

In spite of reports to the contrary, throughout this, and last year (2020/1) many things have remained the same for landlords. What has changed is the way courts, and bailiffs are acting.

We strongly recommend:-

- do lots of due diligence at the outset of the let. It is far, far better to spend time, and money before offering; it is (normally) much cheaper and easier to do this rather than things going wrong at the end of the let.
- Keep a written record of everything – many landlords keep a ‘tenant log’ of communications between them.
- Be conscious of any extenuating circumstances that might affect their response. If you are aware they have just lost their job/had a disaster in their life – tread carefully. This is especially true if they have been adversely affected by the recent pandemic.
- Always offer the tenant the opportunity to discuss, and possibly work out a re-payment schedule.
- Be prepared to negotiate. You might be willing to take less rent for a time if they are a good tenant.
- Any letters should be sent by first class post, and get proof of postage (not registered post).

Rent arrears action taken on, or after August 3rd 2020.

If the tenant gets into arrears it is critical you establish if the arrears are due to Covid, and whether the tenant has attempted to mitigate their own circumstances; it would be very unusual if they were getting no income at all. If their income is diminished you will need to discuss what you can offer, for example:-

- postpone part of the rent for a while, a rent ‘holiday’ which will need to be repaid sometime in the future, or
- waive some, or even all of the rent for a while, after which the rent will return to the old amount, or
- set a new, lower rent level, or
- a combination of the above.

Whichever you do, ensure everything is confirmed in writing. If you agree to a permanent rent reduction we recommend you use a Section 13 notice (*Form 4_-_Eng*) to advise the tenant.

If the arrears continue, you can still serve a Section 8 notice when the arrears are 2 months (8 weeks for weekly tenancies), or more. This is where the first major change from the Pandemic comes in:-

- if the arrears are between 2 and 6 months, the Section 8 notice period is 6 months;
- if the arrears exceed 6 months, the Section 8 notice period is 4 weeks.

It has also been strongly recommended that some kind of pre-action mediation is attempted before going to court.

Consequently we recommend in the case of arrears (*our proforma letter in brackets*):-

- at the first sign of arrears (when they are 1 month in arrears) advise the tenant (in writing) that they are in arrears, and that they need to discuss it with you (*Rent arrears - Letter 1 - informal request for overdue rent*)
- after 2 weeks (now 6 weeks in arrears), write the first formal letter (*Rent arrears - Letter 2 - Formal demand for overdue rent - Letter Before Action*)
- after a further 2 weeks (now 8 weeks/2 months in arrears), write the second formal letter (*Rent arrears - Letter 3 - Formal demand for overdue rent - taking action*)
- after another 2 weeks (now 10 weeks in arrears), serve a Section 8 (Grounds 8; 10 and 11), and advise the tenant (*Rent arrears - letter 4 - after Notice Requiring Possession (Section 8)*)

At all stages try to negotiate, and see if the ‘*Income & Expenditure*’ form will help. If the tenant agrees to a rent repayment schedule use letter ‘*Rent arrears - following agreement on repayments*’

If you need to proceed, you might find the document ‘*Court Process*’ useful, an overview put together by our colleagues at Woodstock.

They have also made available a summary of the notice periods for the different notices – ‘*Minimum Notice Period Lengths under Section 8 and s21 of the Housing Act 1988 140920*’

Note that if required you can also serve a Section 21, but currently (FebruARY 2021) it has a 6 month notice period. Note also that the courts are liable to question the reason for serving a Section 21; so ensure you have all the above proof.

Action for case prior to August 3rd 2020.

If you had taken action before August 3rd a Re-Activation notice (*reactivation-notice-claimant*) must be completed and sent to the court. Please note that this procedure must be followed, see '*important-information-claimant*'.

The reactivation notice must state –

1. That the party filing and serving wishes for the case to be listed or relisted.
2. What knowledge the landlord has about the pandemic's effect on the tenant and any dependants (if known)
1. The reactivation notice must include –
2. A rent account for the last 2 years if the claim is based on rent arrears.
3. If case management directions were made before the stay, a copy of those directions together with new dates
4. contained in a draft order or a statement that no directions are required and that any existing hearing can be met.
5. A statement on whether the claim is suitable to be heard by video or audio link

We recommend you also send a copy to the tenant; a Certificate of Service (*N215*), and a covering letter (*notice-claim-before-3august-eng*).

This doesn't apply to enforceable possession orders, i.e. you only need to apply for a warrant - if you have an outright order or a suspended possession order made before 27th March 2020 which has been breached you do not need to file a reactivation notice. Also, does not apply to appeal matters.

If the tenant does not agree with the proposed directions, they must file and serve a notice in response within 14 days.

The reactivation notice must be served:

- if a trial date was set, no less than 42 days before the hearing, or
- in any case, before 4pm on 29 January 2021.

If a claimant misses the deadlines for serving a reactivation notice (currently April 30th), the court will stay the claim. The claimant will need to apply to have the stay lifted (Form *N244*). This isn't being treated as a sanction and so the landlord will not be required to apply for relief, simply apply to lift the stay.

This deals with the situation whereby the parties have reached an agreement, etc. during lockdown which is being adhered to and so no further action is necessary.

Action when applying to court

When applying to court a statement must be prepared by the landlord demonstrating –

1. What knowledge the landlord has about the pandemic's effect on the tenant and any dependants
2. Evidence if an attempt at mediation has been made. Mandatory for Social Landlords, advisory for Private Landlords.

See Fact sheet - *Pre-action Protocol for Possession Claims by Social Landlords*.

This must be served on the tenant 14 days before the hearing and 2 copies should be brought to the hearing (presumably they should be filed as there will probably be no physical hearing). Copies of all the above letters should provide this.

New Accelerated Possession Claims

Together with the claim form (*N5b*), the landlord must file a notice setting out what knowledge the landlord has about the pandemic's effect on the tenant and any dependants.

General

- The landlord must demonstrate that they have made appropriate efforts to establish whether any rent arrears are due to Covid 19, and what attempts (if any) the tenant has made to mitigate their own circumstances.
- If attempts have been made to establish this, and none has been supplied say so. There is no obligation to make enquiries, but
- would be helpful to aid the passage of the case through the court if they have been made.

Possible delays during the Covid crisis

There have been occasions when either the courts have been suspended, or the bailiffs have been advised not to execute an order. Even if this happens, still follow all the above procedures, but be aware of potential delays.

Finally

Note additionally, that when a tenant vacates it is a good idea to get a surrender document signed (*DEED OF SURRENDER OF TENANCY*), to ensure the tenancy is definitely ceased.