

Transcript

RRA Unit 1.2

Section 8 discretionary grounds

Hello everybody. In this video, we are going to have a look at the Section 8 discretionary grounds. We're going to look at generally what is meant by a discretionary ground, and then we're going to look at the most common discretionary grounds that are likely to be seen by the housing options service from people who in effect are presenting at risk of homelessness. Remember in the previous video we looked at the mandatory grounds, Section 8 grounds for possession, and so we're now looking at the discretionary grounds. Okay, let's have a look at the slides.

So this is all about the discretionary grounds most likely to be seen by the council's housing options service. But first of all, we need to understand a bit more about the rules relating to possession for discretionary grounds. The important thing to understand is that for any of the discretionary grounds, even if the landlord has proven the evidence for the ground, the court does not necessarily have to grant the landlord possession. Why? Because it says what it says: it is a discretionary ground.

Grounds 9 to 18 are the discretionary grounds. We had a look at grounds 1 to 8 in the previous video, which were the mandatory grounds, and now we have grounds 9 to 18 as the discretionary grounds. A number of these grounds are linked to rent arrears or some breach of tenancy condition or behaviour. So we're likely to see quite a few of these grounds presented by landlords, relied on by landlords in terms of housing options cases, cases pregnant with homelessness.

Remember, the council housing options services are likely to see tenants presenting having been served a Section 8 notice where that includes one or more discretionary ground. Do remember from our previous training that a landlord can go on more than one ground. For example, a landlord might go for Section 8 ground 8, which is the mandatory ground for rent arrears, and might also rely on the discretionary grounds 10 and 11, which are also linked to any rent arrears or persistent delays or persistent arrears. So a landlord may well rely on more than one ground.

If they're relying on a discretionary ground – and let's be clear how that might happen – in the example I've just given you, I said they might rely on the mandatory ground, Section 8 ground 8 for rent arrears, and then the discretionary grounds for rent arrears 10 and 11. Let's say the landlord fails to prove their case on ground 8, the mandatory

rent arrears ground, and then the court turns to consider the discretionary grounds 10 and 11. The important thing to understand on any of the discretionary grounds is that a court will decide if it's reasonable to grant possession, and even if they do grant the landlord possession, they can delay possession by up to six weeks.

A housing options service obviously will be looking to provide evidence of the way they can support tenants to resolve the problem and to make sure that doesn't happen again – maybe rent arrears, maybe behaviour – and that will be important evidence that could be submitted to the court on behalf of the tenant, to provide the court with clear evidence as to whether to grant possession on the discretionary ground, taking into consideration the evidence from the council and looking at what can be done to resolve matters and to make sure that it doesn't happen again.

Let's look at these discretionary ground principles in a bit more detail. The big thing to understand is that the discretionary ground brings in what's called the test of reasonableness. The test of reasonableness is absolutely important. It's the primary, not the only, thing, but it's the primary thing the court is concerned with in deciding whether to grant possession on a discretionary ground. Will it be reasonable to grant possession after balancing the landlord's claim and the landlord's position with the tenant's circumstances? That's the balancing act that the county court judge will have to decide. Key factors include the severity of the breach (whatever it is the landlord's relying on), the tenant's conduct, and the proportionality of granting possession – in other words, the proportionality of evicting the tenant. It's important we break that down in a little bit more detail.

Even if the landlord is able to evidence the discretionary ground, the court will consider this test of reasonableness. They will consider other factors in applying the test of reasonableness. First of all, the prime one: reasonableness. Is this eviction reasonable under the circumstances presented? That's the circumstances of the landlord and the circumstances of the tenant. A court might need to look at how severe the issue relied on is. If it was antisocial behaviour, how severe is that antisocial behaviour and its consequences for the landlord, for neighbours, for the community? If it was rent arrears, how severe and significant are those rent arrears, even though those arrears might not meet the mandatory test on ground 8?

The court then wants to see what the tenant has done about it. A tenant that does nothing is less likely to be able to defend the claim for possession, whether it's on a mandatory or on a discretionary ground. So what are the tenant's actions to try and resolve the problem? For example, there may still be rent arrears, but have they tried to pay off the arrears? They might have been in a position where they were doing really

well on paying off the arrears, and then they had a change of circumstances and they've gone back into further arrears – they've gone backwards. But the court still wants to see what the tenant has tried to do to resolve it. What have they done to try and help themselves? Is there some form of commitment and action evidenced where the tenant has genuinely tried to resolve the problem?

The court is going to consider whether there is an impact on anyone else. There may be a severe impact on neighbours of serious antisocial behaviour, for example, and that's something a court is going to take into account. Keeping with the impact area on the discretionary ground, the court will consider whether there's a financial impact on the landlord themselves. For example, a landlord may have defaulted on their mortgage because of the lack of rent coming in from the buy-to-let property that they had. Can the landlord show that there's a financial impact on themselves?

Not just that: what will be the impact of the eviction on the tenant, and not just the tenant themselves, but any family members? The big one, of course, is that they could become homeless. If they could become homeless, that is a significant impact that a court is going to consider in the context of whether to grant possession on a discretionary ground. Obviously, education of children could be severely impacted if children are in exam-critical years and might have to move schools. A tenant could lose their job. Any impact on mental health is also important in the context of disability discrimination. Is there potentially an impact on the tenant's or a family member's mental health if possession was granted?

That's not the only thing a court will consider, but that gives you the framework of the key issues that the court considers. Remember, the test is reasonableness. Is it reasonable to grant possession? Is it reasonable to allow the eviction? There is a framework for the court to consider in deciding if it is reasonable or not.

Now let's have a look at the common discretionary grounds most likely to be seen by the housing options service. This is not all of the discretionary grounds, but the key grounds likely to be seen by the housing options service. First, grounds 10 and 11. Ground 10 is a situation where there are any rent arrears, and ground 11 is a situation where there have been persistent rent arrears. The landlord might be going on both grounds – that there are arrears and that there have been persistent arrears. Maybe the tenant has been persistently late in paying the rent, and always therefore in arrears, or there might just be persistent arrears, with always an amount of rent arrears on the account. This is the first of the grounds most likely to be seen by housing options services.

The first thing to remember is that the notice period for both of those grounds is four weeks. This doesn't mean that the landlord has to give four weeks for the first ground and a further four weeks for the second ground: you just go with the longest notice period. Both of these are four weeks, so it's a four-week notice.

What about the evidence that the landlord may need to provide to the court?

Remember, if you can work through the evidence that the landlord may need to provide, then you can consider what the defence could be for the tenants to submit to the court. If the landlord has not provided the evidence that you would expect them to provide to a court, then you can put in the defence to demonstrate that that evidence has not been provided. If the tenants put it in, or you on behalf of the tenant with their agreement have put that evidence into the court, then that's going to be evidence that the court will consider in deciding whether to give possession based on the discretionary ground.

In this example, how much rent has been paid would have to be demonstrated by the landlord, as well as the extent of the arrears – that's obvious. Also, the number of occasions rent has been paid late. If the landlord's going for persistent arrears and it's only been late once, then that's not going to work well with the court. Any correspondence between the landlord and tenant around the late payments is also relevant. Why might that be important for you in putting a defence? Because the tenant may have set out to the landlord the extenuating circumstances as to why the payments are late.

That's grounds 10 and 11 around the rent arrears. Let's look at another common ground that's likely to be seen by the housing options service: ground 13, deterioration of the property. Remember, this is a discretionary ground, and this is a ground where only two weeks' notice is required.

The likely evidence the landlord will have to provide to court, and therefore the defence that the housing options service can help a tenant to provide to the court, includes: specific areas and items damaged. Deterioration of a property is unlikely to be successful if it's a very minor issue. So what is the landlord relying on? Have there been several specific areas of the property that have deteriorated as a result of the tenant's action? What are the items that have been damaged? The landlord will need to set out the nature and the extent of that deterioration. Remember that we have fair wear and tear as a principle in any rented tenancy, and things like furniture, the property fabric, or decoration will deteriorate. So what is the nature and the extent of the deterioration? That might be pretty significant if the tenant has constantly flooded the property and brought about a deterioration to the floor, the walls, or created a risk

to the electrics, or whatever it might be. How was that deterioration caused? Was it by accident, or was it by deliberate actions of the tenant?

Obviously, dates are important, because a landlord might be relying on a problem which happened five years ago and there have been no further examples of that action from the tenant since. The landlord is going to have to provide photographic evidence. In terms of defending the claim, how conclusive is that photographic evidence? It might just be some grimy, out-of-focus pictures taken a long way away. The cost of the repairs, if known, is also relevant. The greater the cost to do the repairs that the landlord can evidence, the more chance they have of being able to get possession.

That's ground 13. We're going through the common discretionary grounds likely to be seen by housing options services, so let's move on to ground 14: antisocial behaviour. No notice is required on antisocial behaviour, so the landlord can pay their money and go straight to court to try and get a date to get possession. There is a definition of this. It includes illegal or immoral behaviour, but the main definition is where the tenant or anyone living in or visiting the property has been guilty of behaviour causing, or likely to cause, nuisance or annoyance to the landlord, to a person employed in connection with the housing management functions, or anyone else living in, visiting, or in the locality of the property. There is a clear definition of what the antisocial behaviour discretionary clause is.

Remember that it's going to be quite difficult for the landlord to gain possession on the mandatory ground 7 for antisocial behaviour, because it's quite clearly defined what would come under the mandatory ground. So lots of landlords will be going on ground 14. They might go on 7 as well, but they might not prove 7, so they fall back on the discretionary ground of ground 14.

What's the likely evidence that a landlord may need to provide to the court to prove the discretionary ground 14? Knowing what the evidence is that's likely to be required helps you, the council's housing options service, to help the tenant defend a claim if that evidence has not been provided. The landlord will need a description of the behaviour and the incidents, and this needs to be antisocial behaviour, not minor behaviour problems. The dates and times it has occurred, and the recurrence of that behaviour, so that it's not necessarily a one-off, are important. The persons affected by that behaviour also matter. Is it just the landlord themselves? Is it neighbours? Is the behaviour affecting lots of people within the community? Is it the landlord's agent? Is it all of those?

Witness statements are key. If I'm going to rely on the discretionary ground, it can't just be based on hearsay; you need evidence. There may be evidence such as police reports and crime reference numbers. But if there aren't police reports, or even if there are, what about witness statements from neighbours or from others? There may be police reports, and if there's a conviction that's happened as a result, what are the details of that conviction? Or it might not be a conviction; it might be some form of antisocial behaviour order issued by the council. Any correspondence with the tenant about that behaviour is relevant. You would normally expect a landlord not just to go straight to court. You'd expect a landlord to say, "I've got concerns over your behaviour; these are my concerns." That may have been in a letter or email. Then, what was the response from the tenant to that letter or email? Did they not respond at all? Did they respond abusively, or did they respond with evidence as to why they believe they haven't committed any form of antisocial behaviour? That's the likely evidence needed by the landlord, and knowing that, that's the likely defence that you, the housing options service, could help a person use to defend such a ground.

Let's have a look at another one of the discretionary grounds, ground 15: deterioration of furniture. The notice period for most of these grounds is two weeks, and again, this one is a two-week notice period. The likely evidence the landlord needs to provide – and what that means for the housing options service in defending – includes: the items of furniture affected; the nature and extent of the deterioration; and evidence of that deterioration. How does the landlord believe that deterioration of the furniture was caused? What were the dates? What's the photographic evidence to show the deterioration? There might be evidence showing that it was brand-new furniture the landlord put in at the start of the tenancy – photos from then – and then photographs of what's happened to that furniture: it's destroyed, it's broken, and so on. Also, the cost of the replacement or repair of that furniture will be relevant.

Remember, what the landlord is likely to do is throw that one in with another. They might go on the ASB discretionary ground 14, and they might also go on 15, deterioration of furniture, and they might also go on grounds 10 and 11, or one of them, on the rent arrears. So you could have a whole series of grounds relied on by the landlord.

Let's have a look at another one. Ground 17 is the false statement. It is another one where a two-week notice period is required, another discretionary ground with two weeks' notice. This is where the tenancy was granted due to a false statement made knowingly or recklessly by the tenant or someone acting on their instigation. So it's a false statement which led to the tenancy being granted by the landlord, where that

false statement was made knowingly or recklessly, and that could have been made by the tenant or someone acting on their instruction.

What's the likely evidence that the landlord may need to provide to the court for this discretionary ground, and therefore how should a housing options service help the tenant to defend the claim? What is the false statement that's been made or claimed to have been made? When and to whom was the false statement made? A really important point is how it is material to the granting of the tenancy. The statement might not have been relevant to the granting of the tenancy. The false statement has to be material to granting the tenancy – in other words, the landlord would not have granted the tenancy if that statement hadn't been made. What's the evidence that the statement was actually false? What's the evidence that the tenant knew it was false, or was acting recklessly? There may have been a false statement that the tenant just didn't know was false. What is the evidence they knew it was false? What is the evidence that it was reckless?

You can see that as a good example on ground 17, false statement, of how a housing options service is going to be able to provide quite a lot of information specifically to help the tenant defend that claim.

That's our run-through of the discretionary grounds. Just remember, in summary, this brings in the test of reasonableness. We have gone through, in this video, the framework that the court will use to consider whether to grant possession. As you can see, there is a lot behind what is the definition of reasonableness. It's not just the evidence, because the landlord may be able to prove the ground, but there is also the question of reasonableness, and there is also the question of what would be the hardship to the tenant of the court granting possession.

So it's not straightforward for the landlord. If they can't prove a mandatory ground and they then rely on the discretionary ground, the housing options service may well be able to help the tenant defend that discretionary ground by looking at the test of reasonableness and helping the tenant provide the evidence to the court that, in effect, it's not reasonable for the court to grant possession on that ground.

I'll see you on another video.