Case preparation & how possession proceedings work in the county court

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Objectives

- Understanding the County Court process in England
- Understanding the notice periods when serving notice seeking possession
- Importance of complying with pre-action protocol for rent cases
- Importance of carrying our equality/proportionality assessment for ASB cases
- Understanding the legal processes – from serving a notice to eviction by bailiffs
- Good practice for attending court
- Evaluating the strengths and weaknesses in the evidence
- Do's and don'ts for witnesses
- Case studies
- Typical defences raised

The Law

- 1985 Housing Act secure tenancies
- 1988 Housing Act Assured
- Civil procedure rule 55
- https://www.justice.gov.uk/courts/procedure-rules/civil/rules



What does the county court do?

- landlord and tenant disputes, for example claims concerning
- possession, rent arrears and repairs;
- Consumer disputes, for example faulty goods or services;
- Personal injury claims (injuries caused by negligence), for example
- traffic accidents, falling into holes in the pavement, accidents at
- work;
- Debt problems, for example a creditor seeking payment;
- Employment problems, for example claiming for wages or salary
- owing or pay in lieu of notice

Civil procedures rules

- The procedure for making a claim in the County Court is governed by the Civil Procedure Rules (CPR).
- These rules were introduced to reduce the cost and increase the efficiency of the litigation system in England
- and Wales. The rules confer extensive powers on the Court to enable a case to be managed effectively, and for it to be dealt with in a just and timely fashion.
- Since the introduction of the CPR parties to a claim are encouraged to use litigation only as a last resort. To this end they are expected to explore other methods of dispute resolution, and to share information to narrow the issues in contention prior to issuing proceedings

- **HOW TO ENSURE FULL COMPLIANCE WITH PRE-ACTION PROTOCOL**

- Pre-Action Protocol for Possession Claims by Social Landlords (justice.gov.uk)

What is ‘breathing space’ scheme?

- **The Debt Respite Scheme (Breathing Space Moratorium and Mental Health Crisis Moratorium) (England and Wales) Regulations 2020**; 4 May
- ‘Rent arrears’ qualify as a debt under the regs but rent must still be paid
- If accepted tenant will have 60 days where landlord will not be able to contact them directly about arrears, no enforcement action, no notice served
- If you have a PO already you cannot request a warrant of possession
- landlord would need to inform the Court of the breathing space.
- If they are receiving mental health crisis treatment may get longer protection
- During this period, a debt advisor will assess the debt and look at solutions
- Not appropriate for eg for those who have no means of paying regardless
- Someone who has had pay cut or furloughed may be suitable
- Only applies to rent related grounds so can serve a S21 notice

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Non compliance with Pre-action protocol

- **How do we comply with the Pre-action protocol?**
- **lets look at the check list……**
- The risks to you if you do not adhere to the Pre-action Protocol are significant – the Judge will most likely dismiss the claim.
- If the claim is dismissed it is likely that there will be a costs order made
- If the tenant has legal representation their legal costs could be quite high
- You should be able to show you followed the Pre-Action Protocol. A breakdown of the steps that you have taken to engage with the tenant e.g. conversations that you have had with the tenant; letters sent to the tenant; attendances made at the tenant's property and referrals made to the Welfare Rights

1. Notice seeking possession

- Complete Proportionality form ASB case
- Complete pre-action protocol form income cases
- Draft the correct notice for the tenancy
- Give the grounds relied on
- Give the correct notice period
- Proof of service
- Where a joint tenancy exists then a Notice must be served on each of the tenants
- A right to review of the decision to seek possession is available to introductory, demoted and flexible tenants

Common Grounds for possession; Assured tenancy

- Ground 10 and Ground 11 (rent not being paid or is late)
- Ground 12; breach of tenancy ie messy garden
- Ground 7A; absolute ASB ground
- Ground 9 can be used where suitable alternative accommodation is available for the tenant or will be available when the order for possession takes effect.
- Ground 14; ASB ground
- Ground 15 can be used where the condition of any furniture provided for use under the tenancy has, in the opinion of the court, deteriorated owing to ill-treatment by the tenant or any other person residing in the dwellinghouse.

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Mandatory Ground ; ASSURED TENANCY

- **Ground 8**
- Both at the date of the service of the notice under section 8 of this Act relating to the proceedings for possession and at the date of the hearing—

a) if rent is payable weekly or fortnightly, at least [eight weeks'] rent is unpaid;

b) if rent is payable monthly, at least [two months'] rent is unpaid;

c) if rent is payable quarterly, at least one quarter's rent is more than three months in arrears; and

d) if rent is payable yearly, at least three months' rent is more than three months in arrears;

- and for the purpose of this ground "rent" means rent lawfully due from the tenant

Secure tenancy grounds

- Ground 1 – rent arrears or breach of the tenancy agreement
- Ground 2 – nuisance/annoyance; criminal activity
- Ground 2A – domestic violence
- Ground 3 – condition of dwelling-house has deteriorated by acts of waste
- Ground 8 – temporary accommodation provided whilst works being undertaken
- Ground 9 – overcrowding
- Ground 15A – under occupation- successor

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Notices

- This form should be used by landlords where possession of accommodation let under a secure periodic tenancy is sought on one of the grounds in Schedule 2 to the Housing Act 1985. form
- This form should be used for seeking possession of accommodation let on a fixed term tenancy containing a provision which allows the landlord to bring it to an end before the fixed term expires. on one or more of the grounds in Schedule 2 of the Housing Act 1985. form
- Assured tenancy notice Housing Act 1988; form
- Assured shorthold tenancy notice; form

2. Making the possession claim

- Use claim N5 and N119 For accelerated proceedings its form N5B.
- Include address of property
- Full tenants name!
- Claim form should explain eg;
- The amount of arrears due at the start of the claim and a full breakdown or schedule, with dates, of when the arrears started.
- A calculation of the daily rate of rent and interest.
- Details of what steps have been taken to recover the arrears from the tenant.
- Information about the defendant's circumstances, for example whether the tenant receives benefits.
- If the possession is based on the tenant's conduct, give details of the conduct alleged

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Whats next

- Once the Claim Form and Particulars have been sent to the court, the court will issue, or start, the claim and a copy of these documents are sent to the tenant.
- At the same time, the court will fix a date and time for the first hearing and notify all parties. How soon the first hearing will be depends a lot on how busy the local courts are but is usually 6-8 weeks.
- The tenant, who is the Defendant, then has an opportunity to respond to the claim by filing a Defence with the court.
- The Defendant usually has 14 days to do so. The purpose of the Defence is for the tenant to respond to the various allegations made against them and to explain why a possession Order should not be made.
- No later than 3 clear days before the hearing, the landlord should file his/her evidence to support the claims they made in the Claim Form and particulars.

What goes in your witness statement? Income cases

- attempts to contact the tenant at all stages from beginning to end; letters/calls
- Meetings with tenant
- Payment plans ; Benefits/ shortfall
- Attempts to assist with benefits /referrals for support
- Does the tenant have any problems reading/writing etc if so what was done
- Does the tenant have any vulnerabilities/disabilities/MH issues? If so what did you do
- Failure to engage by the tenant?
- When the NSP was served and arrears at the time/proof
- Contact with tenant after the NSP
- personal circumstances the tenant told you about and your considerations
- Confirm you sent out rent statements
- When did you tell the tenant about the court hearing and how?
- why is it reasonable for the court to grant you an order?

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Witness statement tips;

- 1. Create an organisation wide witness statement template
- 2. Explain the story and background ;numbered paragraphs, with pages numbered
- 3 Fill on the gaps
- 4 Don’t hide anything!
- 5. Exhibits: These are documents you may wish to refer to in your statement of evidence, proving what you say. They should be numbered and be attached to the end of your statement. For example, you statement could say “I attach a copy of the diary sheets
- 6. File and serve documents you want to rely on. You will not be able to rely on any document that has not been filed with the court & served on your opponent/s in advance of the hearing

What does file and serve mean?



- **File'** *means sending your evidence to the court office dealing with your case, always quoting your case number, Keep copies of all correspondence so you can prove what you have sent, when and to whom. Sometimes documents get stuck in court admin, so remember to send them to the court in good time for your hearing, and always bring spare copies with you to court.*
- "**Serve'** *means sending your evidence to each of your opponent/s, separately, via their home address, or via their solicitor if they have one, by first class post, quoting the case number, and explaining who you are & what you are enclosing. Again, bring spare copies. Post offices will give you a timed & dated receipt if you buy your stamp/s from them. This is proof of posting, keep it safe in you file.*

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Video & Audio recordings:

- The court **will not** often watch videos & audio recordings. There are exceptions, but the court usually requires a transcript of any recording you may wish to rely upon at court, so it can be read in advance. Some courts still do not have the facilities to watch videos, and it is impractical to hand round your mobile phone for everyone in court to view.
- If you have relevant recorded evidence you should transcribe the relevant parts of the recording. Copy videos to CD/DVD or memory stick. If there is no sound, then summarise on paper what the recording shows, with time signatures so the relevant part can be watched without having to view the whole recording.

3. Attending court hearing

- **PREPERATION IS KEY!** Take 2 bundles to court
- Face to face
- Check the list! This gives each of the different courtrooms and the judge sitting in each room
- Once you have found out which court your county court hearing is in, you should wait in the waiting area outside that court
- Sign in with court usher; your are the claimant !
- Court bundle ready and up to date rent statement
- Present your case/not just answers questions
- Do not talk over the Judge
- Speak to the Duty Solicitor if required
- Be clear as you only have 5 to 10 mins
- 'its hello JUDGE
- mistake to think that Judges can just make whatever decisions they like. Judge's powers are quite tightly prescribed by the CPR rules
- Pen and paper make notes!



Rent case checklist



- Current figure of rent arrears
- Date NSP was served
- Figure of arrears at the date the NSP was served
- Current rent – date next rent is due
- Tenancy start date - Daily rate for rent
- Any HB on account + any problems with this
- 3 copies of up to date rent statement
- Be aware of any potential defences (check with repairs team)
- Explain if tenant has failed to engage

What order can a Court make?

- 1. **Outright possession order.**
- 2. **Suspended possession order;** tenant can remain in the property as long as they comply with the terms. if an SPO is made
- 3. Court might **adjourn** the hearing.
- 4. Court might **strike out** the claim.
- Ask for costs if needed
- Ask for permission to transfer to High court for enforcement if needed
- Possession orders last for 6 years
- When the Judge grants a mandatory order ground 8, ask if they can mark the order to show this
- If an SPO is made, make sure that the Judge specifies the date on which the first arrears instalment is to be paid.

4. Applying for a warrant to evict

- So long as the tenant chooses to continue living in the property, the tenancy will only end when a possession warrant is executed by the Court Bailiff.
- Under the landlord's procedure, a letter will usually be sent to the tenant, directly after the hearing, confirming the outcome.
- The court staff type up and seal the order made by the judge and serve a copy on each party.
- Check if you need approval from management for applying for warrant
- Form N325; valid for 12 months
- Court can give max 6 weeks to a tenant eg on Section 21 grounds to leave
- Court will first give the landlord notice that a warrant has been issued and will later send notice of a Bailiff's appointment along with a Confirmation of Appointment Form, must complete the risk assessment
- Send a letter to the tenant to notify them of the date and to take all items with them
- Arrange for locksmith and someone from the team to attend



Suspension applications; tenant didn't come to the original hearing

- Under CPR 39.3(5) the court may set aside an order made in the tenant's absence if
- he or she: -
- *a) acted promptly when he found out that the court had made an order against him/het;*
- *b) had a good reason for not attending the hearing*
- *c) had a reasonable prospect of success at trial.*

- All three requirements must be met:

Barking & Dagenham v Saint (1999) 31 HLR 620 CA:

- Landlord obtains a suspended possession order.
- The tenant is then remanded in custody.
- He tells the HB department he is inside prison. They send a form to renew his HB to his home!
- HB ceased and the landlord evicts him.
- The Court of Appeal set aside the warrant on the basis of oppression. The landlord had been relying on their own wrong. They knew he was not aware of the impending eviction and could not apply to suspend the warrant

Suspension applications

- The tenant can apply to suspend a warrant using form N244.
- If the tenant breached a suspended order on rent arrears grounds, they usually need to explain:
- *- why they breached the order.*
- *- what they can do to prevent further breaches.*
- *- how they can afford to pay something towards the arrears as well as their contractual rent.*
- court can usually only suspend or stay the warrant if the original order was made on **discretionary grounds.**
- The tenant should provide clear evidence of a change of circumstances
- The tenant should include any other relevant factors, for example if they have a health condition that has prevented them from taking steps to resolve the situation

Whats the court's power on suspensions?

- s.9(2) Housing Act 1988, s85(2) Housing Act 1985
- The court can decide on what terms and for how long the warrant is stayed
- If the court did not have any discretion in making a possession order, the court's power to suspend a warrant is limited. This includes if the order was made:

- *on a mandatory ground, for example ground 8 for assured tenants*
- *under section 21 against an assured shorthold tenant*
- *against an occupier with basic protection*

- The court can only delay execution in these cases up to 14 days after the date the possession order was made, or six weeks in cases of exceptional hardship

What will the court consider?

- The County Court can look at a broad range of factors when deciding if it should suspend the warrant. These include:

- *that the tenant may lose their home*
- *the responsibilities of social landlords to other tenants*
- *the nature and seriousness of any breaches of the tenancy agreement*
- *the nature and seriousness of any breaches of a possession order*

- *In Paragon Asra Housing Ltd v Neville [2018] EWCA Civ 1712*
- unless there had been a material change of circumstances since the SPO was made the application must be dismissed

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- GROUNDS FOR POSSESSION can be mandatory or discretionary. When the ground is proven, the court must:
- make a possession order when the landlord is using a mandatory ground
- only make a possession order when the landlord is using a discretionary ground if it is reasonable to do so;
- *length of time the tenant has lived in the property*
- *breaches of earlier payment agreements or court orders; injunctions*
- *health and age of the tenant and their household*
- *respective financial position of the landlord and tenant*
- *conduct of the tenant and their willingness to remedy any breach*
- *The assistance you have provided to the tenant*
- *Impact of the ASB on neighbours and community*

Varying a possession order from discretionary to mandatory ground

- ***Poplar HARCA v Kerr. Central London County Court 26 July 2023.***
- Ms Kerr was Poplar's assured tenant since 2004. In 2017 a possession order was made on grounds of rent arrears. It was suspended on terms
- In 2020, Ms Kerr's son pleaded guilty to an offence committed at the property, possession of an imitation firearm with intent to cause of violence, and was sentenced to 14 months imprisonment. Poplar served a NSP on Ms Kerr listing, amongst other grounds, Ground 7A, and explaining why each ground was relied up.
- Instead of bringing a fresh possession claim, Poplar applied to the court to vary the existing possession order to provide for outright possession on Ground 7A
- District Judge considered that she had jurisdiction to so vary the order and that Ground 7A was made out. So gave outright order

- Ms K appealed.
- HHJ Luba KC held that the court did have jurisdiction to make such a variation to the order.
- The requirements for the ground would have to be complied with – as here for Ground 7A – a notice seeking possession and a right to seek a review of that decision.
- Appeal dismissed

More Witness evidence tips;

- Never make promises!
- Ensure witness gives permission to use information; if not use as ‘hearsay’ ie second hand (Civil Evidence Act 1995)
- Explain court procedures
- Identify vulnerable witnesses; (consider additional security, spyholes more locks, a temp move)
- obtain the names and addresses of any other witnesses and the details of the suspected perpetrators.
- At the end of the interview, summarise what has been discussed
- Remember the audience do not know the background to the case; so explain the who what where, in the statement ; explain any gaps
- Do NOT hide any info!
- Sign and produce any exhibits eg diary sheets/rent account

Considering the case

What needs to be proved and helpful evidence

Possession claims

- Lesser measures and compliance with PAP
- The notice (inc. any relevant review procedure)
- The ground(s)/the facts
- Reasonableness
- (Proportionality – mandatory grounds)
- Is the Equality Act 2010 engaged? Any health issues?
- Housing benefit/UC issues
- Any relevant decisions/policies e.g. failed succession

Injunction applications (some overlap with the above)

- Warnings and other tools used
- The relevant behaviour
- Is an injunction necessary and/or proportionate?
- POA and terms
- Exclusion from the home
- Without notice

Potential defences and counterclaims

Possession claims

- Compliance with PAP and other technical defences
- The notice not served/not correct
- Errors in review process (if relevant)
- Denying the ground(s)/facts are made out
- (Proportionality under article 8 – mandatory grounds)
- Equality Act 2010
- Public law defences
- Problems with benefits
- Housing conditions

Injunction applications (some overlap with the above)

- Denying behaviour
- Not a necessary or proportionate order
- Capacity to comply

Preparing a case ASB...

- **STRONG**
- Direct evidence
- Will witness attend court?
- a clear trail
- Contemporaneous notes
- record of complaint
- Any independent evidence? .
- need dates, times, of incidents

WEAKER

- Not witnessed by the person complaining
- No corroborative evidence
- No contemporaneous records
- Unclear as to what happened
- conflicting accounts
- He said she said allegations

The correct allegations....

- Simple diary sheets
- Ensure that the court is presented with a clear and consistent account of the behaviour and the impact
- Liaise with police, CCTV footage, photos, police call logs,
- Choose your strongest allegations!
- Fact check the allegations
- document checklist to ensure you have the right exhibits before the court
- Use hearsay if residents too scared to go to court etc give reasons

Getting court pleadings right

Dos

- Assess what needs to go into your pleading
- Plead your best case
- Set out a concise statement of the nature of the claim
- For possession, ensure you have the text for any grounds for possession
- Set out a concise statement of the facts
- Make sure you have contained everything required by the relevant Practice Direction
- Specify all the remedies you seek
- Use paragraph numbers
- Ensure the correct person has signed the statement of truth
- CHECK IT (especially dates)

Don'ts

- Do not use templates from previous cases without checking (and double checking) the information.
- Try and avoid generic statements (tailor the case to build the right narrative).
- Do not copy and paste from file notes.



Defended matter.....next steps

- The court rules (CPR 55.8(3)) state that "Where the claim is genuinely disputed on grounds which appear to be substantial, case management directions to be given
- Directions are instructions that a civil court gives all parties (people) involved
- Directions:
- *clarify which parts of the case are disputed and need a judge's decision*
- *enable the court to make suitable arrangements for the hearing, such as allowing enough time and choosing the right level of judge*
- *help parties understand each other's case so you can focus on the areas you are disputing*
- They make sure that everyone involved knows everything to do with the case before a full hearing.

Other defences

- Human rights/public law/disability discrimination defences. If the issues raised are matters which the landlord was aware of and has given due consideration to under its policy and procedure, point that out, and try to persuade the Judge to decide the case. Otherwise, the Judge will usually adjourn/make directions. Refer the case to legal.
- Technical defences. NOSP not in the prescribed form. - You can argue that it is in a form 'substantially to the same effect', which is sufficient. NOSP otherwise defective. - Except where you are relying on Ground 8, you can agree that the tenant was not prejudiced by the defect and that it is reasonable for the court to dispense with service of a NOSP. NOSP not served in accordance with the tenancy agreement. - You may be able to show evidence that the NOSP was received.

What are the 9 protected characteristics?

- age
- disability
- gender reassignment
- marriage and civil partnership
- pregnancy and maternity
- Race
- religion or belief
- Sex
- sexual orientation

What is the public sector equality duty (PSED)?

- **What is the background?** Stephen Lawrence murder
- **S149 of the Equality Act 2010**
- PSED is often raised as a defence to a possession claim at Court to a rent arrears case or ASB; HAS TO BE REASONABLE AND PROPORTIONATE
- **Top tips!**

    1. Record keeping!!
    2. Make enquires.
    3. Good evidence.
    4. check your policies

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Birmingham City Council v Stephenson [2017]

- Eviction proceedings of a schizophrenic tenant
- COA state the landlord needed to ensure it had looked at alternative action before possession and document the reasons
- In this case there was evidence that the tenant's condition and behaviour could be moderated with treatment/medication
- Court stated other options might have been; the tenant receiving support from social services reminding him to take his medication and attend treatment appointments, support from other mental health professionals, a change of medication and/or investigation as to whether the LA might be able to provide more suitable, supported alternative accommodation for the tenant.
- It was for the landlord to show that nothing less than an eviction would do. PO was set aside

Forward v Aldwyck Housing Group Ltd (2019) EWCA Civ 1334

- Mr F had an assured tenancy from Aldwyck. Soon after the tenancy started, there began what would be repeated incidents ASB with the property being used to sell drugs by other people and non payment of rent
- In May 2017, a closure order was made
- Possession proceeding were then issued (discretionary grounds)
- Mr F had a physical disability in that he had severe back, hip and knee pain on the right side of his body
- The police view was that it was likely that Mr F was subject to 'cuckooing, neighbours said it was him dealing

Continued.....

- The housing officer who made the decision to seek possession carried out a PSED assessment after proceedings had commenced but before trial
- At trial, the HO said it had been inadequate because, although she was aware of Mr F's disability, she had not obtained any medical advice about it so had not considered any alternative to the possession = breach of PSED
- Court still granted the PO to stop the ASB
- MR F appealed; dismissed BUT court said 'the PSED assessment should be kept under review throughout proceedings and when any new evidence is received.'

mental health illness

- **Is the Person Disabled?**
- Section 6 of the Equality Act 2010 defines disability:

(1) A person (P) has a disability if—

(a) P has a physical or mental impairment, and

(b) the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities.

- **Long term?** Is at least 12 months; can fluctuate ie likely to reoccur
- Past disability ; person is protected permanently
- **Deemed disabilities;** cancer, HIV, MS, certified as blind,

Is a mental health condition a disability?

- Must last at likely to last 12 months
- Affects normal day to day activities eg interacting with people

- The following are examples that can lead to a disability;
- - dementia
- -bipolar disorder
- -OCD
- -Schizophrenia

Does the person lack mental capacity; Mental Capacity Act 2005

- Always presume capacity is present unless its proven otherwise/ can fluctuate

- Test; a) Does the person have an impairment of, or disturbance in the functioning of, the mind or brain (whether temporary or permanent)?AND
- b) Is the person unable to make the decision in question because of that impairment

Mental capacity....questions to consider...

- Does the tenant understand they have a Tenancy agreement?
- Do they understand if they don't pay rent or cause ASB they are breaching tenancy?
- Do they understand that landlord will take action if they continue
- Would they be able to comply with a suspended possession order or injunction?
- At court a medical report would be needed to show no capacity
- A capacity assessment can be undertaken by for example a social worker or mental health worker or a local authority should strongly consider instructing a consultant psychiatrist









Possession against trespassers

- a possession claim against trespassers can only be brought against ***a person or persons who entered and remained on the property without the consent of the owner/landlord. It does not apply to a claim against a tenant or subtenant when their tenancy has been terminated***
- The owner/landlord must file a claim form, **Form N5**, and a particulars of claim for possession (trespassers) form, **Form N121**; it must;
- identify the property that is the subject of the claim
- state the landlord's interest in the property, whether s/he is the freeholder or leaseholder for instance, or the basis of the right to claim possession
- specify the circumstances in which the property was occupied without licence or consent
- state whether the claim relates to residential property
- state that the defendant (squatter) was not previously a tenant or a sub-tenant at that property
- If the landlord does not know the name of one or more of the squatters, the claim must be brought against 'persons unknown' in addition to any named defendants

- any witness statements on which the landlord intends to rely in her/his claim, these must be filed together with the claim form
- The court will fix a date for the hearing when it issues the claim form
- Service of claim; must service all claim docs and blank defence form by;
- *attaching copies to the main door or some other part of the property so that they are clearly visible, and*
- *if practicable, inserting copies of those documents in a sealed transparent envelope addressed to 'the occupiers' through the letterbox, or*
- *placing stakes in the land in places where they are clearly visible and attaching to each stake copies of these documents in a sealed, transparent envelope addressed to 'the occupiers'*
- All docs must be served at least 5 clear days before the hearing

Defences

- **Disrepair**
- Communicate with repairs team
- Check the logs before serving a notice and before court attendance
- complete any outstanding works
- Off set any damages against rent arrears



Succession

- **What is succession?** when a sole tenant dies and an eligible partner or qualifying member of his or her family takes over the tenancy. Succession also includes when a joint tenant dies and the surviving joint tenant succeeds to the tenancy
- Incentive to succeed even if not entitled:
- *Avoids homeless*
- *Payer lower rent than private sector*
- *Better management/repairs than private sector*
- *Potential RTB*
- Need evidence to entitlement
- Death does not end the tenancy



Succession continued.....

Act quickly!

- Check if there is a succession – check the tenancy agreement
- If potential discretionary succession, request evidence of entitlement and give timescales
- Serve NTQ as soon as possible and set up use & occupation account tor the occupants to make payments to cover the rent charge once the original tenancy has ended
- Address NTQ to Personal Representatives of the deceased
- Serve at the property
- Send copy to Public Trustee with Form NL1 and fee (assuming no Grant of Probate)
- If succession results in significant over or under occupation, by more than one bedroom, the successor may be able to succeed to the tenancy, but seek to rehouse the successor into suitable alternative accommodation
- any arrears that accrue before the tenant dies, if the successor held a JT with the deceased tenant then any rent arrears accrued on the joint tenancy will be passed to them. In all other cases the rent arrears will form part of the deceased tenant's estate

- **TOP TIPS :**
- **1**. know and apply your own policies and procedures.
- **2**. Know and apply the contents of the deceased tenant's tenancy agreement.
- **3.** Consider in detail any application to succeed and personal circumstances before making a decision.
- **4.** So long as any relevant policy/procedure has been applied there should not be any procedural unfairness
- **5.** Where there is any request to reconsider the decision, the prospective successor should be asked to provide any further information, in particular of personal circumstances, which they wish to be taken in to account.

Rosebery Housing v Williams (2021)

- **ASBI**; 123 allegations reduced to 6 for trial inc verbal abuse, taking photos, noise
- T was part S/O she was driving up ad down the Road filming residents
- T suffered from huge **OCD**, which meant she would obsessively film her surroundings, drive up and down the road or sit in it to calm herself
- her counter claim; was the LL breached the EA 2010 '*LL had unlawfully subjected T to detriment because of something arising form he disability*'
- Lack evidence to support the claim lots of hearsay 5 out of 5 allegations not proved
- Court said; LL aims were legitimate **BUT** not proportionate;
- Allegations were not put to T in a timely manner,
- No medical advice was sought to understand T's disability
- LL did not seek to foster relations between neighbour and T
- LL did not explore T's offer to move
- T awarded **£27,500** LL was criticised

Questions?

