

SCHEDULE 2

CCR ORDER 49

MISCELLANEOUS STATUTES

Housing Act 1988: assured tenancies

Rule 6.—(1) In this rule

“the 1988 Act” means the Housing Act 1988(1);

“dwelling-house” has the same meaning as in Part I of the 1988 Act; a Ground referred to by number means the Ground so numbered in Schedule 2 to the 1988 Act;

“the requisite notice” means such a notice as is mentioned in any of those Grounds and

“the relevant date” means the beginning of the tenancy.

(2) This rule applies to proceedings brought by a landlord to recover possession of a dwelling-house which has been let on an assured tenancy in a case where all the conditions mentioned in paragraph (3) below are satisfied.

(3) The conditions referred to in paragraph (2) are these.

(a) The tenancy and any agreement for the tenancy were entered into on or after 15th January 1989.

(b) The proceedings are brought

(i) on Ground 1 (landlord occupation),

(ii) on Ground 3 (former holiday occupation),

(iii) on Ground 4 (former student letting) or

(iv) on Ground 5 (occupation by a minister of religion).

(c) The only purpose of the proceedings is to recover possession of the dwelling-house and no other claim is made in the proceedings (such as for arrears of rent).

(d) The tenancy is an assured tenancy within the meaning of the 1988 Act (and consequently is not a protected, statutory or housing association tenancy under the Rent Act 1977), and

(i) is the subject of a written agreement, or

(ii) is on the same terms (though not necessarily as to rent) as a tenancy which was the subject of a written agreement and arises by virtue of section 5 of the 1988 Act, or

(iii) relates to the same or substantially the same premises which were let to the same tenant and is on the same terms (though not necessarily as to rent or duration) as a tenancy which was the subject of a written agreement.

Where the tenancy in relation to which the proceedings are brought arises by virtue of section 5 of the 1988 Act but follows a tenancy which was the subject of an oral agreement, the condition mentioned in sub-paragraph (d)(ii) or (iii) above is not satisfied.

(e) The proceedings are brought against the tenant to whom the requisite notice was given.

(f) The tenant was given the requisite notice, not later than the relevant date.

(g) The tenant was given notice in accordance with section 8 of the 1988 Act that proceedings for possession would be brought.

(1) 1988 c. 50.

Status: This is the original version (as it was originally made).

(4) Where the conditions mentioned in paragraph (3) of this rule are satisfied, the landlord may bring possession proceedings under this rule instead of making a claim in accordance with Order 6, rule 3 (claim for recovery of land by claim form).

(5) The application must be made in the prescribed form, and a copy of the application, with a copy for each defendant, must be filed in the court for the district in which the dwelling-house is situated.

(6) The application shall include the following information and statements.

- (a) a statement identifying the dwelling-house which is the subject matter of the proceedings;
- (b) a statement identifying the nature of the tenancy, namely—
 - (i) whether it is the subject of a written agreement; or
 - (ii) whether the tenancy arises by virtue of section 5 of the 1988 Act, or
 - (iii) where it is the subject of an oral agreement whether the tenancy is periodic or for a fixed term and, if for a fixed term, the length of the term and the date of termination;
- (c) a statement that the dwelling-house (or another dwelling-house) was not let to the tenant by the landlord (or any of his predecessors) before 15th January 1989;
- (d) the date on which and the method by which the requisite notice was given to the tenant;
- (e) a statement identifying the Ground on which possession is claimed giving sufficient particulars to substantiate the claimant's claim to be entitled to possession on that Ground;
- (f) a statement that a notice was served on the tenant in accordance with section 8 of the 1988 Act,
 - (i) specifying the date on which and the method by which the notice was served; and
 - (ii) confirming that the period of notice required by section 8 of the 1988 Act has been given; and
- (g) the amount of rent which is currently payable.

(7) Copies of the following documents shall be attached to the application—

- (i) the current (or most recent) written tenancy agreement,
- (ii) the requisite notice (referred to in paragraph (6)(d) above), and
- (iii) the notice served in accordance with section 8 of the 1988 Act, together with any other documents necessary to prove the claim.

(8) The statements made in the application and any documents attached to the application shall be verified by the claimant on oath.

(9) Service of the application and of the attachments shall be effected by an officer of the court sending them by first-class post to the defendant at the address stated in the application and paragraphs (c) and (d) of Order 3, rule 6 (mode of service) and Order 7, rule 15 (service of claim form for recovery of land) shall apply as they apply where service is effected under those rules.

(10) A defendant who wishes to oppose the claimant's application must, within 14 days after the service of the application on him, complete and deliver at the court office the form of reply which was attached to the application.

(11) On receipt of the defendant's reply the court shall—

- (a) send a copy of it to the claimant;
- (b) refer the reply and the claimant's application to the judge, and where a reply is received after the period mentioned in paragraph (10) but before a request is filed in accordance with paragraph (12) the reply shall be referred without delay to the judge.

(12) Where the period mentioned in paragraph (10) has expired without the defendant filing a reply, the claimant may file a written request for an order for possession and the court shall without delay refer the claimant's application to the judge.

(13) After considering the application and the defendant's reply (if any), the judge shall either—

- (a) make an order for possession under paragraph (15) or
- (b) fix a day for a hearing under paragraph (14) and give directions regarding the steps to be taken before and at the hearing.

(14) The court shall fix a day for the hearing of the application where the judge is not satisfied as to any of the following—

- (a) that the requisite notice was given before the relevant date,
- (b) that a notice was served in accordance with section 8 of the 1988 Act and that the time limits specified in the 1988 Act have been complied with,
- (c) that service of the application was duly effected, or
- (d) that the claimant has established that he is entitled to recover possession under the Ground relied on against the defendant.

(15) Except where paragraph (14) applies, the judge shall without delay make an order for possession without requiring the attendance of the parties.

(16) Where a hearing is fixed under paragraph (14)—

- (a) the court shall give to all parties not less than 14 days' notice of the day fixed;
- (b) the judge may give such directions regarding the steps to be taken before and at the hearing as may appear to him to be necessary or desirable.

(17) The court may, on application made on notice in accordance with CPR Part 23 within 14 days of service of the order or of its own initiative, set aside, vary or confirm any order made under paragraph (15).

(18) A district judge shall have power to hear and determine an application to which this rule applies and references in this rule to the judge shall include references to the district judge.