

Possession Proceedings

The Standard Procedure

The process/steps below for making a claim for possession of residential property applies (“the standard procedure for possession”) unless the claimant/landlord served a section 21 notice under the Housing Act 1988 (“the accelerated possession procedure”).

This note applies to the county court procedure only.

This note sets out the procedure after the service of notice to quit on the occupant/tenant.

Issuing a claim

You have to prepare and file a claim form and particulars of claim at court for issue. A court fee of £365 (in the county court) is payable. You must include certain information and relevant documents in the claim form and particulars of claim e.g. relevant tenancy documents and notices to quit; proof of ownership of property or authority to act. You can post or hand deliver the documents to the local county court for the subject property. The court will not issue the claim immediately; it can take several weeks. Once the claim has been issued by the court, it will be sent back to you and the defendants/occupants indicating a date for the possession hearing.

The hearing date will generally be between 28 and 56 days from the date of issue of the claim form

The defendant has 14 days from the date of deemed receipt (allowing for postage) of the claim form to put in a defence at court.

Please note that you cannot generally speak to court staff or bailiffs in the county courts in London on the telephone or in person. Telephone enquiries are diverted to a separate support centre whose records are approx. 10-20 plus working days behind the date on which correspondence is received and saved onto the system by the relevant county court.

The (first) hearing

The first hearing is typically 5 to 10 minutes long. If the defendant has not filed a defence, or has put in a defence which does not show a genuine dispute on substantial grounds, the judge will normally determine possession there and then.

If possession is ordered at the first hearing, the date for possession is typically 14 days after the date of the hearing, except in cases of exceptional hardship. The maximum period before possession is to be given is 56 days.

If the defendant's defence is of substance, the judge will normally adjourn the case with case management directions to progress the claim further e.g. disclosure of relevant documents and exchange of witness statements. The court will make a final determination of the claim and decide upon possession and whether to make a money judgment and a costs order. The trial could take 12-18 months to be listed.

Arrears of rent

The claimant/landlord may ask the court to make an order that the defendant/tenant pays the unpaid rent within a certain period, normally 14 days. If a tenancy deposit is held, the claimant/landlord should ask the court to make an order that the deposit may be repaid to them out of that scheme.

Recovering costs

The general rule in litigation is a "winner takes all" i.e. that the unsuccessful party will be liable for paying the successful party's costs and disbursements. However, the court has discretion and can order the winner to pay the loser's costs or anything in between. The court will take into account all the circumstance of the case including a party's conduct. You should be aware that the court rules in possession claims provide for fixed costs which are limited to the court issue fee and approximately £70 (currently) for legal costs. The court will not normally award a claimant/landlord his actual legal fees, but the fixed fees, unless the proceedings become more complex or proceed to a further hearing. That said many landlords have terms in their tenancy agreements allowing them to recover costs of recovering possession of the property from their tenants and all things being equal, this should prevail.

Unless you have legal expenses insurance which would cover your legal fees, or the defendant/tenant pays your fees as part of a settlement, you are likely to have to finance the possession proceedings yourself with little prospect of recovery of those costs.

Recovering possession after judgment

If the defendant/tenant stays in the property beyond the date for possession specified in the court order, the claimant/landlord must apply for a warrant for possession. The warrant for possession allows the court bailiff to re-enter the property and evict anyone found at the property. The warrant will specify a date and time for the warrant to be "executed", i.e. the property given back to the claimant/landlord. The claimant/landlord will need to arrange for a locksmith to meet with the bailiff at the property to change the locks at that appointment. Unless the defendant/tenants leave the property in the meantime, clear their belongings and hand over all keys to the property the claimant/landlord, it is only after the bailiff has recovered possession of the property, that the claimant/landlord may re-let the property or otherwise go back into possession. It is important to note that physical recovery of the property by bailiffs is not always quick – it depends on the workload of the bailiffs for the court concerned. In some cases it can take up to around 9 months. The County Court and their bailiffs especially in London have huge backlogs which are leading to significant delays with enforcement. We have recently dealt with a case where it has taken the bailiffs nearly 10 months in order to fix a date for possession.
