

# PART 55

## POSSESSION CLAIMS

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**NOTE: These rules do not come into force until 15 October 2001**

### INTERPRETATION

55.1

In this Part –

- (a) 'a possession claim' means a claim for the recovery of possession of land (including buildings or parts of buildings);

- (b) 'a possession claim against trespassers' means a claim for the recovery of land which the claimant alleges is occupied only by a person or persons who entered or remained on the land without the consent of a person entitled to possession of that land but does not include a claim against a tenant or sub-tenant whether his tenancy has been terminated or not;
- (c) 'mortgage' includes a legal or equitable mortgage and a legal or equitable charge and 'mortgagee' is to be interpreted accordingly; and
- (d) 'the 1988 Act' means the Housing Act 1988<sup>11</sup>.

## I GENERAL RULES

### SCOPE

55.2

- (1) The procedure set out in this Section of this Part must be used where the claim includes –
  - (a) a possession claim brought by a –
    - (i) landlord (or former landlord);
    - (ii) mortgagee; or
    - (iii) licensor (or former licensor);
  - (b) a possession claim against trespassers; or
  - (c) a claim by a tenant seeking relief from forfeiture.
- (2) This Section of this Part
  - (a) is subject to any enactment or practice direction which sets out special provisions with regard to any particular category of claim; and
  - (b) does not apply where the claimant uses the procedure set out in Section II of this Part.

(CCR Order 24, rule 10(1) provides that where an application for an interim possession order is made, unless otherwise provided, Part 55 does not apply)

### STARTING THE CLAIM

55.3

- (1) The claim must be started in the county court for the district in which the land is situated unless paragraph (2) applies or an enactment provides otherwise.
- (2) The claim may be started in the High Court if the claimant files with his claim form a certificate stating the reasons for bringing the claim in that court verified by a statement of truth in accordance with rule 22.1(1).

<sup>11</sup> 1988 c. 50.

- (3) The practice direction refers to circumstances which may justify starting the claim in the High Court.
- (4) Where, in a possession claim against trespassers, the claimant does not know the name of a person in occupation or possession of the land, the claim must be brought against 'persons unknown' in addition to any named defendants.
- (5) The claim form and form of defence sent with it must be in the forms set out in the relevant practice direction.

## PARTICULARS OF CLAIM

55.4

The particulars of claim must be filed and served with the claim form.

(The relevant practice direction and Part 16 provide details about the contents of the particulars of claim)

## HEARING DATE

55.5

- (1) The court will fix a date for the hearing when it issues the claim form.
- (2) In a possession claim against trespassers the defendant must be served with the claim form, particulars of claim and any witness statements –
  - (a) in the case of residential property, not less than 5 days; and
  - (b) in the case of other land, not less than 2 days,
 before the hearing date.
- (3) In all other possession claims –
  - (a) the hearing date will be not less than 28 days from the date of issue of the claim form;
  - (b) the standard period between the issue of the claim form and the hearing will be not more than 8 weeks; and
  - (c) the defendant must be served with the claim form and particulars of claim not less than 21 days before the hearing date.

(Rule 3.1(2)(a) provides that the court may extend or shorten the time for compliance with any rule)

## SERVICE OF CLAIMS AGAINST TRESPASSERS

55.6

Where, in a possession claim against trespassers, the claim has been issued against 'persons unknown', the claim form, particulars of claim and any witness statements must be served on those persons by –

- (a) (i) attaching copies of the claim form, particulars of claim and any witness statements to the main door or some other part of the land so that they are clearly visible; and

- (ii) if practicable, inserting copies of those documents in a sealed transparent envelope addressed to 'the occupiers' through the letter box; or
- (b) placing stakes in the land in places where they are clearly visible and attaching to each stake copies of the claim form, particulars of claim and any witness statements in a sealed transparent envelope addressed to 'the occupiers'.

## DEFENDANT'S RESPONSE

55.7

- (1) An acknowledgment of service is not required and Part 10 does not apply.
- (2) In a possession claim against trespassers rule 15.2 does not apply and the defendant need not file a defence.
- (3) Where, in any other possession claim, the defendant does not file a defence within the time specified in rule 15.4, he may take part in any hearing but the court may take his failure to do so into account when deciding what order to make about costs.
- (4) Part 12 (default judgment) does not apply in a claim to which this Part applies.

## THE HEARING

55.8

- (1) At the hearing fixed in accordance with rule 55.5(1) or at any adjournment of that hearing, the court may –
  - (a) decide the claim; or
  - (b) give case management directions.
- (2) Where the claim is genuinely disputed on grounds which appear to be substantial, case management directions given under paragraph (1)(b) will include the allocation of the claim to a track or directions to enable it to be allocated.
- (3) Except where –
  - (a) the claim is allocated to the fast track or the multi-track; or
  - (b) the court orders otherwise,

any fact that needs to be proved by the evidence of witnesses at a hearing referred to in paragraph (1) may be proved by evidence in writing.

(Rule 32.2(1) sets out the general rule about evidence. Rule 32.2(2) provides that rule 32.2(1) is subject to any provision to the contrary)

- (4) Subject to paragraph (5), all witness statements must be filed and served at least 2 days before the hearing.
- (5) In a possession claim against trespassers all witness statements on which the claimant intends to rely must be filed and served with the claim form.

- (6) Where the claimant serves the claim form and particulars of claim, he must produce at the hearing a certificate of service of those documents and rule 6.14(2)(a) does not apply.

## ALLOCATION

55.9

- (1) When the court decides the track for a possession claim, the matters to which it shall have regard include –
  - (a) the matters set out in rule 26.8 as modified by the relevant practice direction;
  - (b) the amount of any arrears of rent or mortgage instalments;
  - (c) the importance to the defendant of retaining possession of the land; and
  - (d) the importance of vacant possession to the claimant.
- (2) The court will only allocate possession claims to the small claims track if all the parties agree.
- (3) Where a possession claim has been allocated to the small claims track the claim shall be treated, for the purposes of costs, as if it were proceeding on the fast track except that trial costs shall be in the discretion of the court and shall not exceed the amount that would be recoverable under rule 46.2 (amount of fast track costs) if the value of the claim were up to £3,000.
- (4) Where all the parties agree the court may, when it allocates the claim, order that rule 27.14 (costs on the small claims track) applies and, where it does so, paragraph (3) does not apply.

## POSSESSION CLAIMS RELATING TO MORTGAGED RESIDENTIAL PROPERTY

55.10

- (1) This rule applies where a mortgagee seeks possession of land which consists of or includes residential property.
- (2) Not less than 14 days before the hearing the claimant must send a notice to the property addressed to ‘the occupiers’.
- (3) The notice referred to in paragraph (2) must –
  - (a) state that a possession claim for the property has started;
  - (b) show the name and address of the claimant, the defendant and the court which issued the claim form; and
  - (c) give details of the hearing.
- (4) The claimant must produce at the hearing –
  - (a) a copy of the notice; and
  - (b) evidence that he has served it.

## II ACCELERATED POSSESSION CLAIMS OF PROPERTY LET ON AN ASSURED SHORTHOLD TENANCY

### WHEN THIS SECTION MAY BE USED

- 55.11 | (1) The claimant may bring a possession claim under this Section of this Part where –
- (a) the claim is brought under section 21 of the 1988 Act<sup>12</sup> to recover possession of residential property let under an assured shorthold tenancy; and
  - (b) all the conditions listed in rule 55.12 are satisfied.
- (2) The claim must be started in the county court for the district in which the property is situated.

### CONDITIONS

- 55.12 | The conditions referred to in rule 55.11(1)(b) are that –
- (a) the tenancy and any agreement for the tenancy were entered into on or after 15 January 1989;
  - (b) the only purpose of the claim is to recover possession of the property and no other claim is made;
  - (c) the tenancy did not immediately follow an assured tenancy which was not an assured shorthold tenancy;
  - (d) the tenancy fulfilled the conditions provided by section 19A or 20(1)(a) to (c) of the 1988 Act<sup>13</sup>;
  - (e) the tenancy –
    - (i) was the subject of a written agreement;
    - (ii) arises by virtue of section 5 of the 1988 Act but follows a tenancy that was the subject of a written agreement; or
    - (iii) relates to the same or substantially the same property let to the same tenant and on the same terms (though not necessarily as to rent or duration) as a tenancy which was the subject of a written agreement; and
  - (f) a notice in accordance with sections 21(1) or 21(4) of the 1988 Act<sup>14</sup> was given to the tenant in writing.

### CLAIM FORM

- 55.13 | (1) The claim form must –

<sup>12</sup> 1988 c. 50; section 21 was amended by the Local Government and Housing Act 1989 (c. 42), section 194(1) and Schedule 11, paragraph

<sup>13</sup> 1988 c. 50; section 19A was inserted by the Housing Act 1996 (c. 52), section 96(1); section 20(1) was amended by section 104 and Schedule 8, paragraph 2(3) of that Act.

<sup>14</sup> 1988 c. 50; section 21(1) and 21(4) were amended by the Housing Act 1996 (c. 52), section 98.

- (a) be in the form set out in the relevant practice direction; and
- (b) (i) contain such information; and
  - (ii) be accompanied by such documents,
 as are required by that form.
- (2) All relevant sections of the form must be completed.
- (3) The court will serve the claim form by first class post.

## DEFENCE

55.14

- (1) A defendant who wishes to –
  - (a) oppose the claim; or
  - (b) seek a postponement of possession in accordance with rule 55.18,
 must file his defence within 14 days after service of the claim form.
- (2) The defence should be in the form set out in the relevant practice direction.

## CLAIM REFERRED TO JUDGE

55.15

- (1) On receipt of the defence the court will –
  - (a) send a copy to the claimant; and
  - (b) refer the claim and defence to a judge.
- (2) Where the period set out in rule 55.14 has expired without the defendant filing a defence –
  - (a) the claimant may file a written request for an order for possession; and
  - (b) the court will refer that request to a judge.
- (3) Where the defence is received after the period set out in rule 55.14 has expired but before a request is filed in accordance with paragraph (2), paragraph (1) will still apply.
- (4) Where –
  - (a) the period set out in rule 55.14 has expired without the defendant filing a defence; and
  - (b) the claimant has not made a request for an order for possession under paragraph (2) within 3 months after the expiry of the period set out in rule 55.14,
 the claim will be stayed.

## CONSIDERATION OF THE CLAIM

- 55.16 | (1) After considering the claim and any defence, the judge will –
- (a) make an order for possession under rule 55.17;
  - (b) where he is not satisfied as to any of the matters set out in paragraph (2) –
    - (i) direct that a date be fixed for a hearing; and
    - (ii) give any appropriate case management directions; or
  - (c) strike out the claim if the claim form discloses no reasonable grounds for bringing the claim.
- (2) The matters referred to in paragraph (1)(b) are that –
- (a) the claim form was served; and
  - (b) the claimant has established that he is entitled to recover possession under section 21 of the 1988 Act against the defendant.
- (3) The court will give all parties not less than 14 days' notice of a hearing fixed under paragraph (1)(b)(i).
- (4) Where a claim is struck out under paragraph (1)(c) –
- (a) the court will serve its reasons for striking out the claim with the order; and
  - (b) the claimant may apply to restore the claim within 28 days after the date the order was served on him

## POSSESSION ORDER

- 55.17 | Except where rules 55.16(1)(b) or (c) apply, the judge will make an order for possession without requiring the attendance of the parties.

## POSTPONEMENT OF POSSESSION

- 55.18 | (1) Where the defendant seeks postponement of possession on the ground of exceptional hardship under section 89 of the Housing Act 1980<sup>15</sup>, the judge may direct a hearing of that issue.
- (2) Where the judge directs a hearing under paragraph (1) –
- (a) the hearing must be held before the date on which possession is to be given up; and
  - (b) the judge will direct how many days' notice the parties must be given of that hearing.
- (3) Where the judge is satisfied, on a hearing directed under paragraph (1), that exceptional hardship would be caused by requiring possession to be given up by the date in the order of possession, he may vary the date on which possession must be given up.

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<sup>15</sup> 1980 c. 51.



## APPLICATION TO SET ASIDE OR VARY

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55.19

The court may

- (a) on application by a party within 14 days of service of the order; or
- (b) of its own initiative,

set aside or vary any order made under rule 55.17.

