



# Junior Litigation Series Session Four: Property

# *Residential Possession Hearings*

Dale Timson

*'Residential Possession Hearings'*

Exploring strategies for both sides on how to maximise or minimise the chances of possession being obtained at the first hearing.

Richard Cherry

*'Section 21 explored'*

An in-depth review of the pitfalls and problems in claims brought for possession pursuant to s.21. Housing Act 1988.

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# Residential Possession Hearings

Dale Timson

# *Residential Possession Hearings*

## Agenda

- Service
  - Defence
  - The hearing
  - Practical considerations
- 
- Applicable to standard residential possession hearings. Does not cover interim possession orders or the accelerated procedure

# *Residential Possession Hearings*

- Service- CPR 55.8:
  1. Trespassers must be served with the claim form, particulars of claim and any witness statements not less than 5 days before the hearing date.  
Note CPR 2.8
  2. Trespassers- stakes and transparent envelopes- CPR 55.6 /PD55A, paragraph 4.1
  3. In all other possession claims: the hearing date will be not less than 28 days from the date of issue of the claim form; and, the defendant must be served with the claim form and particulars of claim not less than 21 days before the hearing date.
  4. CPR 3.1(2)(a) provides that the court may extend or shorten the time for compliance with any rule.

# *Residential Possession Hearings*

- Defence- CPR 55.7
  1. Acknowledgment of service not required and CPR 10 does not apply.
  2. Trespassers- CPR 15.2 does not apply and the defendant need not file a defence.
  3. Any other possession claim, CPR 15.4 (14 days after service of the particulars of claim).
  4. If the defendant does not file a defence, he may take part in any hearing but the court may take his failure to do so into account when deciding what order to make about costs.
  5. CPR 12 (default judgment) does not apply.

# *Residential Possession Hearings*

- The hearing- CPR 55.8
  - (1) At the hearing or at any adjournment of that hearing, the court may –
    - (a) decide the claim; or
    - (b) give case management directions.
  - (2) Where the claim is genuinely disputed on grounds which appear to be substantial, case management directions given under paragraph (1)(b) will include the allocation of the claim to a track or directions to enable it to be allocated.

# *Residential Possession Hearings*

- The hearing-

The test as to whether a claim is “genuinely disputed on grounds which appear to be substantial” is the same as for summary judgment under CPR 24. In *Global 100 Ltd v Laleva* [2021] EWCA Civ 1835; [2022] H.L.R. 20, Lewison LJ stated:

*“It may be procedurally unfair to decide a case against an occupier who turns up unannounced at a hearing without having filed a defence, but who tells the district judge that there is (or may well be) a substantive defence which he wishes to advance.”*



# *Residential Possession Hearings*

- The hearing-
  1. In *Benesco Charity Ltd v Kanj* [2011] EWHC 3415 (Ch), a case where a defendant had submitted a witness statement, Peter Smith J stated, it: *“... should be not rejected at a summary stage unless the evidence is incredible. A person is entitled where there are matters raised in the witness statement unless that high threshold is reached to take the matter to trial.”*
  2. Also note CPR PD55A, paragraph 5.4, if: (1) the maker of a witness statement does not attend a hearing; and (2) the other party disputes material evidence contained in his statement, the court will normally adjourn the hearing so that oral evidence can be given.

# *Residential Possession Hearings*

- First things first- important practical considerations
  1. DDJ/DJ
  2. Block list/ time estimate
  3. Defence? Timing of Defence
  4. Bundle?
  5. Skeleton?
  6. Cause of action
  7. Compliance

# *Residential Possession Hearings*

- Cause of action
  1. Parties
  2. Ownership
  3. Tenancy agreement
  4. Basis for possession- e.g. ground 8 / s.21 / trespassers / mortgage
  5. Limitation

# *Residential Possession Hearings*

- Compliance

1. Correct Court- CPR 55.3(1)(c)
2. Correct Claim Form/ Particulars- CPR PD55A, paragraph 1.5
3. Content of Particulars- CPR PD55A, paragraphs 2.1- 2.7
4. Service
5. Correct notices and service of notices
6. Witness statement

# *Residential Possession Hearings*

- Mortgage possession – additional compliance requirements
  1. Notices to property, housing department, registered proprietor of registered charge – CPR 55.10
  2. Official copy of the Charges Register issued by the Land Registry
  3. HRR Search
  4. Witness statement
  5. N123- PAP – CPR PD55, paragraph 5.5

# *Residential Possession Hearings*

- Failure to comply
  1. CPR 3.10 - The error does not invalidate the step taken and the court may make an order to remedy the error.
  2. The court should have regard to the overriding objective. In some situations dealing “with cases justly” will involve adjourning proceedings to enable the error to be corrected. In other cases, where the defect is purely technical and there is no prejudice to the defendant, the court is likely to waive the defect (*Cardiff CC v Lee* [2016] EWCA Civ 1034).
  3. If the failure on the part of the claimant amounts to an abuse of process, the court may strike out the claim (CPR 3.1 and 3.4). See, in another context, *Gwynedd CC v Grunshaw* [2000] 1 W.L.R 494, CA.

# *Residential Possession Hearings*

- Costs

1. Mortgage possession- contractual

2. Other claims:

- a) Fixed Costs- CPR 45.16(2)

- b) Contractual- *Gomba Holdings v Minorities Finance* [1992] 4 All ER 588  
CA

# *Residential Possession Hearings*

- Other matters
1. Draft orders
  2. Time it takes to obtain possession
  3. Transfer to High Court for Enforcement





# Section 21 Explored

Richard Cherry

# Possession Claims under s21 Housing Act 1988

## Defences

- Formalities, service and dates
- Limitations on Post October 2015 Tenancies
  - EPC
  - Gas Safety Records
  - How to Rent guide
- Limitations on all Tenancies
  - Compliance with Licensing Requirements
  - Deposit Protection
  - Tenant Fees
  - Retaliatory Eviction

# Possession Claims under s21 Housing Act 1988

## Formalities Service and Dates

- **s21, 21A Housing Act 1988**
  - Correct Form? – Form 6A Current Version (**s21(8) HA 88; s37 Deregulation Act 2015**)
    - ‘substantially to the same effect’ Pease v Carter [2020] EWCA Civ 175
  - Correct timings and dates?
    - Not within 4 months of grant
    - Issue claim within 6 months of giving notice (**s21(4D) HA 88**)
  - ‘Specify a date’ – no longer a need to be the end of period except periodic tenancies from the outset

# Possession Claims under s21 Housing Act 1988

## (1) Post Oct 2015 Tenancies

### 21A and 21B Housing Act 1988

- Tenancies post 1 Oct 2015 – *Minister v Hathaway* [2021] EWCA Civ 936

### **Assured Shorthold Tenancy Notices and Prescribed Requirements (England) Regulations 2015 Reg 2 ('2015 Regs')**

- EPC – **s21A and Reg 2(1)(a) 2015 Regs and Reg 6(5) Energy Performance of Buildings (England and Wales) Regulations 2012**
- Gas Safety Records – **s21A and Reg 2(1)(b) 2015 Regs and Regs 36(6)(a) and (b) Gas Safety (Installation and Use) Regulations 1998**
- How to Rent – **s21B HA88 and 2015 Regs Reg 3**

# Possession Claims under s21 Housing Act 1988

## (1) Post Oct 2015 Tenancies - EPC

**s21A HA 88 and Reg 2(1)(a) 2015 Regs and Reg 6(5) Energy Performance of Buildings (England and Wales) Regulations 2012**

Valid 10 years

Given any time before giving s21 Notice

# Possession Claims under s21 Housing Act 1988

## (1) Post Oct 2015 Tenancies - Gas Safety Record

### s21A HA88 and Gas Safety (Installation and Use) Regulations 1998

What: **Reg 36(6)(b):**

*'a copy of the last record made in respect of each appliance or flue is given to any new tenant of premises to which the record relates before that tenant occupies those premises'*

What (2): **Reg 36(6)(a)**

*'a copy of the record made pursuant to the requirements of paragraph (3)(c) above'*

When: any time before giving the s21 Notice - Trecarrell House v Rouncefield [2020] EWCA Civ 760

What if there's no check? – Byrne v Harwood Delgado Luton County Court 21 June 2022

What must the GSR contain? – all the information at **Reg 36(3)(c)(i-ix)**

# Possession Claims under s21 Housing Act 1988

## (1) Post Oct 2015 Tenancies – How to Rent

### s21B HA88 and 2015 Regs Reg 3

- When - any time before s21 Notice
- What: **Reg 3(2)**:  
*‘the version of the document entitled “How to rent: the checklist for renting in England”, as published by the Department for Communities and Local Government, that has effect for the time being.’*
- **Reg 3(3)** *‘(3) The information may be provided to the tenant—*
  - (a) in hard copy; or*
  - (b) where the tenant has notified the landlord, or a person acting on behalf of the landlord, of an e-mail address at which the tenant is content to accept service of notices and other documents given under or in connection with the tenancy, by e-mail.’*
- Revised versions? - **Regs 3(4)** and **3(5)** no need to serve a revised version but...
  - (5) This regulation does not apply—*
    - (a) where the landlord is a private registered provider of social housing; or*
    - (b) where—*
      - (i) the tenancy (“the new tenancy”) is a replacement tenancy;*
      - (ii) the landlord, or a person acting on behalf of the landlord, provided the tenant with the document mentioned in paragraph (2) under an earlier tenancy; and*
      - (iii) the version of the document provided to the tenant under the earlier tenancy is the same version as the version which is in effect on the first day of the new tenancy.’*

# Possession Claims under s21 Housing Act 1988

## (2) All Tenancies – Compliance with Licensing

### ss74 and 98 Housing Act 2004

**s74** – unlicensed HMO (defined in **s73**)

Exceptions in **s73(2)**

- (a) temporary exemption notice per **s62(1)**
- (b) 'effective' application for licence made per **s63**

**s98** – unlicensed house (defined in **s96**) under selective licensing (check LA website)

Exceptions in **s96(2)**

- (a) temporary exemption notice per **s62(1)** or **86(1)**
- (b) 'effective' application for licence made per **s87**

No section 21 Notice may be given when not in compliance



# Possession Claims under s21 Housing Act 1988

## (2) All Tenancies – Deposit Protection

### ss213-215 Housing Act 2004

What – comply with *‘the initial requirements of an authorised scheme’* within 30 days of taking deposit

**s213(3)** – protect and

**s213(5) and (6)** provide Prescribed Information *‘in the prescribed form or in a form substantially to the same effect’*

Prescribed Information (‘PI’)

Contents?: **The Housing (Tenancy Deposits) (Prescribed Information) Order 2007 Art 2**

**Art 2(g)(vii)** *‘confirmation (in the form of a certificate signed by the landlord)...’* Possibly... *Lowe v Charterhouse* [2022] EWCA (28 October 2022)

**Caution!** – different schemes different requirements. Scheme leaflets and Terms and Conditions

Re-protection? – no

Re-serve PI? – possibly – if changes

Protection under previous AST? – s215A

# Possession Claims under s21 Housing Act 1988

## (2) All Tenancies

### Prohibited Payments under Tenant Fees Act 2019

#### s17 Tenant Fees Act 2019

No s21 Notice may be given where a prohibited payment has been made  
by T or guarantor  
to LL (not agent)  
and not returned in full (can be credited against rent/deposit with T  
agreement)

Permitted payments are listed in **Sch 1 Tenant Fees Act 2019**

# Possession Claims under s21 Housing Act 1988

## (2) All Tenancies - Retaliatory Eviction

**ss33 and 34 Deregulation Act 2015** - Two applications:

1. **s33(1)**: No s21 Notice within 6 months of service of 'relevant notice' (under **s11,12** or **40(7) Housing Act 2004**) unless revoked.
2. **s33(2)**: s21 Notice will be invalid where:
  - (a) T complains to LL in writing re condition
  - (b) LL fails to respond in 14 days, fails to give '*adequate response*' or gives s21 notice '*following the complaint*'
  - (c) T '*then*' complains to LA re '*same or substantially the same subject matter*'
  - (d) LA serves '*relevant notice in response to the complaint*'
  - (e) '*if the section 21 notice was not given before the tenant's complaint to the local housing authority, it was given before the service of the relevant notice*'

Court must strike out proceedings (s33(7))

Definitions in **s33(13)** and exemptions in **s34**

Retaliatory???

Any Questions?

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