

## **RESIDENTIAL POSSESSIONS – OUTLINE OF PROCEDURE**

### **Notices pursuant to Section 21 of the Housing Act**

Notices pursuant to Section 21 of the Housing Act 1988 may be served upon your tenant at any time after the commencement of the tenancy agreement, to expire at the end of, or after, the fixed term and must be at least two months in length. If the fixed term has expired the tenancy will become a periodic tenancy. There are two types of Section 21 notices: one for service during the fixed term of the agreement and one for service once the agreement has become a periodic tenancy.

Service of a Section 21 notice will allow you to either recover possession of the property, after two months have expired, using the accelerated procedure (see below) or possession plus a County Court Judgment for the rent arrears using the standard procedure (see below).

If you took a bond or deposit from the tenant, to be able to use the section 21 procedure, you must have placed the monies into a Government approved Tenancy Deposit Scheme and notified the tenant of that fact. Failure to do so will entitle the tenant to issue proceedings against you for three times the value of the deposit and also prevents a Section 21 notice from being validly served. If monies have not been placed in a Tenancy Deposit Scheme they should be as a matter of urgency and the prescribed information should be supplied to the tenant.

### **Accelerated procedure**

This is a paper process whereby the Landlord files an application at Court and the tenant is given 14 days to file a Defence to the application. If no Defence is received then the Landlord can request an Order for Possession from the Court without the need for a hearing. If the Court considers the notice may have been incorrectly served, or the tenant defends the application, then the Court is likely to schedule a hearing to determine the dispute. If a hearing is set then we may need to prepare evidence for you and instruct Counsel to represent you. We recommend that you are present at the hearing as well.

If the Order for Possession is granted, then a date will be set for the tenant to vacate the premises and fixed legal costs will be awarded and recoverable from the tenant. Such costs are currently fixed at £79.50, as well as the Court fee of £280, regardless of the fees that you have paid to us for our services.

The Court will serve the Order upon the tenant and we suggest that you make arrangements with your tenant to view the property to see whether they have vacated by the date required. If the tenant does not vacate, you will need to instruct a bailiff to evict the tenant (see below).

### **Notices pursuant to section 8 of the Housing Act**

Notices pursuant to Section 8 of the Housing Act 1988 may be served at any time. Schedule 2 of the Housing Act 1988 contains a list of grounds pursuant to which possession may be granted, and includes non-payment of rent and other breaches of the tenancy. When the Court considers granting possession it will bear in mind that some grounds are mandatory and some are discretionary.

Rent arrears, where those arrears remain outstanding at the date of the hearing, is a mandatory ground. The Court will therefore automatically make an Order for Possession. If the arrears have been paid by the date of the hearing then a request can be made for the Judge to consider ordering possession based upon other discretionary grounds, provided they have been set out in the Section 8 notice.

The notice itself specifies the notice periods that must be given depending upon which ground is being relied upon. In a situation where rent is outstanding for more than two months, a two week notice period is required before Court proceedings using the standard procedure can be commenced.

### **Standard procedure**

Following the expiry of the notice, proceedings may be issued in the County Court local to the property. A hearing date is given to the parties. This may be up to eight weeks from the date of issuing the claim, depending on the Court timetable. We will draft a witness statement for you to be filed at Court and served on the tenant in advance of the hearing so that the current position may be evidenced. We will instruct Counsel to represent you at the hearing. We recommend that you are also present at the hearing. The Court will determine whether possession of the property should be granted and upon what terms. Further, the Court will order the tenant to pay the arrears by way of a County Court Judgment.

As with the accelerated procedure, only fixed costs are recoverable from the tenant if the tenant has not denied liability. These are currently limited to £126.75, as well as the court fee of £280, regardless of the fees that you have paid to us for our services.

If the tenant fails to vacate the property on the date given a bailiff will need to be instructed to evict the tenant (see below).

### **Instructing a Bailiff**

If the Court orders possession and the tenant does not vacate on the given date, a further application must be made to the Court for a bailiff to attend the property to evict the tenant and secure possession of the premises. It can take up to a further six weeks to obtain the bailiff's appointment, depending upon the bailiff's availability. The bailiff's costs can be ordered to be paid by the tenant.

It is possible to 'transfer up' the order to the High Court and request a High Court Officer to attend to evict the tenant. This can be quicker than using the County Court Bailiff and the cost of doing so is set out in our fixed fee price list.

***The information provided in this outline is for information purposes only. It is not intended to constitute legal advice and should not be relied upon for specific advice relating to a particular set of circumstances.***