

Rent Arrears Pre-Action Protocol Bulletin

Overview

This is one of nine pre-action protocols that exist, the others being for:

- ❖ Construction and Engineering Disputes
- ❖ Defamation
- ❖ Personal Injury Claims
- ❖ Resolution of Clinical Disputes
- ❖ Professional Negligence
- ❖ Judicial Review
- ❖ Disease and Illness Claims
- ❖ Housing Disrepair

This protocol will come into force on the 2nd October and imposes a huge number of obligations on social landlords for dealing with tenants who are failing to pay rent. One of the important messages in the document is that landlords must go through a number of stages and tick several boxes before going to court to recover arrears.

About the Protocol

There are many considerations that landlords must evaluate prior to taking action for rent arrears and the emphasis on pre-action communication is intended to reduce the burden on the courts. The bullet points below summarise these considerations and must be taken into account by law firms when asked to pursue rent arrears cases through the courts.

- ❖ The protocol refers only to claims that are solely for rent arrears and cannot be used on long-leases or where there is no security of tenure
- ❖ If a claim is pursued through the courts, evidence must be shown that the protocol has been followed otherwise an order cannot be made
- ❖ The landlord must provide rent statements to the tenant every quarter that cover the previous 13 weeks and produce any previous statements upon request
- ❖ All statements and any other documentation sent to the tenant must be comprehensible and reasonable steps taken to take into account the following:
 - Reading difficulties
 - Mental capacity to defend a claim (if under 18) and whether a litigation friend should be appointed
 - Any issues under the DDA 1995
 - Whether a Community Care Assessment is required (Local Authority landlords only)

- ❖ If appropriate criteria are met, the landlord is required to arrange for the DWP to pay the arrears from the tenant's benefits and assist the tenant in claiming housing benefit
- ❖ Proceedings must not be started if the tenant can show the Local Authority:
 - Evidence that a claim for housing benefit can be processed
 - A reasonable expectation of eligibility for housing benefit
 - Other sums not covered by housing benefit are paid
- ❖ On-going, effective communication between the landlord and the Housing Benefit Department (with the tenant's consent) is expected before action can be taken
- ❖ Advice should be given to the tenant by the landlord regarding seeking assistance from the CAB or other agencies
- ❖ If a statutory notice is served, the landlord must contact the tenant to discuss the arrears before proceedings are started
- ❖ If the tenant at this point agrees to pay the rent *and* a 'reasonable' amount towards the arrears, the proceedings must be postponed
- ❖ Alternatives to litigation (e.g. mediation, arbitration etc) should be discussed and if not pursued, evidence will be needed to show why they were not used or why they were unsuccessful
- ❖ In the event that a claim is pursued, the tenant must be given up-to-date rent statements and information relating to their position regarding housing benefit at least 10 days before the hearing
- ❖ The landlord should tell the tenant about the order applied for and advise them to attend the hearing given the risk to their home
- ❖ If, after issuing proceedings, the tenant agrees to pay rent and towards the arrears, they must be postponed
- ❖ If the landlord does not comply with this protocol, an order for costs may be made and adjourn, strike out or dismiss the claim
- ❖ If the tenant fails to comply, this will be taken into consideration by the judge

If you have any queries about the pre-action Protocol and how to ensure you comply, please contact us for an informal chat.

