

## Gas Servicing

### - gain access without incurring significant costs

All landlords, whether Local Authorities, Housing Associations or Private, are under an obligation to service gas appliances at their properties pursuant to the Gas Safety (Installation and Use) Regulations 1998. Those regulations impose criminal sanctions on landlords who fail to comply so that landlords take such obligations seriously. Registered Social Landlords spend millions of pounds each year on ensuring that their tenants are safe and their appliances function correctly.

In spite of this, most landlords face difficulty in gaining access to some properties on an annual basis. Having given their tenants the right to immediate possession of the premises, gaining access is not simply a matter of using a spare key and can often involve complicated legal proceedings.

At Forbes, we work with Local Authorities and Housing Associations to develop key procedures to enable them to gain access to properties as soon as possible without incurring significant costs. Should the threat of legal action not prove effective, two court procedures exist to bring the matter before a court as swiftly as possible and with the minimum expenditure.

#### Possession Proceedings

Since the advent of the Civil Procedure Rules, there has been a simple and effective procedure in place for the recovery of possession of premises let on short tenancies. Most landlords use this procedure on a regular basis for rent arrears matters but few realise the potential in other situations.

A tenant's failure to allow you or your agent access to the property will constitute a breach of their tenancy agreement which may give rise to a right to possession in itself. At the same time, that breach is indicative of the tenant's failure to maintain the property. It may even be possible to argue that the tenant is causing a nuisance due to the risk that unserviced gas appliances may present to visitors, neighbours and the general public.

Whilst such issues constitute discretionary grounds for granting possession, the procedure can be dealt with on an urgent basis in nuisance cases and a suspended possession order can remain effective for up to twelve years reducing the need to return to court in the case of "repeat offenders"

#### Injunctive Relief

Some landlords prefer not to use the threat of eviction to gain access to their properties. Whilst the concept of injunctive relief might be considered by some to be one of the most draconian remedies available, in the circumstances, its application in cases such as these seems wholly appropriate, as has been highlighted by the new anti-social behaviour legislation.

Where used, the court has been persuaded that the landlords have attempted all that is reasonable in the circumstances to secure access to the premises. That being the case, there is nothing to prevent the law imposing an obligation on tenants to do that which is required under the terms of their tenancy agreement.

The procedure in such cases is not as clearly defined as the Possession route. However, Forbes has been involved in a number of such matters and recently secured a Judicial Declaration that the procedure adopted was correct and that the matters may continue to be dealt with by District Judges in the County Court.

#### Costs

At the conclusion of any hearing, a Judge will be asked to consider the costs of proceeding against the tenant. Forbes offers a fixed fee service for these matters and, whilst those costs may still be subject to assessment on any occasion, they have repeatedly been awarded by District Judges.

It is, however, open to the tenant to apply to pay by instalments and the Judge will consider the reasonableness of any such proposals. Depending on the wording of your tenancy agreements, you may simply be able to add the court costs to the rent account so that the tenant is able to make regular, direct payments

#### Enforcement

Whichever method is adopted, the outcome will be a court order which requires your tenant to arrange a service within 28 days. However, if your tenant does not comply, the remedies available differ according to which route is used.

Where an Injunction has been granted but the tenant has not made contact, the matter can be brought back before a more senior Judge to consider whether the tenant should be fined or even sent to prison. However, even where a warrant is issued for the

# forbessolicitors.

tenant's arrest, you will not have the right to enter the property and you are still reliant upon the tenant affording you access at some later date.

It is often the case that tenants who are refusing access are also in arrears on their rent accounts and they may already have been the subject of possession proceedings. In those circumstances, it is possible to apply to the court to amend the original possession order to include a further requirement that the tenant allow your engineers access.

If a Suspended Possession Order is granted and your tenant fails to allow you access within the period stipulated, the next step will be to apply to the court for a Warrant of Possession. This will mean that a County Court Bailiff attends at the premises to remove your tenant. You or your agents may then enter to effect the service and you can take a decision as to whether to enter into a new tenancy agreement with that tenant and allow them back into occupation.

## Frequently Asked Questions

### What information will you need to commence proceedings?

In order to prepare all the relevant documents, we will need details of the tenancy agreement and what attempts have been made to gain access. This information will be inserted into standard documents tailored specifically to your requirements which will exhibit any standard letters or documents which you use.

### What documents will be prepared?

A Claim Form, Statement of Case and Witness Statement will be prepared for each case. Each of these documents will need to be signed by a representative of your company who has access to the information outlined above and so is able to confirm that it is true and accurate.

### How long will it take to get to court?

Whilst the procedure varies according to the method used, the court will usually list the first hearing of any matter approximately six weeks after proceedings are issued. In the vast majority of cases, that hearing will be the final determination of all the issues and the matter will only have to come back to court if the tenant does not comply with the court order.

### How can we keep abreast of developments?

As soon as we are instructed, all the details of each case will be placed on our computer systems which can be accessed remotely using your internet connection. We will provide you with a username and password and you can login to our secure website at any time to see how the case is progressing. In addition, members of our Gas Servicing Team are available by telephone or e-mail to answer your queries.

### What happens if the appliances are serviced before we get to court?

If a tenant gets in touch before the court hearing and the service is carried out, you can simply let the Gas Servicing Team know by telephone, e-mail or through the internet link. When we attend court, we will only seek to recover the lower rate of costs which we will charge you. As we make your tenants aware of this from the outset, it often acts as incentive for them to make contact.

### What will happen at the hearing?

We will attend the hearing on your behalf and your tenant will also be entitled to attend and explain why they should not have an order made against them. The court will consider both arguments and make an order. If the tenant does not attend then an Injunction or Suspended Possession Order will usually be granted along with an order that the tenant pay your costs.

## The Gas Servicing Contacts

### Stuart Penswick

[stuart.penswick@forbessolicitors.co.uk](mailto:stuart.penswick@forbessolicitors.co.uk)  
01254 222 340

Stuart completed his training with the firm and qualified as a Solicitor in 2002. He left to work for a national practice, based in their Manchester Office. Stuart rejoined the firm in March 2003 and specialises in property litigation within the commercial litigation team. This includes Landlord and Tenant disputes, lease renewals, boundary and right of way disputes and commercial and residential possession proceedings.

### Lachlan McLean

[lachlan.mclean@forbessolicitors.co.uk](mailto:lachlan.mclean@forbessolicitors.co.uk)  
01254 222 303

Lachlan is a paralegal who will be working closely with other team members on property litigation for clients including local authorities and housing associations.

To discuss your requirements further please complete the enclosed faxback sheet or contact any member of the team.

### Blackburn Office

Rutherford House  
4 Wellington Street (St. Johns)  
Blackburn, BB1 8DD  
Tel: 01254 54374  
Fax: 01254 52347