

Necessary Action Required Before Demanding Unpaid Rent Practice Direction – Pre Action Conduct

Landlords who have engaged solicitors to pursue unpaid rent often assume that proceedings can be issued straight away. The Court rules (known as the Civil Procedure Rules) contain guidance as to how the Court expects the parties to behave in the run-up to any Court action. These guidelines are contained within Practice Directions or Pre-Action Protocols. If either party has failed to comply with the relevant protocols the Court has power to impose sanctions once proceedings have been issued – usually by way of a costs penalty. Potentially, even if a Landlord's claim for unpaid rent has been successful he may be prevented from recovering a contribution towards his legal fees from the Defendant if he has not complied with the protocols.

Recently the Civil Procedure Rules have been updated and a new Practice Direction on Pre-Action Conduct introduced. The new Practice Direction introduces new requirements in respect of debt claims (including unpaid rent). It details information which should be provided to the Defendant in pre-action correspondence before the Claimant resorts to Court action. Notably, the Defendant should be given a period of time to come up with payment before proceedings are issued. Where the Claimant is a business (e.g. a Landlord company) and the Defendant is an individual (e.g. a non-corporate Tenant) additional requirements apply.

Often a Landlord will have already issued written demands for unpaid rent before we have been instructed. It is unlikely that those written demands will have complied with the protocol requirements, in which case we would need to serve a further written demand in the form of a pre-action 'Letter of Claim'. Ideally we should be instructed as soon as the tenant defaults on rent. That way we can ensure that the correct steps are taken at an early stage and time will be saved in the long-run. In addition, we shall also be able to bear in mind other important considerations, such as whether there may be any notice requirements in relation to deposits or Guarantors and whether the Tenant's default has triggered a forfeiture clause.

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