

Preparing Particulars of Claim in Possession cases

Speakers: Krishma Patel & Samuel Davis

Basic Requirements of a Possession Claim

- Check the tenancy agreement and identify the type of tenancy
- Identify the grounds that can be relied on for a possession order
- Serve the required notice, ensuring it includes the prescribed information
- Issue the Claim in the County Court in accordance with CPR 55

Determining the type of tenancy

Most agreements will outline, among other things:

- The length of the tenancy, and whether it's fixed term or periodic (eg. running month-to-month)
- The rent amount payable and how often it must be paid
- What bills or services are included in the rent
- How the tenancy can be ended and who is responsible for repairs, maintenance and safety

Assured Shorthold Tenancies

The most common form of tenancy is an AST. Most new tenancies are automatically this type.

A tenancy can be an AST if all of the following apply:

- the property you rent is private, your tenancy started on or after 15 January 1989, the property is your main accommodation and your landlord does not live in the property
- A tenancy cannot be an AST if it began or was agreed before 15 January 1989, the rent is more than £100,000 a year or the rent is less than £250 a year (less than £1,000 in London), if it's a business tenancy or tenancy of licensed premises, if the property is a holiday let and if your landlord is a local council

Other Tenancies

- Assured tenancies
- Regulated tenancies
- Excluded tenancy/lodger
- Council tenancies – introductory tenancies/secure tenancies/flexile tenancies

Notices in possession proceedings

- Section 21 Notices
- Section 8 Notices

Grounds of possession

- Mandatory
- Discretionary

Mandatory Grounds

- Schedule 2 of the Housing Act 1988
- The judge must order possession if the landlord proves their case on a mandatory ground

Discretionary Grounds

- Schedule 2 of the Housing Act 1988
- The court must conclude it is reasonable to grant possession and has wide powers of adjournment in cases involving discretionary grounds.

Defences

- Landlord's ground has not been proved
- Equality Act 2010
- Defects in the Notice seeking possession
- Public Law Defences
- Counterclaims?

CPR 55 and matters to include in a Particulars of Claim

- Must be filed and served with the claim form (CPR 55.4)
- Identify the land to which the claim relates (PD 55A, 2.1(1))
- State whether the claim relates to residential property (PD 55A, 2.1)
- State the ground on which possession is claimed (PD55A, 2.1)
- Give full details of any mortgage or tenancy agreement (PD55A, 2.1)
- Give details of every person who, to the best of the claimant's knowledge, is in possession of the property (PD 55A, 2.1)

Additional requirements – CPR 55A

- Applicable to residential property let on a tenancy
- Additional requirements apply where the claim includes non payment of the rent – PD 55A, paragraphs 2.3 – 2.4(B)

Practical Pointers

The end – any questions?

- **Legal Updates on our Twitter account:** @42BR_Housing
- **Subscribe to our Free Housing Law Bulletin by emailing:**
housing@42br.com
- **Please email us with any questions:**
Krishma Patel: krishma.patel@42br.com
Samuel Davis: Samuel.davis@42br.com

Disclaimer

- **Legal Updates on our Twitter account: @42BR_Housing**
- **Subscribe to our Free Housing Law Bulletin by emailing:**
housing@42br.com
- **Please email us with any questions:**
Krishma Patel: krishma.patel@42br.com
Samuel Davis: Samuel.davis@42br.com