPC)
- 'How to Rent' Guide
- Gas Safety Certificate (if there is gas in the property)

And this is in addition to the usual rules regarding tenancy deposit protection.

Despite being nearly four years on from the 1st October 2015 at the time of this guide going to press, there are still landlords out there who are completely unaware of the Deregulation Act 2015 and its implications.

To be fair, if between the 1st October 2015 and maybe February 2018, you had forgotten to provide your 'post October 2015' tenant with an EPC, 'How to Rent' guide, or gas certificate, and you wished to serve a section 21 notice, you would get away with serving those items retrospectively, as long as you served them before you served any section 21 notice.

However, in February of 2018 a County Court case, ***Caradon Property v Monty Shooltz***, changed all that.

Without going into the minutia of the case, the main principal established was that if the gas certificate could not be evidenced as having been provided to the tenant before the tenancy started, and the tenant claimed not to have received (or even remember receiving) it, then any section 21 notice that is served would not be valid.

Whilst not expressed in this particular case, it also may be arguable that the same principal could be applied to the Energy Performance Certificate and the 'How to Rent' guide.

So, if you've not served these documents with evidence, and you're a landlord who needs to sell your property, where does that leave you?

If you've chosen your tenant so well that they are a model tenant that doesn't put a foot wrong, then not only can you NOT use a section 21, but a section 8 notice is off limits too because they haven't caused any issues. If you need to evict your tenant under these circumstances you may well find that you can't – but doesn't that go against the whole point of the assured shorthold tenancy?

Whilst a County Court case is not binding, the ***Caradon Property v Monty Shooltz*** case is so well known to solicitors who routinely defend tenants that I doubt there will be a Duty Adviser in any Court in the country that will not try to raise the principal in ***Caradon Property v Monty Shooltz*** as a defence if they are able to.

2. Make sure you don't get caught out

With the odds stacked against you, should you end up having to evict your tenant (most of whom are absolutely fantastic when things are going well!), it's wise to make sure you're properly prepared right from the start.

Whilst much of what I'm going to summarise below might seem like common sense, it's well worth going through all these steps in detail.

- If you are going to become a landlord or are an existing landlord that is a little behind with new legislation / regulation, join a body such as The National Landlords Association and/or The Residential Landlords Association and do some courses. Courses are not expensive and will acquaint you with the basic legal framework around assured shorthold tenancies and what you need to do to stay compliant.

- Make sure you reference your tenants well and take out rent-guarantee insurance that will pay in the event of non-payment of rent. There are even some policies that cover the cost of any evictions as well.

- Be careful of taking on tenants that don't pass referencing. Some agents may try to encourage you to take on tenants that don't meet your usual reference standards, on the basis that they are willing to pay six months' rent or more up-front. However, be careful of this and ask questions. I have come across a significant number of landlords who have had to evict tenants who had paid six months up front, but then paid nothing for the next six months!

- If using an agent to source a tenant, before signing your agreement with the agent (whether it be for full management or a tenant find-only service), insist that you have sight of references including previous landlords, employment, and affordability. If they want your business they will try to oblige, and if needs be, they can tell prospective tenants that in order to be considered for your property they will need to agree to their references being disclosed to you.

- Make sure that your property is indeed ready to let when your agent (if you use one) releases it to your new tenant.

- Make sure you get a good inventory done. I would recommend using a firm that specialises in undertaking professional inventories as it will pay dividends later if things go wrong.

- Ensure your tenancy is compliant with current legislation. At present you need to ensure that you can evidence having provided the following items to your tenant before the tenancy started:

1. Energy Performance Certificate (EPC)
2. 'How to Rent' Guide (which must be the latest current version at the time of the tenancy being signed)
3. Gas Safety Certificate (if there is gas in the property)

   In addition, don't forget the tenancy deposit regulations. Deposits must be protected within 30 days of receipt, and the tenant must receive a copy of the certificate, prescribed information as well as an information leaflet if there is one. You will need to be able to prove that you have complied properly with the regulations or you may find that, if you need to serve a section 21, it is later deemed to be invalid.

A good idea would be to prepare a checklist as an appendix to the tenancy agreement, that shows that the above information has been received, and get your tenant to sign and date it.

- If using an agent, make sure you know whether they are evidencing the provision of the 'How to Rent' Guide, Energy Performance Certificate and Gas Certificate, or whether they are expecting you to do it. I have come across so many agents recently that confirm that those items have been provided but are not able to prove it when it comes down to it. If you can't evict your tenant but it's your agent's fault, you may well have a claim against your agent, but if you need to evict your tenant, you're still going to have a problem.

- Make sure your tenancy agreement is fit for purpose! I've come across so many tenancy agreements that are one or two pages of nothingness. Make sure you've got the following clause in your tenancy agreement:

  " Notice is hereby given that possession might be recovered under Ground 1 in Schedule 2 of the Housing Act 1988, that is the landlord used to live in the property as his or her main home, or intends to occupy the property as his or her main home. "

  If you've got the clause above in your agreement, then it's another option for you to use – especially if you find you can't serve a valid section 21 notice for some reason.

Don't be afraid to listen to your gut instinct when it comes to a prospective tenant or situation. At the very least be prepared to ask more questions or seek further verification of references if something just doesn't seem right.

3. Serving notices – section 21, section 8, or both

The section 21 notice or rather "notice requiring possession" was originally intended to provide landlords with a mandatory right to secure possession of their properties and is still the most commonly used notice to secure possession. However, in recent years it has become more problematic. There has recently been an announcement by the Government that it will be looking to abolish the section 21 notice, as it is commonly believed that section 21 is abused. In the meantime, in order to serve a valid section 21 notice you will need to:

- Ensure you can evidence that at the start of the tenancy you provided your tenant with a copy of the Gas Safety Certificate, 'How to Rent' guide and Energy Performance Certificate, and that the tenants signed something to say they received them.

- Ensure you have protected the deposit (if there was one) within 30 days, and that you have complied with the procedure for the particular scheme that you have used.

- Know that you cannot serve a section 21 until at least two months before the end of the fixed term. It cannot expire on the last day of the tenancy, it must be after.

- Be aware that the section 21 notice is now only valid for six months from the date of service. I recently became aware of a landlord who had his claim struck out because he had applied to court one day after the six months.

- Make sure you use the correct version of the section 21 notice. At the time of writing there has been a new version of the section 21 notice that is to be used from 1st June 2019, to take into account new legislation. Always check the Government website in case there have been revisions.

- When drafting the section 21, make sure that name and address details for both parties are expressed exactly as on the tenancy agreement. Make sure you give two clear months' notice if serving by hand. If serving by post, provide at least two additional days for service and get a certificate of postage.

The section 8 notice. Or rather "section 8 notice seeking possession" is generally for breach of contract and most commonly used for evicting tenants when there are at least 2 months of rent arrears. There are both **mandatory** grounds and **discretionary** grounds, however the most commonly used grounds are as follows:

Ground 1 - Not later than the beginning of the tenancy the landlord gave notice in writing to the tenant that possession might be recovered on this ground or the court is of the opinion that it is just and equitable to dispense with the requirement of notice and (in either case)—

(a) at some time before the beginning of the tenancy, the landlord who is seeking possession or, in the case of joint landlords seeking possession, at least one of them occupied the dwelling-house as his only or principal home; or
(b) the landlord who is seeking possession or, in the case of joint landlords seeking possession, at least one of them requires the dwelling-house as his only or principal home and neither the landlord (or, in the case of joint landlords, any one of them) nor any other person who, as landlord, derived title under the landlord who gave the notice mentioned above acquired the reversion on the tenancy for money or money's worth.

This is a **mandatory ground** which is becoming more common, partly I believe due to section 21 becoming more complicated. However, in order to use Ground 1, you need to demonstrate that the tenant was notified before the tenancy started that you may seek possession of the property because you need to move back in at some point in the future. Many tenancies will have a clause referring to Ground 1 as one of their standard clauses. If it's in the tenancy agreement. then your argument will hold water. Length of notice - **2 months.**

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.

This is another **mandatory ground** for possession and requires you to demonstrate that at the time of the notice being served there were at least 8 weeks or 2 months or 1 quarters' rent outstanding, and that the same amount of rent or more is also outstanding at the time of the possession hearing. It is worth knowing that, with this ground, the tenant can (and often does when supported by a duty adviser or solicitor in court) counterclaim for things such as disrepair or issues around breach of tenancy deposit rules. You also need to be able to prove that the rent is outstanding. Length of notice - **2 weeks.**

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.

This discretionary ground usually accompanies Ground 8. On its own I would not recommend its use, however, when used in conjunction with Ground 8 and Ground 11 (if Ground 8 becomes redundant at the hearing because the tenant has brought the arrears below the 2 months mark), possession can sometimes be secured on discretionary grounds – **2 weeks' notice.**

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.

As per Ground 10, a discretionary ground often used with Ground 8 and 10 – **2 weeks' notice**.

Ground 12 – Any obligation of the tenancy (other than one related to the payment of rent) has been broken or not performed.

This discretionary ground as it says, is used for all breaches of contract that are not rent related and is often used for breaches such as having pets or having more people living at the property than may have been specified in the agreement – **2 weeks' notice.**

Ground 13 - The condition of the dwelling-house or any of the common parts has deteriorated owing to acts of waste by, or the neglect or default of, the tenant or any other person residing in the dwelling-house and, in the case of an act of waste by, or the neglect or default of, a person lodging with the tenant or a sub-tenant of his/hers, the tenant has not take such steps as ought reasonably to have taken for the removal of the lodger or sub-tenant.

For the purposes of this ground, "common parts" means any part of a building comprising the dwelling-house and any other premises which the tenant is entitled under the terms of the tenancy to use in common with the occupiers of other dwelling-houses in which the landlord has an estate or interest.

If it has come to your attention that your tenant or their visitors are abusing your property, and there is damage that you can prove was not there when they moved in, then **discretionary** Ground 13 may be used. It would have to be very bad for you to secure possession on this ground alone, and you would need good evidence. This is why it is a good idea to employ a professional inventory writer at the outset, as well as ensuring that you inspect the property on a regular basis and keep records of any requests you receive to repair the property - **2 weeks' notice.**

Ground 14 - The tenant or a person residing in or visiting the dwelling-house—

(a) has been guilty of conduct causing or likely to cause a nuisance or annoyance to a person residing, visiting or otherwise engaging in a lawful activity in the locality, or

(b) has been convicted of—

(i) using the dwelling-house or allowing it to be used for immoral or illegal purposes, or

(ii) an indictable offence committed in, or in the locality of, the dwelling-house.

This is also a **discretionary** ground, and one not to be used unless you can evidence it. **2 weeks' notice.**

Ground 17 - The tenant is the person, or one of the persons, to whom the tenancy was granted, and the landlord was induced to grant the tenancy by a false statement made knowingly or recklessly by—

(a) the tenant, or

(b) a person acting at the tenant's instigation.

Ground 17 is also a **discretionary** ground, and again, evidence is the key with this. If you've taken references (both employment and landlord) and checked them out but are later able to evidence that the tenant misrepresented themselves in order to secure the property, then this may be a useful ground to use. **– 2 weeks' notice**

I should explain if it isn't clear that 'mandatory' generally means that the judge does not have discretion to refuse possession if the ground is proven. Discretionary grounds are grounds where the judge can use his/her discretion to allow or refuse possession. Consequently, unless necessary, it is always better to ensure you have a mandatory ground if you are seeking possession. Having said that, I have had a lot of success where we have not had the luxury of using Ground 8, and we have had strong evidence of the tenant neglecting the property and being abusive to neighbours as well as other instances of anti-social behaviour, so it is by no means impossible.

Useful tips on drafting a section 8 notice

- Ensure the addresses and parties are a mirror of the tenancy agreement.

- If the landlord's address has changed at some point between the latest tenancy and the notice being served, is there evidence that a notice under section 48 of the Landlord and Tenant Act 1987 has been served. If there isn't, then serve one. It need not delay you by more than a day and will be one less reason for your claim could to be struck out.

- Make sure the grounds you are going to use are set out in the notice in exactly the same format of words as they appear within Schedule 2 of the Housing Act 1988. If not, the notice may be deemed invalid.

- Where you state why you are using each ground, state in detail why each ground is made out. If not, your notice may be deemed invalid.

- If using ground 8, and the other arrears grounds, make sure you refer to an attached rent statement.

- Ensure that you provide the correct notice period. If you are using Ground 1 because the landlord is moving back in, and you also wish to use Ground's 8, 10, and 11, then as ground 1 is a 2 month notice, even though the other grounds are 2 weeks, you must give a minimum of 2 months (not forgetting an additional couple of days for post if you are not serving by hand).

Using both notices – section 21 and section 8 notices

So, why would you use both notices in the same proceedings?

Well, if you can confidently say that your section 21 notice is valid, you should get possession using this method. However, if you've also got thousands of pounds in unpaid rent and you are prepared to wait for a section 21 notice to expire, using both notices will give you the opportunity to get judgement for the rent arrears. And, if it looks unlikely that, for whatever reason, you are not going to get possession that day, then you could rely on the section 21 instead. Of course it does come down to how you complete the claim form and your witness statement, but it can be done, and can be a useful strategy to employ when the tenant (or rather their legal advisers) seek to have the claim adjourned - as it can be a useful compromise.

Sometimes tenants stop paying the rent when they know you're serving them with notice, or they may already have arrears. If you've served a section 21 notice, serving a section 8 notice can be sold to them as an incentive to clear their arrears before court, as being evicted for rent arrears may have an impact on their ability to get social housing, and a county court judgement will have a potential impact on their ability to get private accommodation. So, potentially it's a bargaining chip and also a device to enable compromise if things get tricky in court.

4. What to do between notice and possession hearing

It's an unfortunate fact that, even when the relationship has been amicable, once you've served notice on a tenant, it can often go quiet. If you are able to maintain a channel of open communication then this can be useful, as you may glean something from your tenant about their intentions.

- Do try to keep communication amicable if possible.
- Try and get a property inspection organised. Take pictures of problem areas if you are able to do so. If appropriate, take a witness with you.
- If there is any work outstanding, get it done whilst you can. It will negate any possible counterclaim for disrepair.
- If access is not being provided, make your request in writing in a polite and professional manner and hand deliver or post to your tenant every 2-3 weeks. This will potentially be evidence that access is being denied.
- Never enter the property without express permission from the tenant.
- Do regularly request payment of outstanding rent arrears in a polite and professional manner and provide a rent statement. If you have done this over a period of time and have not had any denials over the level of rent arrears, if the tenant later denies owing rent, then it may make your tenant appear less credible.

5. Completing the possession claim

Completing the possession claim is not a particularly onerous task but there is not a lot of guidance around and the paperwork must be right.

Accelerated Possession

If possession is sought using a section 21 notice, then often landlords will use the Accelerated Possession Procedure on Form N5B. However, I would point out that 'accelerated' does not necessarily mean a lot quicker. If you have served a section 21 notice and your documents are in perfect order, the accelerated procedure is a good choice. If the tenant does not file a defence, the judge will make a decision based solely on your claim, and you will be able to secure possession without attending a hearing. You cannot use a section 8 notice when using the accelerated route, nor can you make a claim for rent arrears. I have noticed a marked increase in the number of accelerated possession claims that are being decided at possession hearings – a clear sign of the increasing complexity of the rules and changes brought about by new legislation and caselaw.

As a guide, if the most recent tenancy started before 1st October 2015 and you can evidence meeting all the requirements of the tenancy deposit regulations if appropriate, and you have all your other documents in order like your tenancy agreement, section 21 and certificate of service, then go for it.

If your tenancy started after 1st October 2015, you will need to ensure that you can evidence serving the following items:

- Gas Safety Certificate
- Energy Performance Certificate
- 'How to Rent' Guide

There are also various questions about licensing and Improvement notices. If you are confident that you have the required evidence and can competently complete the form, then great – it might save you from having to attend a hearing.

The Normal Possession Track

The normal possession track always results in having to attend a hearing to prove your case. Both section 21 and section 8 notices can be used, separately as well as together. When you submit your claim to court, which is nearly always the court closest to the location of the property, the courts have up to 8 weeks to arrange a hearing. This is the time frame set out in the Civil Procedure Rules that the courts abide by, and as such, if your hearing is set at a date much longer than 8 weeks from the date of your application, writing to the courts will sometimes result in an earlier revised court date.

The forms used are the 'Claim Form for Possession of Property form N5' and the 'Particulars of Claim form N119. Things to consider:

- Make sure you have the correct version of the forms. Use the ones from the Ministry of Justice website. If you don't check and they've updated the forms, your claim will be delayed as they will most likely send them back (even if the update is not materially different!)

- Use the titles Mr, Mrs, Ms, Miss etc. Failing to do so could result in delay as it's a requirement of a Civil Procedure Rule introduced in 2006. Many courts will let a claim form with an omission through, however it depends which court you're dealing with and who is processing your claim form. I've heard stories of claims being returned several weeks after submission because the landlord described himself as "John Smith", instead of "Mr John Smith" for example. It's not worth the risk of a further 3 or 4 week delay.

- If, like me, you don't have clear legible handwriting, make sure you use the on-line forms that you can download from the Ministry of Justice site. If the judge can't read your writing, the forms may well come back to you.

- If you are intending to apply for possession using both notices, make sure you refer to both notices in the claim form where you express the grounds for possession. Seek advice if you're not sure how to word the claim effectively or where to say what. The forms are not designed with ease in mind, but it will be your fault as far as the courts are concerned if they are not completed correctly.

6. The possession hearing

As I've alluded to earlier, a possession hearing will usually take place within 8 weeks of an application for possession being made to court. This time frame is set out within the Civil Procedure Rules that the courts aim to adhere to, but it is by no means cast in stone. Some hearings will be scheduled in less than 8 weeks, it all depends on how busy the County Court is that you've made the application to. I have known a possession hearing be scheduled in as little as 4 weeks of the application being made and the notice of hearing being with the landlord 3 days after the application was made, but this is the exception to the rule and most hearings are held within the 8-week period.

Where you receive notice of a hearing that is in excess of the 8-weeks, it is worth writing to the court to ask for an earlier hearing date to comply with the civil procedure rule. It has worked for me on many occasions so far. Some thoughts to consider:

- Draft and file a witness statement at least 2 days before the hearing (or earlier if possible) and serve on the County Court and the defendant.

- Make sure you bring two spare copies of your witness statement to court. It is possible that the defendant will claim that they did not receive their copy. It is also possible that the judge may still be waiting for your statement to reach the court file from the post-room.

- Ensure you have copies of all the documents that relate to your claim. I know it sounds obvious, but if you have drafted a statement setting out your case, make sure you have all the exhibits such as the tenancy agreements, notices, certificate of service as well as an up to date rent schedule.

- Be prepared for the defendant to be less than honest. Your property might have been spotless when the tenant moved in. Your tenant may have never reported any disrepair to you. Yet now, at the hearing, they are using disrepair to counterclaim against you because you are seeking to evict them for not paying the rent for 6 months! If you've not been able to inspect the property for several months because the tenant has gone quiet on you, and you have a record of the contact you have made to your tenant that has not been responded to, this may well be good evidence that your tenant is being disingenuous to the courts. Use copies of letters that you've sent to your tenant asking for access to carry out an inspection as evidence of your attempts to get in to do an inspection. Screen shots of text messages you've sent to your tenant may also be useful. Make sure your witness statement has this evidence attached as exhibits.

- Make notes of what you want to get across to the judge but keep it short and make sure it is relevant. Possession hearings are generally 5-10 minutes at most so try to ensure what you need to get across can be done so in that time, or you risk an adjournment.

- Know and understand the area of law that is relevant to your claim. It is not good enough to just know that you have served your notice properly and that your tenants are in the wrong. Judges do not always know the exact details, so they may occasionally get it wrong sometimes. If you've got a tenant who is defending a claim and they insist that you haven't done something that you should have, and you cannot prove it, it is highly likely that you are going to end up with an adjournment.

- There have been cases where the landlord had a perfect set of papers and a case that was as straight forward as a case could be, but because the landlord did not understand the law, he ended up having his/her case adjourned for 3 months whilst the defendant was given time to seek legal advice. Proper legal representation would likely have meant that possession would have been granted first time around, and a further 3 months of rent arrears would have been avoided.

- Do not argue with the judge or the defendant, even though being in court can get stressful on occasions. If the defendant is trying to argue with you, just don't engage. If you disagree with the judge or want to get a point across, ask for permission to speak. Be respectful at all times no matter how annoyed you may be, as there is nothing worse than putting the judge's back up!

7. When things go wrong

Regardless of whether you've done it yourself or employed a solicitor or an eviction specialist, things can and do go wrong, even if you have a case that should win.

Judges have to listen to both parties and must be seen to be fair. It is not uncommon for a landlord who is evicting a tenant for several months-worth of rent arrears, to find that his/her claim is going to trial. If the defendant's solicitor is able to persuade the judge that it is in the interests of justice for there to be a trial, then you can be looking at a further delay of several months, a direction hearing, exchange of witness statements and evidence etc. The outcome could well be that you will still get possession, however your legal costs will have increased, and even though you may be able to argue that the defendant should pay your costs, getting them back is another matter (especially if the defendant is on benefits or a low income). However, if you lose, not only do you have to pay your own increased costs (which can easily be anything from a couple of thousand pounds upwards…), but you may well have the defendants costs to cover too, which if they were legally represented, could add a few more thousand to your overall cost.

So, what can you do? Here are some of my thoughts:

- Don't start possession proceedings unless your documents are in order and you believe you can prove your case.

- If you have started possession proceedings, or your case has been adjourned and you've discovered that the defendant has a defence that is likely to result in you losing, don't be afraid to apply to discontinue the case. You can start your claim again later if it is possible to do so. Of course, you will have spent money which will now be lost, but it could work out cheaper and quicker then having to pay the defendants costs and still have to evict them at some point later.

- If you are not totally sure how to go about possession proceedings, get help. It will work out cheaper in the long run, and if you use someone with a good track record you will probably get possession first time around.

8. The bailiffs

Assuming you secure possession of your property in court, and the tenants do not leave by the date of the possession order expiring, you will need to apply for the bailiffs. It's worth being aware that some tenants may well try to string you along by telling you they have a date to move into their next property, but at the last minute it then seems to fall through. This may be a delaying tactic, or it may well be genuine - either way you won't really know for sure. It may even be the case that the tenant is at the property but won't communicate with you. I have known a case where the landlord has found the property to be insecure and the tenant appears to have taken all their belongings but has maintained that they are still in occupation at the property! In these cases, the best thing to do is apply for the bailiffs.

It's probably worth knowing that, even when you have an appointment for the bailiff to enforce a warrant of possession the tenant can still apply to the courts to suspend the warrant. If this happens, it is important for you to attend the hearing, even though it may be held at very short notice, so that you can object to the suspension. More often than not a hearing to suspend a warrant of possession is at such short notice you barely have time to prepare anything in writing for the hearing. However, if you are not there and the defendant is persuasive you could end up with a further delay of a few weeks.

EVICTION MANAGEMENT SERVICES

I hope you've found this mini-guide useful.

For more information about eviction management,
or to instruct us to assist you with an eviction, please contact us:

Eviction Management Services
Grosvenor House
11 St Paul's Square
Birmingham
B3 1RB

0121 728 5588
0203 9126 299

Email: info@evictionms.co.uk

Web: www.evictionmanagementservices.co.uk



The Priory Courts
33 Bull St, Birmingham B4 6DS
Birmingham Civil &
Justice Centre
The County
The Family
District
Court of Justice
gration & Asylum Chamber)

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