



# Illegal Evictions Claims – Practical Guidance

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GARDEN COURT CHAMBERS



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# Unlawful eviction: Civil claims

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# Unlawful eviction

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The term “unlawful eviction” is not precisely defined in civil law. It is an umbrella expression for what is likely to be a number of unlawful acts committed by the landlord or someone acting with them or on their behalf which excludes the occupier from residential property that they have a continuing right to occupy.

As the circumstances of unlawful eviction differ widely, it is crucial before embarking upon a claim for unlawful eviction or even pre-action correspondence, to consider carefully

- a) The client’s entitlement to occupy the premises;
- b) The circumstances surrounding the eviction – before, during and afterwards;
- c) What causes of action you have, and against whom;
- d) What are the potential defences.



# Unlawful eviction

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There are various causes of action which are available depending on the circumstances and the type of occupation, below are those mainly relied upon

## **Breach of contract**

### *Covenant of Quiet Enjoyment*

- Each tenancy agreement has, either by an express term or implied in to it, an obligation on the landlord to allow the tenant possession of the property demised without interference. This is known as the covenant for “quiet enjoyment”.
- The term refers “*to the exercise and use of the right [of possession] and having the full benefit of it, rather than deriving pleasure from it*” (Kenny v Preen [1963] 1 QB 499)



# Breach of contract

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- The interference must be “substantial”
- The obvious example of breach in the context of unlawful eviction is excluding the occupier by changing the locks, but it can also be harassment designed to force a tenant out, such as persistent threats, or cutting off utilities ” (*Kenny v Preen*, *McCall v Abelesz* [1976] QB 585)
- The right is not conditional ie on payment of rent (*Edge v Boileau* (1885) 16 QBD 117)
- The right begins on the date the tenancy begins, not upon entry into the property. It ceases upon termination of the tenancy



# Breach of contract

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*Who can claim/against whom?*

- The tenant against their landlord. Need to establish identity of the landlord. Section 1 and 2 *Landlord and Tenant Act 1985*. However if landlord's identity is unknown and they have acted through agents then the agent can be sued (*Allen v F O'Hearn & Co* [1937] AC 213)
- An injunction and special damages may be claimed (*Branchett v Beaney* (1992) 24 HLR 348).
- It has been said that a similar right to quiet enjoyment (albeit not a covenant) may be implied in to a license agreement (*Smith v Nottinghamshire CC* (1981) Times, 7 November)
- Protection from eviction for licensees is generally covered by the *Protection from Eviction Act 1977* (below), however excluded licensees are entitled to the notice in their agreement or “reasonable notice” (*Gibson v Douglas* (2016) EWCA Civ 1266)



# Breach of contract

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## *Defences*

A claim can only be brought where there is a subsisting right to occupy. The situation may arise where the landlord claims that the tenant has surrendered the property therefore has no subsisting right to occupy

- Surrender by deed - a written agreement by which the parties agree the tenancy will end
- Surrender by operation of law – conduct by one party inconsistent with continuation of tenancy which the other party can be seen to have agreed to. Must be clear and unequivocal
- Where joint tenants all must be party to surrender
- Not surrender – indication tenant is going to leave and looking for other accommodation, tenant is absent but possessions left at the property and paying rent





# Protection from Eviction Act 1977

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Under section 3 *Protection from Eviction Act 1977* it is unlawful for an owner of residential property to recover possession against occupiers of residential property, after the end of the tenancy or license, otherwise than by proceedings in court

*Who can claim/against whom?*

- The claim can be made by a person occupying the premises as a residence (by contract, enactment or rule of law giving them the right to remain in occupation) (see section 1(1))
- It applies where premises are “let as a dwelling” – occupied as a residence or home, including a room without cooking facilities (*Uratemp Ventures Ltd v Collins* [2002] 1 AC 301), but licensees of temporary accommodation under the *Housing Act 1996* have been held not to be occupying that as a dwelling (*Desnousse v Newham LBC and Paddington Churches* [2006] EWCA Civ 547, *R(CN and ZH) v Lewisham LBC and Newham LBC* [2014] UKSC 62)



# Protection from Eviction Act 1977

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- The provisions do not apply to statutorily protected tenancies (defined in section 8) which include, among others, protected tenants under Rent Act 1977, assured tenants, assured shorthold tenants
- Neither do the provisions apply to “excluded tenancies and licenses” (defined in section 3A), which includes those who share with resident landlord, or with a member of resident landlord’s family, holiday accommodation, licenses granted other than for money or money’s worth, accommodation under Part 6 *Immigration and Asylum Act 1999*, license of a public sector hostel, disqualification due to immigration status from occupying under a residential tenancy agreement
- The claim is against the owner (section 3(1)), defined as the person who, as against the occupier, is entitled to possession (section 8(3)). If eviction carried out by someone else, will need to show acting on owner’s behalf
- Claim is for damages for breach of statutory duty or an injunction



# Associated claims

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It is usual for unlawful evictions to involve associated torts, either common law or under statute. It is important to consider and claim these, where applicable, alongside breach of contract claims so that general, aggravated and exemplary damages may be sought

## **Trespass to land**

- Where the landlord or their agent enters or remains on the property without permission.

*Who can claim/against whom?*

- The tenant whose right to occupy has not come to an end, against whoever unlawfully enters and the landlord, if it was not them but the person is acting on their behalf. Licensees generally do not have exclusive possession so cannot claim
- Claim for damages and/or injunction to prevent further trespass



# Trespass to goods/conversion

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- Trespass to goods is a direct interference with another's belongings ie putting them outside, destroying, removing them
- If the goods taken and not returned this is “conversion”
- *Torts (Interference with Goods) Act 1977*, statutory tort of “wrongful interference with goods”

## *Who can claim/against whom?*

- The person who owns the goods, not dependent upon right of residence, against whoever interferes with goods/converts the goods, and the landlord if not them but the person was acting on their behalf
- Note: the landlord is not permitted to retain the goods until any rent owing is paid
- Claim for damages and/or for return of goods



# Trespass to the person

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- Battery: intentional application of direct physical force without reasonable excuse
- Assault: any act which puts another person in immediate reasonable fear of battery

*Who can claim/against whom?*

- Whoever is the victim of the assault, not dependent upon right of residence, against whoever commits the assault/battery, and the landlord if the person was acting on their behalf



# Where tortfeasor is a company

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- Where tort is committed by directors of company landlord, or directors of agent company, consider claim against the individuals concerned as joint tortfeasors with the company (*Standard Chartered Bank v Pakistan National Shipping Corporation and others No 2* [2003] 1 AC).



## S27 Housing Act 1988

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Section 27 *Housing Act 1988* provides a statutory cause of action for damages where a landlord:

- unlawfully deprives the residential occupier of his occupation of the whole or part of the premises (section 27(1))
- attempts unlawfully to deprive the residential occupier of his occupation of the whole or part of the premises, or

knowing or having reasonable cause to believe that the conduct is likely to cause the residential occupier of any premises to give up his occupation of the premises or any part of them, or to refrain from exercising any right or pursuing any remedy in respect of the premises or any part of them, does acts likely to interfere with the peace or comfort of the residential occupier or members of his household, or persistently withdraws or withholds services reasonably required for the occupation of the premises as a residence,

**and**, as a result, the residential occupier gives up his occupation of the premises (section 27(2))



# S27 Housing Act 1988

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## *Who can claim/against whom?*

- Claim can be brought by “residential occupier” as defined by section 1(1) *Protection from Eviction Act 1977*, except those excluded by section 3A of that Act – excluded tenancies and licenses (see above)
- Claim is only against landlord. Even if agents carried out relevant acts the landlord is liable (section 27(3))
- Claim damages only (s28). Expert evidence is needed for calculation of loss of value of landlord’s interest
- Due to ease with which assured shorthold tenants can be evicted, this is most relevant to secure, assured and Rent Act tenants





# S27 Housing Act 1988

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## *Defences*

- The landlord believed or had reasonable cause to believe that the residential occupier had ceased to reside in the premises at the relevant time, or they had reasonable grounds for the acts complained of (section 27(8))
- No liability if the occupier is re-instated before proceedings disposed of (section 27(6)).
- If a successful application for re-entry is made under claim for breach of contract or re-instatement offered and accepted then damages for other causes of action may still be claimed



## Also Consider...

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- *Protection from Harassment Act 1977* – damages for conduct prior to eviction, and injunction if client readmitted
- Remedies under tenancy deposit legislation
- Warrants unlawfully obtained - where a landlord needs permission to obtain a warrant for possession (ie the original possession order is more than 6 years old) but obtains and executes a warrant without such permission and this is an abuse of process, the eviction will be unlawful (*AA v London Borough of Southwark* [2014] EWHC 500)



# Procedure and damages in unlawful eviction cases

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13 May 2021



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# Part 1 – Procedure in starting a case

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At the first stage when the client approaches, strongly advisable to:

- identify the client's legal interest
- identify the potential parties to the claim
- identify separately of each potential party what the cause of action might be against them; and whether any should be included and why
- where possible, do basic internet research to establish publicly available information, eg. title entries from the Land Registry, any relevant licensing register kept by the local authority and publicly available information about companies and their directors at Companies House



## Initial stage/2

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When contacting a landlord or agent, strongly advisable to:

- be clear about what you are asking the person to do or not do
- set a clear deadline and, if it is short, explain why
- set out the basis (using the analysis of causes of action)
- set out what will happen if they do not do what you ask for
- list any information you want e.g. names / contact details and/or documents



# Practice Direction – Pre-Action Conduct And Protocols

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## *Steps before issuing a claim at court*

6. Where there is a relevant pre-action protocol, the parties should comply with that protocol before commencing proceedings. Where there is no relevant pre-action protocol, the parties should exchange correspondence and information to comply with the objectives in paragraph 3, bearing in mind that compliance should be proportionate. The steps will usually include—

- (a) the claimant writing to the defendant with concise details of the claim. The letter should include the basis on which the claim is made, a summary of the facts, what the claimant wants from the defendant, and if money, how the amount is calculated;
- (b) the defendant responding within a reasonable time - 14 days in a straight forward case and no more than 3 months in a very complex one. The reply should include confirmation as to whether the claim is accepted and, if it is not accepted, the reasons why, together with an explanation as to which facts and parts of the claim are disputed and whether the defendant is making a counterclaim as well as providing details of any counterclaim; and
- (c) the parties disclosing key documents relevant to the issues in dispute.



# Practice Direction – Pre-Action Conduct And Protocols

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## *Objectives of pre-action conduct and protocols*

3. Before commencing proceedings, the court will expect the parties to have exchanged sufficient information to—

- (a) understand each other’s position;
- (b) make decisions about how to proceed;
- (c) try to settle the issues without proceedings;
- (d) consider a form of Alternative Dispute Resolution (ADR) to assist with settlement;
- (e) support the efficient management of those proceedings; and
- (f) reduce the costs of resolving the dispute



# Interim Injunction & Issue

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Documents required:

- Application form: N16A
- Witness statement in support
- Draft order: N16
- Notice of issue of public funding

<https://www.gov.uk/government/collections/county-court-forms>

And fee for issue of application and claim





# N16A Application form

## Application for Injunction (General Form)

[Click here to reset form](#) [Click here to print form](#)

|                           |           |
|---------------------------|-----------|
| Name of court             | Claim No. |
| Claimant's Name and Ref.  |           |
| Defendant's Name and Ref. |           |
| Fee Account no.           |           |

**Notes on completion**  
Tick which boxes apply and specify the legislation where appropriate

- (1) Enter the full name of the person making the application
- (2) Enter the full name of the person the injunction is to be directed to
- (3) Set out any proposed orders requiring acts to be done. Delete if no mandatory order is sought.
- (4) Set out here the proposed terms of the injunction order (if the defendant is a limited company delete the wording in brackets and insert whether by its servants, agents, officers or otherwise).
- (5) Set out here any further terms asked for including provision for costs
- (6) Enter the names of all persons who have sworn affidavits or signed statements in support of this application
- (7) Enter the names and addresses of all persons upon whom it is intended to serve this application
- (8) Enter the full name and address for service and delete as required

- By application in pending proceedings  
 Under Statutory provision \_\_\_\_\_  
 This application is made under Part 8 of the Civil Procedure Rules



This application raises issues under the Human Rights Act 1998  Yes  No

**The Claimant<sup>(1)</sup> applies to the court for an injunction order in the following terms:**  
**The Defendant<sup>(2)</sup> must<sup>(3)</sup>**

**The Defendant be forbidden (whether by himself or by instructing or encouraging or permitting any other person)<sup>(4)</sup>**

And that<sup>(5)</sup>

**The grounds of this application are set out in the written evidence** of<sup>(6)</sup> \_\_\_\_\_ sworn (signed) on \_\_\_\_\_

This written evidence is served with this application.  
**This application is to be served upon<sup>(7)</sup>**

**This application is filed by<sup>(8)</sup>** \_\_\_\_\_  
(the Solicitors for) the Claimant (Applicant/Petitioner)  
whose address for service is \_\_\_\_\_

Signed \_\_\_\_\_

Dated \_\_\_\_\_

This section to be completed by the court

\* To\*  
Name and address of the person application is directed to

**This application will be heard by the (District) Judge**

**at \_\_\_\_\_ on \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_ at \_\_\_\_\_ o'clock**

**If you do not attend at the time shown the court may make an injunction order in your absence**

If you do not fully understand this application you should go to a Solicitor, Legal Advice Centre or a Citizens Advice Bureau

The court office at \_\_\_\_\_

is open between 10am and 4pm Mon - Fri. When corresponding with the court, please address all forms and letters to the Court Manager and quote the claim number.

N16A General form of application for injunction (05.14)

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# Witness statement

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- PD 25A, paragraphs 3.2 to 3.4
- duty to make full and frank disclosure of all matters relevant to the application, including matters of fact and law adverse to the applicant. PD 25A, para. 3.3 evidence must include ‘all material facts of which the court should be made aware.
- explanation if application made without formal notice (CPR 25.3(3), PD 25A, para 3.4)
- compelling justification if the application made without warning the landlord at all
- explanation for any delay in making the application



# N16 Injunction

[Click here to reset form](#) [Click here to print form](#)

**Injunction order**

|                  |  |
|------------------|--|
| Claimant's name  | Name of court                            |
| Defendant's name | Claim no.                                |
|                  | Claimant's ref.                          |
|                  | Defendant's ref.                         |
|                  | For completion by the court<br>Issued on |

Seal

**If you do not comply with this order you may be held in contempt of court and imprisoned or fined, or your assets may be seized.**

On the  the court considered an application for an injunction.  
Enter the name of the person the order is directed to below

**The court ordered that**

Has a mandatory order been made?  Yes  No

on or before

*If you do not understand anything in this order you should go to a solicitor, Legal Advice Centre or a Citizens Advice Bureau*

The court office is

is open between 10 am and 4 pm Monday to Friday. When corresponding with the court, please address forms or letters to the Court Manager and quote the claim number

N16 General form of injunction for interim application or originating application ( 10.12) © Crown copyright 2012

Is the defendant a Limited Company?  Yes  No

and is **forbidden** whether by himself or by instructing or encouraging or permitting any other person from

This order will remain in force until the  at

unless before then it is revoked by a further order of the court.

It is further ordered that

The applicant do pay the costs of the application

A power of arrest be attached to clauses

Is the order temporary and made without notice?  Yes  No

**Notice of further hearing**

The court will reconsider the application and whether the order should continue at a further hearing at:

on the  at

If you do not attend at the time shown the court may make an injunction order in your absence. You are entitled to apply to the court to re-consider the order before that day.

*If you do not understand anything in this order you should go to a solicitor, Legal Advice Centre or a Citizens Advice Bureau*

# Mandatory injunctions

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*Nottingham Building Society v Eurodynamics Systems* [1993] FSR 468 at 474 as approved in *Zockoll Group Ltd v Mercury Communications Ltd* [1997] EWCA Civ 2317:

“In my view the principles to be applied are these. First, this being an interlocutory matter, the overriding consideration is which course is likely to involve the least risk of injustice if it turns out to be ‘wrong’ in the sense described by Hoffmann J.

Secondly, in considering whether to grant a mandatory injunction, the court must keep in mind that an order which requires a party to take some positive step at an interlocutory stage, may well carry a greater risk of injustice if it turns out to have been wrongly made than an order which merely prohibits action, thereby preserving the status quo.

Thirdly, it is legitimate, where a mandatory injunction is sought, to consider whether the court does feel a high degree of assurance that the plaintiff will be able to establish this right at a trial. That is because the greater the degree of assurance the plaintiff will ultimately establish his right, the less will be the risk of injustice if the injunction is granted.

But, finally, even where the court is unable to feel any high degree of assurance that the plaintiff will establish his right, there may still be circumstances in which it is appropriate to grant a mandatory injunction at an interlocutory stage. Those circumstances will exist where the risk of injustice if this injunction is refused sufficiently outweigh the risk of injustice if it is granted.”



# Practice Direction 25

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## Orders for injunctions

5.1 Any order for an injunction, unless the court orders otherwise, must contain:

- (1) subject to paragraph 5.3, an undertaking by the applicant to the court to pay any damages which the respondent sustains which the court considers the applicant should pay.
- (2) if made without notice to any other party, an undertaking by the applicant to the court to serve on the respondent the application notice, evidence in support and any order made as soon as practicable,
- (3) if made without notice to any other party, a return date for a further hearing at which the other party can be present,
- (4) if made before filing the application notice, an undertaking to file and pay the appropriate fee on the same or next working day, and
- (5) if made before issue of a claim form—
  - (a) an undertaking to issue and pay the appropriate fee on the same or next working day, or
  - (b) directions for the commencement of the claim.

See also *Allen v Jambo Holdings Ltd* [1980] 1 WLR 1252



# Formal notice

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- General rule in CPR 23.4 that notice must be given by serving a copy of the application applies.
- CPR 23.7 provides that the application notice and supporting evidence and draft order must be served 3 clear days before a hearing.
- CPR 25.3 permits the court to grant an interim remedy on an application made without notice “if it appears to the court that there are good reasons for not giving notice”.



# Informal notice

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- If there is not time for formal service, PD 23A paragraph 4.2 provides:

4.2 Where an application notice should be served but there is not sufficient time to do so, informal notification of the application should be given unless the circumstances of the application require secrecy.
- PD 25A, paragraph 4.3(3) similarly states:

(3) except in cases where secrecy is essential, the applicant should take steps to notify the respondent informally of the application.
- Informal notification includes sending the application notice, draft order and evidence and informing the other party of the proposed time of any hearing.



# After the application

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- Return date
- Record of hearing
- Service of order
- Evidence of service of order





# Return date

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- Evidence to continue or vary injunction
- Dispense with personal service of varied or continued injunction if Respondent present
- Committal to be pursued?
- Service of Particulars of Claim or amended Particulars of Claim
- Directions



# Allocation

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- CPR 26.7 provides that:
  - (4) The court will not allocate a claim to the small claims track, if it includes a claim by a tenant of residential premises against his landlord for a remedy in respect of harassment or unlawful eviction.
- The choice is between the fast track and the multi-track. Courts are likely to want to put these cases on the fast track unless there is a compelling reason for the multi-track, but this should be considered focusing on the number of witnesses and complexity of issues.
- If multi-track, the costs budgeting rules will apply unless the court dispenses with them. If not dispensed with, the time limits must be strictly complied with.



# Other directions

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- Standard disclosure
- Expert evidence
  - Medical evidence
  - Valuation evidence



# Witness statements

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- Address all the allegations and counter-allegations
- Address all heads of loss, especially all items of special damages claimed
- Normal rules apply:
  - The witness statement should be in the witness's own words (PD 31, para. 18.1)
  - The witness statement must originally be drafted in the witness's own language (PD31, para. 18.1 & 19.1(7)). If this is not English, the original should be in the witness's language and that should then be translated.
  - It should follow a chronological sequence except where there is a justified reason not to.
  - Pleadings, orders, other witness statements and duplicate documents that will be found elsewhere in a trial bundle should be excluded.
  - Documents should be exhibited in a chronological order, preferably in one exhibit with an index.



## Part 2 - Remedies

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- General damages
- Special damages
- Aggravated damages
- Exemplary damages
- Reinstatement



# General damages

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- Damages for mental distress not available for breach of contract so torts eg trespass must be pleaded: *Watts v Morrow* [1991] 1 WLR 1421
- Basis as explained in *Smith v Khan* [2018] EWCA Civ 1137:

45. But, in the case of unlawful eviction, damages for trespass must compensate the tenant not merely for the letting value of the property of which he has been deprived but also for the anxiety, inconvenience and mental stress involved in the loss of what was the tenant's home.



# How much?

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## *Smith v Khan:*

45 [...] A summary of recent County Court decisions indicate awards ranging between £100 and £300 per night. [...]

46. [...] But I think that he was entitled to set aside that award. In so far as it is explained by the District Judge in her judgment, it relies heavily on the passing rent and the allowance which it makes for other factors such as the inconvenience and anxiety caused to Mrs Smith is inadequate. Although the awards made in other cases cannot be treated as strict precedents and judges must feel free to base their awards on their own assessment of the damage which has been caused, they do indicate the value which has been placed by the courts in those cases on the additional factors I have mentioned. [...]

Award of £130 by circuit judge on first appeal confirmed.



## Cases since *Smith v Khan*

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- a. *Insalaco v One Room UK etc* (Employment Judge Glennie, County Court at Willesden 06.07.18, Legal Action September 2018) £125 per night for 202 days of sofa-surfing following exclusion of single man.
- b. *Vadher & Vadher v Property Arck* (HHJ Freeland QC, County Court at Central London 30.11.18, Legal Action May 2019) £35000 general damages for 372 days i.e. c. £94 per night.
- c. *Albu-Swalin v Regency* (HHJ Luba QC, County Court at Central London 19.02.19, noted on Nearylegal) £150 per day awarded plus 10% *Simmons* uplift for 60 days to a single man with “no particular hardship or distress beyond the simple loss of a home...”. Landlord’s appeal to the High Court failed.
- d. *Sanchez v Simple Properties* (HHJ Melissa Clarke, County Court at Central London 24.02.20, Legal Action April 2020) - £200 per day being awarded for 90 days to a single woman who had to sleep on a friends floor as a result of illegal eviction.





# How long for?

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- *Smith v Khan*, Patten LJ held that “a cause of action for damages for trespass continues for so long as the right to possession actually subsists” (para. 39).
- The period for damages in that case stopped at the end of the fixed term of the assured shorthold tenancy because:
  - Ms Smith had elected not to pursue reinstatement by then
  - The right of occupation therefore ended as neither Ms Smith nor her husband were in occupation then to trigger a statutory periodic tenancy under s. 5 of the Housing Act 1988
- Reinstatement therefore needs to be pursued



# Special damages

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- Client has the burden of establishing the loss.
- That means proving the existence of the item and its condition at the point of loss or damage, proving the loss or damage and proving the financial effect of that.
- The value is the cost of repair or replacement. It is for the client to prove that why repair is not reasonable or why replacement second hand in the same condition is not reasonable.
- Prepare the best available evidence for each items as soon as possible.
- Other financial loss can be claimed, eg. loss of work due to destruction of computer essential for work, extra costs of takeaway food



# Aggravated damages

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- Aggravated damages are additional compensatory damages to reflect aggravating features of the defendant's conduct. Not awarded for breach of contract.
- *Drane v Evangelou* [1978] 1 WLR 455 where an award of £1000 was upheld. Would now be nearly £7300 if updated for inflation. Awards c. £2000 more common.



# Exemplary damages

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- Exemplary damages are punitive damages awarded to punish the defendant. Also not awarded for breach of contract.
- *Rookes v Barnard (No.1)* [1964] AC 1129
  - (i) oppressive, arbitrary or unconstitutional acts by government servants;
  - (ii) where the defendant's conduct had been calculated by him to make a profit for himself which might well exceed the compensation payable to the plaintiff;
  - (iii) where expressly authorised by statute.
- *Albu-Swalin v Regency* (above) HHJ Luba QC awarded £4000 on the basis that the eviction was a criminal offence and the landlord had sought to make a profit. Upheld on appeal by Chamberlin J at [2019] EWHC 3713.



## s. 27 Housing Act 1988

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- Damages according to formula in s. 28 Housing Act 1988 i.e. difference in value between
  - the landlord's interest if the tenant's tenancy / licence continues
  - the landlord's interest if the tenancy/licence had ended
- Can't be awarded under s. 27 and liability arising under another cause of action
- Usually not worthwhile for Assured Shorthold Tenancy, but assess in each case
- Tenant must elect at trial whether to seek reinstatement or damages under s. 27:  
*Wandsworth LBC v Osei-Bonsu* [1999] 1 WLR 1011
- Expert valuation evidence needed, and instructions to valuer must raise the valuation assumptions in s. 28(3)



# Reinstatement

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- Following *Smith v Khan*, there is a presumption to pursue reinstatement at interim stage and by final order
- *And* failure to take steps to enforce an interim order for reinstatement may be taken as an election not to pursue it



# Thank you

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