

Recovering your Rent Arrears

As many people will know a Possession Order is unusual insofar as it remains potentially enforceable for a period of 12 years from the date of the original Order. Most debts are in fact irrecoverable after a 6-year period, because of the provisions of the Limitation Act 1980.

The purpose behind the Limitation Act is to ensure that cases can't be brought many years after the events that gave rise to them and different Limitation Periods apply to different Claims. So for example with Personal Injury matters the usual Limitation Period is 3 years.

However, there are provisions in the County Court Rules, which state that once a Possession Order is more than 6 years old, although it can be enforced by a Warrant, the permission of the Court has to be obtained before the Warrant can be issued. If a Warrant is issued without the requisite permission having been obtained it is void.

Clearly in many cases Suspended Possession Orders will have been made when the level of rent arrears at the date of the Order are such that a period of more than 6 years will be needed to clear the debt. This is particularly so in Housing Benefit cases. Any debt in excess of £700 (plus Court costs) will take 6 years to clear at the normal deduction rate even if every single payment is made

How to proceed?

An Application Notice has to be issued for "Permission to Issue a Warrant of Possession". This has to be supported by a witness statement. Past practice has been for Judges to consider such Applications on a Without Notice basis and without a Hearing. However, this practice appears to be changing and many Judges are now ordering that the Application should proceed on Notice to the Tenant and list the Application for a Hearing to take place.

So what kind of matters will the Court look at when deciding whether or not to grant permission? There is Case Law to say that the issue of a Warrant after 6 years should be exceptional rather than routine and therefore we need to think about what kind of factors will be taken into account in establishing that the circumstances are exceptional. The following may be relevant in this context:

- Failure to pay rent due after the date of the Order - It may clearly have been a situation where the level of rent arrears should easily have been re-paid within the 6 year period, but because of non-payment of rent subsequent to the Order the amount has escalated such that the 6 year period will no longer be sufficient.

- Where proper efforts have been made to arrive at agreements with “Tenants”, but these have not been kept to.
- There have been previous Warrants Suspended on Terms, but the Terms have been breached.
- The case has been properly managed following the Suspended Order and has been reviewed regularly to confirm compliance or otherwise and prompt action has been taken where there has been breach.

What else might be done?

- It is always possible to apply to Vary the Terms of an Order for Possession. The “Tenant’s” circumstances may well have changed such that increased payments can be justified. It may be worth seeking the agreement of the “Tenant” to an increase and having that incorporated into a Varied Order by Consent. In the absence of agreement, an Application can be made for an increase in the rate of payment.
- There is another possibility which is yet to be tested - if at the time of the Possession Hearing it is quite clear that, at the best rates then available, repayment of the arrears will take longer than 6 years, the court can be asked to make a Possession Order that is in force until the debt is satisfied or until 12 years has elapsed.
- Cases should be reviewed shortly before the expiry of the 6-year period and where it is appropriate issue an Application for the Warrant just before the expiry date. Even if this is Suspended on Terms there will be no need to Apply for Permission to Re-Issue the Warrant in the event of breach, which will buy a further 12 months, as the Suspended Warrant can remain in force for that period of time.

If any further information is needed please do not hesitate to contact Lindsay Felstead at Whiteheads Solicitors on 01257 266008.