

Are Possession Proceedings Really Necessary

All too often we are asked by residential property landlords as to whether or not property proceedings are really necessary.

In the main when one is dealing with a tenancy of a residential property it is always best for a landlord to obtain possession by way of a Court Order.

With a residential tenancy unless a landlord obtains possession by way of a Court Order and Court Bailiffs they leave themselves open to claims that they are in breach of the Protection From Eviction Act 1977. This Act provides that where the landlord evicts a tenant or harasses them in such way that they leave a property without the necessary Court Order they can find themselves liable for both a civil and criminal penalty. The criminal sanction can include a prison sentence. With regards to the civil penalties the tenant can bring a claim for damages and the Court will often award a punitive sum running into many thousand of pounds often far exceeding any sums which a tenant may owe to his landlord.

A landlord must therefore take very great care before re-entering and changing locks in the property where they believe a tenant may have vacated. If the landlord wishes to do this it is vital that they give consideration to the following points:-

- Have the tenants given up and left behind the keys
- Have they left any possession behind
- Is it possible that they are away from the property on holiday, in hospital or in prison
- Is there any other conduct of the tenant which is inconsistent with the continuation of the tenancy

It is only upon consideration of all of these points that the landlord can then make a decision as to whether or not the property has been abandoned. Certainly before attending at any property to try and assess the situation it is vital that the landlord has with them an independent witness in case there is any dispute which needs to be resolved by the Court. If the landlord is in doubt as to whether or not there has been some form of abandonment the best advice is always to obtain a Court Order notwithstanding the time that this can take. It is vital that landlords take real care over this area since failure to comply with the statutory responsibilities can give rise to substantial penalties.

If you are in doubt or require any further information please contact:

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