

Number 08

New Costs Restrictions in Possession Actions

There are already restrictions in the legal costs that can be recovered where proceedings are commenced for a Money Judgment (i.e seeking payment of a debt such as rent arrears without a claim for possession). Most claims for outstanding arrears will fall within the small claims jurisdiction of the County Court where costs are restricted.

As from 25th March 2002 changes to the costs recoverable in possession actions have been introduced.

In possession claims issued on or after the 25th March 2002, where one of the grounds for possession is arrears of rent (whether or not the Order for Possession is suspended on terms) and the Defendant has neither delivered a defence, admission or counterclaim, nor otherwise denied liability, then the costs on giving judgment on the return date are fixed - unless the Court orders to the contrary - at £57.25. The total of the costs (Court fee and Solicitors charges) which are likely to be ordered when the Court makes the possession Order in a contested case (whether outright or suspended) will be £246.75.

It is not clear how the Court will apply the new rules.

However, it will be important to continue to serve a statement of costs for assessment based on a reasonable charge.

At present, where Counsel has been instructed, the average order for costs made in possession cases is in the region of £600 to £700 plus VAT inclusive of solicitors' charges, Court fee and Counsel's Brief fee.

If the Courts apply the new rules rigidly there will be a substantial shortfall in the costs recovered by Landlords, unless the Courts accept valid reasons why the fixed costs should be increased. It will be important to ensure that evidence is available at all possession hearings to show actual costs, in order to invite the court to exercise its discretion.

If there is a contractual right in the Lease to recover costs, then it may still be possible to recover any shortfall through the service charge.

The rule change, if applied rigidly, will increase the costs to Landlords in bringing possession proceedings.

It is not clear why a Landlord should be penalised if a tenant is not paying rent and the only way to obtain an Order for Possession against him is to commence possession proceedings.

Certainly, in relation to assured shorthold tenancies, Local Authorities are not willing to re-house tenants unless there is an Order for Possession.

In most cases possession proceedings are only brought as a last resort and there does not appear to be any good reason why tenants should not pay the actual cost incurred by those proceedings.

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Clearly there will be a need to dust off the leases and check for express contractual obligations to pay costs, which can be pleaded as a specific head of claim.

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Readers are advised to take specific advice before acting in reliance on the matters set out in this briefing. For further information on property disputes or litigation please contact:

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