

Snakes and ladders

Landlords are often ignorant of how poorly possession claims are drafted, and how it ruins their chances at court, says TIM BRIGGS



Advice about how to get eviction proceedings under way is not hard to find and there are a number of companies that help landlords evict tenants.

But what about the part that all landlords (and the eviction specialist companies themselves) need to concentrate on – what happens when you get to court?

Any landlord who has ever looked at Section 21 of the Housing Act 1988 will see why they might consider getting professional help.

Companies such as my firm, LegalMentor Landlords, help landlords issue claims for possession at fixed fees in what can be a complicated area of law. However, not all firms proceed in the same way and landlords should be aware of exactly what the service on offer is.

We ourselves do the paperwork with the consent of the landlord, and then arrange for an advocate from outside the company to go to court with the landlord on the day of the hearing.

The advocate at court is trained as a barrister (though not fully qualified), and some are solicitors or legal executives. I did this kind of work at court before setting up my firm, and still do.

The advocates have to be skilled, of course, and ready to put the landlord's case carefully to the judge.

But the reality is that when problems occur at court, they occur as a result of mistakes in the way the claim has been drafted. So on the day of the court hearing, if the paperwork has been done badly, the advocate's hands are tied.

The truth is that for more than 90% of

the time, there are mistakes in the paperwork. Thus, from the last ten hearings I attended, I estimate there were mistakes in all but one claim.

If mistakes are spotted at court by the judge or a duty solicitor acting for the defendant, these errors can defeat or delay the claim. Getting tripped up by 'snakes' in the paperwork can send you back down the ladder to square one.

Luck not judgement

Of course, if there is no legal representative for the tenant, the landlord has a massively increased chance of getting possession.

It really helps the landlord's chances if the tenant does not come to court. So companies that charge large amounts of money to help landlords evict tenants are often only successful as a result of the

tenant not getting legal advice. In other words, many companies that help draft claims are dependent on one thing more than anything else – luck.

But if there are sharp-eyed judges or solicitors acting for tenants, it does not matter if the tenant has not paid rent for months: if there are problems with the paperwork, the judge will either adjourn the hearing or strike out the claim.

Either way, the landlord ends up paying by losing more rent, or having to start again and issue a new claim.

All that effort in climbing metaphorical ladders to get your tenant out will have come to nothing.

Whose mistake?

Naturally, when mistakes are made in the paperwork by companies issuing claims on behalf of landlords, the company will not tell the landlord that it was their error which caused the judge to act as he or she did.

Instead it is left to the landlord to assume that the judge has made a strange decision, that courts are random and unpredictable places, and that the law bends over backwards to help tenants over landlords, none of which is true.



Tim Briggs is director of LegalMentor Landlords at www.legalmentor.co.uk

Contrary to popular belief, judges are perfectly happy to give possession to landlords so long as the paperwork has been done correctly and the law observed.

Judges are strict about the legal requirements for a landlord to get possession because they have to be.

The law strikes a good balance between the right of someone to stay in their home

and the right of the owner of the property to do what they want with their own property. Judges simply follow the law.

But the evidence has to be correctly served, pleaded and presented. If there is not enough evidence, or there are procedural defences as a result of mistakes in the paperwork, the judge will not make an order removing someone from their home.

Landlord's baby

Employees of companies helping draft claims but who do not go to court as advocates, however hard working, cannot understand how law and procedure combine in practice at court. Or at least they cannot do so to a standard that enables them to help draft claims with a depth of understanding to avoid mistakes in this difficult area of the law.

Whether or not the property is part of a portfolio, or a single one-bedroom flat that is a future pension or a nest-egg for the landlord, it is the landlord's baby, and the landlord needs help getting it back.

But professional help should ensure that the proceedings and notices are issued correctly, and are not flawed from the outset.

TEN TYPICAL HORROR STORIES

The eviction company fails to instruct a lawyer to attend the hearing.

This is quite common, and of course the landlord pays for the lost rent until the next hearing. I have heard of a company that charges twice the amount of its competitors (on the basis that it cannot do a good job for less) asking for another £800 to send a lawyer to the next hearing after it forgot to do so first time around.

The tenants' names are not spelled correctly on the particulars of claim.

Common again. No fun for the landlord if he goes through court proceedings and a lawyer or local authority gets involved near the time of the eviction. At that point the bailiff suddenly gets told the eviction order or the particulars are not actually made out against the tenants. Back to square one.

The advocate is not sent all the papers.

Exactly what it says: exhibits missing on witness statements, information about deposits, or previous hearings, or letters about previous agreements. It is very difficult for the judge to listen to what the advocate for the landlord says if the judge sees that the advocate does not have all the facts.

The evidence of service is insufficient.

Poorly drafted and incomplete witness statements, wrongly filled out forms, incomplete forms, undated forms, unsigned forms, inconsistencies between evidence and pleadings – you name it. All of this can be corrected easily before the hearing, but is not.

The Section 21 Notice has the wrong expiry date on it.

Even some duty solicitors do not seem to know the difference between a Section 21(4)(a) Notice and Section 21(1)(b) Notice.

Reliance on Section 21 is not set out properly in the claim.

Extremely common, and easy to avoid.

The date of expiry on the Section 8 Notice is incorrect.

Fortunately, many district judges and duty solicitors miss this one.

The Particulars of Claim is not CPR 55 compliant.

The requirements setting out the Civil Procedure Rules are like a foreign language to many companies. If in doubt about what information to give, give more information than is necessary.

The dates of service are wrong.

The letting agent or company helping evict do not understand the rules for dates for service under Part 6 of the Civil Procedure Rules. Unfortunately, judges do understand them.

Arrears statements are wrong or confusing.

The company should be asking the letting agent or landlord to ensure that the statement is clear and correct. Many claims will get adjourned by Judges because credits, debits and arrears totals seem incorrect.