



# Mediation, an alternative to litigation

by Martin Plowman, solicitor and mediator

## Introduction

Disputes arise in all walks of life, and landlords and tenants are no exception. Traditionally we have gone to court to sort disputes out but these days there is a modern alternative which can be quicker; cheaper and often more satisfactory too; Mediation.

## What is Mediation?

Don't let the name mislead you. It's not about 'feeling the other side's pain' and then compromising in the middle. It's a commercially focused process where a qualified Mediator, ideally one with experience of landlord and tenant law, uses his or her training to facilitate a practical solution that recognises each party's rights, but also reflects their commercial and practical needs. The parties can go to Mediation without lawyers, though some prefer to take lawyers along.

## What are the Advantages of Mediation over Litigation?

**It works.** About 8 out of 10 mediations settle.

**It's quicker than litigation.** A Mediation can normally be arranged and take place in as little as two weeks, whereas even the 'accelerated' possession procedure available for shorthold tenancies typically takes between six to ten weeks, and defended litigation between landlords and tenants can easily take over a year.

### **It's cheaper than litigation.**

The cost of a Mediation starts from £50 plus VAT per party. The legal costs of fighting defended litigation can run to tens of thousands of pounds.

### **It's less risky than litigation.**

If a party doesn't like what's on offer, they don't have to settle. But, mostly, they do. Whereas all litigation ends with at least one loser; and often the only real winners are the lawyers!

### **It offers a more practical range of solutions than a court can offer.**

A judge can mostly only make an order for possession, or award a sum of money, for example, for rent arrears. That's fine if the dispute is about whether a tenant should be evicted, or about rent arrears. But a lot of disputes between landlord and tenant are actually about something else; the repair of a leaking roof, or the damp on the wall in the kitchen, or the times when a landlord can inspect the condition of the property

without being accused of harassment. A judge's award of damages in these circumstances can be a pretty blunt instrument and often leaves the 'winner' as well as the 'loser' feeling dissatisfied. Besides which it often fails to solve the problems for the future. A Mediation may offer a range of practical solutions that actually sort the problem out for good.

### Finally, ignoring the possibility of Mediation can be costly.

Litigants have been refused costs orders because they refused to mediate.

## Are all Landlord and Tenant Disputes suitable for Mediation?

Some are, but not all. These disputes between landlords and tenants may lend themselves very well to Mediation:

- ✓ Any seriously defended possession proceedings, where the speed and cost saving of Mediation offer advantages
- ✓ Disputes about disrepair or the condition of the property generally, where the practical approach of a Mediator can often address the real issues far better than a court can. Consider offering mediation either before or in the Early Notification Letter or the Letter of Claim (required by the Pre Action Protocol) or in response to them.
- ✓ Any case where the landlord would actually be content for the tenant to stay, if only the issue in dispute could be sorted out e.g where the tenant is

paying the rent but there's a problem as to when the landlord can inspect. If it's a shorthold the landlord could always serve a section 21 notice and go for possession, but that can be a sledge hammer to crack a nut if the tenant is otherwise ok, added to which there's then the hassle of finding a new tenant, and the risk of a void. It might be better to resolve the problem through a Mediation!

- ✓ Allegations of harassment. Monetary awards and injunctions are pretty blunt instruments for sorting these out, and often make the landlord and tenant relationship worse, not better.
- ✓ Disputes over the repayment of damage deposits, or between landlords and letting agencies, where the cost and expense of going to court can often outweigh the amount the parties are arguing about. (*Note however that there is a Landlord-Law Online kit for damage deposit claims*).

But some landlord and tenant disputes are not appropriate for Mediation:

- ✓ If a landlord just wants the tenant out, and has served the right notices, and the tenant doesn't have grounds for defending then, frankly, the landlord may as well go to court.
- ✓ If it's a simple matter of rent which the tenant won't (or can't) pay there may not be much a Mediator can do.
- ✓ If the tenant is going to want to be rehoused by their local council following an eviction order a mediated settlement could be inappropriate as it might make them 'intentionally homeless' in the eyes of the council.

And a word of warning; pressuring a tenant to go to Mediation if they've said 'no' to an

offer of Mediation could be construed to be harassment by the landlord. So if a tenant says 'no' then, frankly, the landlord's best course is to think 'more fool them' and to let the courts resolve the dispute. The landlord can always tell the judge later on, who is likely to be pretty unimpressed by the tenant's refusal to mediate.

## **How to get a Mediation started.**

Mediation will need the other party's consent. But that's not usually an obstacle. Most people are open to the suggestion of Mediation, and a letter politely offering Mediation and pointing out that if the other party doesn't agree the matter will go to court and they could be penalised in costs for having refused Mediation usually does the trick! After that, it's just a matter of finding and agreeing a suitable Mediator.

## **So how to find a Mediator?**

There are several companies that offer mediation services. Mediation-1st is run by the author, Martin Plowman, a fully qualified Mediator with extensive experience of landlord and tenant work. Tessa and Martin even clashed in court in the days before Martin became a Mediator! He or one of his fellow mediation-1st mediators will mediate throughout the country and his rates are competitive. Moreover, Mediation-1st will offer a 10% discount to both parties if either is a member of Landlord-Law; be sure to tell them before the Mediation to claim your discount.

© Martin Plowman 2004

*Martin Plowman is a partner with Leathes Prior, Solicitors in Norwich, and a qualified CEDR Mediator. You can find out more about his mediation services from the web-site*

<http://www.mediation-1st.co.uk>