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## **L.E. LAW INFORMATION SHEET NO. 12**

### **GUIDE FOR LANDLORDS TO OBTAINING POSSESSION OF RESIDENTIAL PROPERTY**

We have experience of handling cases for landlords who wish to obtain possession of residential property. Whether you are seeking to recover possession from a tenant or from a squatter, we can guide you through the process from start to finish.

This guide is divided into two parts; part one concerns possession from tenants, part two concerns possession from squatters.

#### **Part 1 – Tenants**

##### **1. Introduction**

This Guide is intended to give general advice to landlords wishing to obtain possession of their properties from tenants. The Guide assumes that the property has been let on an Assured Shorthold Tenancy (AST) and different considerations apply to other forms of Tenancy Agreement.

The Guide will hopefully answer some of the questions which are most frequently asked by landlords but is not a substitute for taking professional advice on the circumstances of a particular case from a qualified solicitor or other professional.

##### **2. Choice of Procedures**

There are two different Court procedures available which each have their advantages and disadvantages. Namely:-

- a) The accelerated possession procedure.
- b) The normal possession procedure.

### **3. The Accelerated Possession Procedure**

This is only available if the following conditions can be met:-

- a) The fixed term of the tenancy has expired.
- b) A valid Section 21 Notice has been served.
- c) The landlord does not seek at the same time a money judgment in respect of rent arrears.

A section 21 Notice is a Notice giving the tenant at least 2 months Notice that the landlord will be seeking possession. The Notice can be served at any stage, even at the commencement of the tenancy. Most professional letting agents will give a Section 21 Notice at the commencement of the tenancy to save having to do it at a later date.

If no Section 21 Notice has been served, it can be served either before or after the expiry of the tenancy but the Notice is technical and if it is not absolutely correct the possession proceedings may be dismissed and the landlord will have to start all over again.

The earliest time a Section 21 Notice can expire is the last day of the fixed term of the tenancy. If the landlord wants to bring the tenancy to an end early (eg because of rent arrears) then he MUST use the normal possession procedure(see below).

The main advantages of the accelerated procedure are:-

- a) Speed and
- b) Cost.

Once the necessary papers are lodged with the Court, the Court will send copies of the papers to the Tenant who has 2 weeks to respond. After that, the landlord may apply for a Possession Order and matters will be dealt with on paper by the Court and in all but exceptional circumstances the Court will grant a 14 days Possession Order on paper without the need for a Court hearing.

If the Tenant submits a Defence challenging for example the validity of the Section 21 Notice, then a hearing will be fixed and matters will inevitably take longer.

Assuming that no hearing is necessary however, LE Law offer a fixed fee service of £300 plus VAT to prepare the necessary Court papers to commence the claim and to apply for the Possession Order. There is in addition a Court Fee payable, currently £175.

#### **4. The Normal Possession Procedure**

This is the procedure used whenever the landlord wants to end the Tenancy Agreement and obtain possession early, e.g. because of rent arrears or other breaches of the Tenancy Agreement.

By using the normal possession procedure the landlord can apply not only for an Order for possession, but for a money judgment in respect of rent arrears and in respect of damage to the property or contents.

Before normal possession proceedings can begin the landlord must first serve a valid Section 8 Notice. This is a Notice setting out the grounds for seeking possession and will include brief details of the arrears and/or other breaches of Tenancy Agreement.

Once the Notice has been served, the landlord must then wait a certain period before proceedings can be issued. The period will vary according to the grounds on which possession is sought, but for rent arrears the relevant period is 14 days.

Once the proceedings have been issued, the Court will fix a preliminary hearing date allowing for a hearing of about 10 minutes. How soon the hearing takes place will depend upon listing delays which vary from Court to Court but typically the first hearing is approximately 2 months after proceedings have been commenced.

What happens at the first hearing will depend upon whether the Tenant tries to defend the claim or not. If they do not, then if the Court is satisfied that the grounds for possession are proved a Possession Order will normally be made at the first hearing.

If the case is defended, then the Court will give directions for further evidence to be exchanged and a final hearing may not take place for several months.

#### **5. Which procedure should I use?**

If the tenancy has come to an end or is likely to within the next month or two, and the priority is to recover possession, you will almost certainly be better off using the accelerated procedure. It is likely to be quicker and cheaper.

If the tenancy will not expire for several months and/or if it is important to you to obtain a money judgment against the Tenant then you will want to use the normal possession procedure.

#### **6. Will I recover rent arrears and costs from the tenant?**

If you use the normal procedure you can ask the Court for a money judgment in respect of rent arrears. If you can prove the arrears, and the tenant does not have a counterclaim, then the Court will enter judgment for any rent arrears and other valid money claims.

In relation to costs, the Court will only award nominal fixed costs whether using the accelerated or normal procedure, unless the claim is defended. If it is defended, then the Court has a wide discretion whether to award costs and how much.

Please bear in mind that it is one thing getting a money judgment and Costs Order against the tenant and quite another thing enforcing it. If you were holding a deposit you may be able to use that towards any rent arrears. Apart from that however you will have to use one of the various Court processes for enforcing a judgment. Once you have obtained possession of the property it is highly likely that you will not know where the tenant has moved to and will then need to incur further costs trying to trace the tenant. The tenant may or may not have assets available against which a judgment can be enforced.

## **7. Enforcement**

Once you have obtained the possession order, unless the tenant leaves, you will have to take enforcement action (i.e. instructing bailiffs) to evict. This process involves applying to the Court for a bailiff's appointment and paying a further fee of £100. An appointment for a bailiff to attend the property usually takes several weeks but depends on the workload at the local court.

## **8. How much will it cost me?**

LE Law offer fixed fees for the following services:-

Preparation and service of Section 8 Notice £100 plus VAT.

Preparation and service of Section 21 Notice £100 plus VAT.

Preparation and issue of accelerated proceedings £300 plus VAT.

Preparation and issue of normal possession proceedings £300 plus VAT.

In relation to normal proceedings, it is impossible to offer fixed fees once the proceedings have been issued. At the very least there will be a need for evidence in support of the claim and an attendance for at least one Court hearing and these two steps can typically cost £300 to £500 plus VAT.

If the proceedings are defended and become prolonged, further costs estimates will be given as the case proceeds.

## **Part 2 – Squatters**

### **1. Introduction**

Squatters, or trespassers as they are legally known, can vary from the innocent, to the opportunistic, to the highly organised. The difficulty and expense of removing them will often depend on which category the particular squatters fall into.

This guide outlines some of the procedural mechanisms for removing squatters but specific legal advice on each particular case is always advisable.

### **2. Procedure**

#### Interim Possession Orders

Depending on the exact circumstances, it may be possible to obtain an Interim Possession Order, which requires the squatters to leave the property within 24 hours of service of the order. A further hearing will then be listed within 7 days. Interim Possession Orders are only available in limited circumstances, however, and will require a minimum of two court hearings

It is possible in theory that the court on the second hearing can order the landlord to allow the squatters back into the property if all the necessary requirements were not met.

#### Claim for Possession

If it is not possible to obtain an Interim Possession Order, a claim for possession against trespassers will be necessary. These claims are usually listed quite quickly, often within 2 or three weeks, but this will depend of the efficiency and workload of the local court.

#### Hearings

Many orders against squatters are made at the first hearing, however it is increasingly common that squatters appear at hearings and put forward arguments that require further investigation. In such circumstances, the court will often adjourn the claim to a second hearing to allow evidence to be filed. Highly organised squatters in particular are known to make claims such as having been granted a tenancy or permission from an agent of the landlord to reside in the property.

#### Costs

Costs of proceedings to evict squatters are not usually recoverable because the identity of squatters is usually unknown and the court will not make an order to pay money against an unknown person.

### How much does it cost?

Because of the uncertainties highlighted above, it is impossible to give a fixed indicator of the costs of evicting squatters. However, it would not be unusual for the process to cost around £2,000.

### **7. Enforcement**

As with eviction of tenants, you may have to take enforcement action (i.e. instructing bailiffs) to evict. In practice, this will almost always be necessary to evict squatters. This process involves applying to the Court for a bailiff's appointment and paying a further fee of £100. An appointment for a bailiff to attend the property usually takes two to three weeks but depends on the workload at the local court.

### **Disclaimer**

This information sheet is for guidance only and does not remove the need to take professional legal advice relevant to the specific facts of any individual case. No responsibility will be accepted for any losses occasioned as a result of any action taken in reliance on the contents of this document.

### **Contact Details**

For further help please contact:-

**Neil Lloyd-Evans**

**L.E. Law  
Solicitors  
127 High Road  
Loughton  
Essex IG10 4LT**

**Tele: 0208 508 4691**

**Fax: 0208 508 6359**

**Email: [neil@lelaw.co.uk](mailto:neil@lelaw.co.uk)**

**L.E. LAW TERMS OF BUSINESS - JULY 2013**

This document explains the basis on which we will carry out all work necessary relating to your matter.

### **1. Office Hours**

Our normal office hours are 9.00am to 5.00pm Monday to Friday. We are usually closed for lunch between 1.00pm and 2.00pm. It is helpful if you make an appointment before

you come to the office and avoids the risk that the person you wish to see will not be available

If you wish to bring documents or pay a bill, it is still important that you let us know in advance that you are coming even if you do not wish to see a solicitor.

## **2. Charges and expenses**

Our charges are usually based on the time we spend dealing with your case. Our hourly charging rates (exclusive of VAT) with effect from 1 July 2013 are as follows:

Neil Lloyd-Evans (Principal)	£250
Shameela Ahmed (Associate Solicitor)	£200
Aqeel Kadri (Assistant Solicitor)	£165

Time spent on your matter includes meetings with us and with others, court hearings, any time spent travelling, reading, preparing and working on documents, correspondence, and making and receiving telephone calls.

- Routine letters, faxes and e-mails that we write will be charged as units of one-tenth of an hour.
- Routine telephone calls that we make and receive will be charged as units of one-tenth of an hour.
- Routine letters, faxes and e-mails received will be charged as units of one-twentieth of an hour.
- Other letters and calls will be charged on a time basis.

If your instructions mean we have to work outside normal office hours (Monday to Friday 9.00am to 5.00pm), we reserve the right to charge you at a rate 50% higher than our usual rates for work done during normal office hours.

You will also have to pay for any expenses that we incur in connection with your matter (sometimes referred to as “disbursements”). This might include court fees, search fees, payments to barristers and experts, travelling expenses and so on.

VAT will be added to our charges at the appropriate rate (presently 20%) and will be added to disbursements where applicable.

## **3. Estimate**

Please refer to our covering letter for an estimate of our charges.

We will review this estimate from time to time and inform you if it appears that the estimate may be exceeded.

If any unforeseen work becomes necessary (for example due to unexpected difficulties and /or if your requirements or the circumstances significantly change during the course

of the matter) we will inform you and provide a revised estimate as soon as we reasonably can.

If, for any reason, this matter does not proceed to conclusion, we will charge you for work done and expenses incurred.

You may set a limit on the charges and expenses to be incurred. This means that you pay our charges and expenses incurred up to the agreed limit without our needing to refer back to you. We will inform you as soon as it appears that the limit may be exceeded and we will not exceed the limit without first obtaining your consent.

#### **4. Payments on account**

You will be asked to pay sums of money from time to time on account of the charges and expenses which are expected in the following weeks or months. We may request further payments on account as the matter progresses. We will offset any such payments against your bills, but it is important that you understand that your total charges and expenses may be greater than any advance payments.

#### **5. Billing arrangements**

To help you budget, we will normally send you a bill for our charges and expenses every month, or at such interval as we may agree with you, or at a convenient point in the case. We will send our last bill after completion of the work.

Please note that each of our bills is a final bill for the period of work that it covers, and will include as far as possible all disbursements relating to that period of which we are aware (although we reserve the right to include unbilled disbursements in later bills). Each bill is governed by the provisions of the Solicitors Act 1974, which means that you are entitled to have the bill assessed by the court in accordance with the provisions of the Act, and subject to the time limits set out in the Act.

Payment is due immediately we send you a bill. We will charge you interest on our bill at 10 per cent per year from the date of the bill if you do not pay our bill within 28 days. Interest will be charged on a daily basis. We are entitled to cease acting and to sue you if any bill remains unpaid after 28 days.

If you have any query about your bill, you should contact us straight away.

**Please note that sections 6 – 8 below only apply to litigation matters, i.e. where we represent you in court proceedings.**

#### **6. Recovering your costs from another party**

It is important that you understand you are responsible for paying our bills regardless of the outcome of your case. Even if you win, your opponent may not be ordered to pay all your charges and expenses. In any event, he may not have the means to pay your charges



and expenses. If this happens, you will have to pay the balance of our charges and expenses.

As a very rough guideline, if your case is successful, your opponent would normally be ordered to pay about 75-90% of our full charges and expenses. This would not apply however to a claim dealt with under the Small Claims track (which usually applies to claims for less than £10,000, or personal injury claims worth less than £1,000). In those cases, costs are not generally recoverable even if you win.

If your opponent has public funding (formerly known as legal aid), you may not get back any of your charges and expenses, even if you win the case.

Special rules apply about recovery of costs if we are acting under a Conditional Fee Agreement (CFA) or Damages Based Agreement (DBA). Please see our Guide to Funding Options for Litigation for further details.

If you are successful and the court orders the other party to pay some or all of your charges and expenses, interest can be claimed on them from the other party from the date of the court order. If there are costs outstanding at the date of the order then we are entitled to retain the interest on those costs. You will be entitled to the interest on the costs you have paid at the date of the order.

### **7. Other party's charges and expenses**

If you lose the case, the court will probably order you to pay the other party's charges and expenses. This would be payable in addition to our charges and expenses.

### **8. Funding your case**

There are a number of different ways to fund any case. We are happy to discuss which are available in any particular case.

Full details of the various methods of funding litigation (ie court proceedings) are set out in our Guide to Funding Options for Litigation.

### **9. Storage of papers**

After completing the work, we are entitled to keep all your papers and documents while there is money owing to us. We will keep our file of papers except for any papers which you ask to be returned to you for no more than six years. We keep a file on the understanding that we have authority to destroy it at any time after one year from the date of the final bill. If we retrieve papers or documents from storage there may be a charge involved.

### **10. Termination**

You may terminate your instructions to us in writing at any time but we will be entitled to keep all your papers and documents where there is money owing to us for our charges and expenses.

We may decide to stop acting for you for example, if you do not pay a bill or comply with a request for a payment on account, fail to give us instructions or give us instructions to carry out work in an unreasonable manner.

If you or we decide that we will no longer act for you, you will pay our charges as set out earlier.

### **11. Complaints**

We are confident of providing a high quality service in all respects. If, however, you have any queries or concerns about our work please raise them with Neil Lloyd-Evans at the earliest opportunity. If that does not resolve the problem to your satisfaction and you wish to make a formal complaint then please ask for a copy of our complaints procedure.

In the event that you are not satisfied with the outcome of any complaint, you can then refer your complaint to the Legal Ombudsman. His contact details are as follows:

Legal Ombudsman  
PO Box 6806 Wolverhampton WV1 9WJ  
Tel: 0300 555 0333  
Email: [enquiries@legalombudsman.org.uk](mailto:enquiries@legalombudsman.org.uk)  
Website : [www.legalombudsman.org.uk](http://www.legalombudsman.org.uk)

### **12. Distance Selling Regulations**

Please note for the purposes of the Distance Selling Regulations:

1. It cannot be assumed that the work that we do for you will be completed within 30 days.
2. By signing this letter and/or instructing us to act you agree that we should start work for you immediately and that you waive any right under the Regulations to cancel our agreement.

### **13. Data Protection and Confidentiality**

Please note for the purposes of the Data Protection Act 1988 that we will collect and store data given by you for a number of purposes, including :

- (a) the provision of legal advice,
- (b) performing money laundering checks and
- (c) the marketing of our services.

Please also note that there will be occasions when we may need to use external agencies to assist in the provision of our services to you. This might include barristers, photocopying bureaux, typing agencies, doctors and other expert witnesses. By instructing us to act for you, you are taken to consent to the use of such external agencies and the disclosure to them of such documents and other information as we consider appropriate.

We will nevertheless use our best endeavours to ensure that affairs remain confidential as far as is possible, and that our obligations under the Data Protection Act are fulfilled.

If you have any concerns regarding confidentiality and/or data protection, do raise these at the earliest opportunity.

#### **14. Solicitors Financial Services (Conduct of Business) Rules 2001**

Sometimes family, probate, company work and other areas we may act for you in involve investments. We are not authorised by the Financial Services Authority and so may refer you to someone who is authorised to provide any necessary advice. However, we can provide certain limited services in relation to investments, provided they are closely linked with the legal services we are providing to you, as we are regulated by the Solicitors Regulation Authority.

If you have any problem with the service we have provided for you then please let us know. We will try to resolve any problem quickly and operate an internal complaints handling system to help us to resolve the problem between ourselves. If for any reason we are unable to resolve the problem between us, then we are regulated by the Solicitors Regulation Authority which also provides a complaints and redress scheme.

#### **15. Professional Indemnity Insurance**

In accordance with the regulations applying to all solicitors in England and Wales, we carry professional indemnity insurance to cover claims of professional negligence. The limit of indemnity is £3million per claim.

Our insurers for the period 1 October 2012 to 30 September 2013 are as follows :

International Insurance Company of Hannover Ltd  
c/o Fishburns Solicitors, 6<sup>th</sup> floor, 60 Fenchurch St, London EC3M 4AD  
Policy No A1236323

#### **16. Conclusion**

Unless otherwise agreed, these terms of business apply to any future instructions you give us.

Your continuing instructions in this matter will amount to your acceptance of these terms and conditions of business. Even so, we ask you to please sign and date the enclosed copy of this letter and return it to us immediately. We can then be confident that you understand the basis on which we will act for you.

We hope that by sending this letter we have addressed your immediate queries about the day-to-day handling of your work and our terms of business. If you still have any queries,

please do not hesitate to contact Neil Lloyd-Evans. This is an important document. Please keep it in a safe place for future reference.

LE Law and LE Law Solicitors are trading names of LE Law Services Ltd

L.E Law Services Ltd is a limited company registered in England and Wales with registered number 07676752

We are authorised and regulated by the Solicitors Regulation Authority (number 562428).

Our registered office and address for service of documents is 127 High Road, Loughton, Essex IG10 4LT.

(Version 14 amended July 2013)