

Procedural pitfalls in real estate litigation: key lessons from the Justice of the Peace

Two decisions from the Justice of the Peace – one from Woluwe-Saint-Pierre, the other from Thuin – recently published in the *Journal des Juges de paix/Tijdschrift van de Vrederechters*, provide important guidance on procedural requirements in real estate-related disputes. The first case addresses eviction proceedings under a residential lease in Brussels, while the second concerns anti-squat eviction measures. In both instances, procedural shortcomings led to the inadmissibility of the actions.



**J.P. Woluwe-Saint-Pierre, 28 November 2023,
J.J.P., 2025/5-6, 368**

A landlord brought proceedings before the Justice of the Peace in Woluwe-Saint-Pierre, seeking the recovery of rent arrears, termination of a residential lease, and eviction of his/her tenant. The central question was whether the landlord's failure to serve a prior formal notice (*mise en demeure/ingebrekestelling*), as required by the Brussels Housing Code (*Code Bruxellois du Logement/Brusselse Huisvestingscode*), would render the claim inadmissible, even when the tenant did not appear in court.

The judge confirmed that under articles 233quater and 233quinquies of the Brussels Housing Code, landlords are required to provide formal notice and to attach proof of this notice to the court summons when seeking the eviction of a tenant, failing which the claim is void. This obligation upholds the fundamental right to housing, which is considered a matter of public order. Judges are therefore required to verify compliance with this safeguard on their own motion. In this case, the absence of formal notice led the judge to declare the landlord's claim void and inadmissible.

The key takeaway for landlords in Brussels is clear: failure to attach proof of prior formal notice when pursuing eviction within a residential lease context will result in the claim being declared inadmissible, regardless of whether the tenant attends the hearing or does not appear.



J.P. Thuin, 13 May 2024, J.J.P., 2025/5-6, 365

A municipality sought to evict individuals occupying its property without title under Article 1344octies of the Belgian Judicial Code, filing a unilateral petition. The municipality argued that it could not identify any of the occupants. The Justice of the Peace was asked to determine whether this procedural route was valid in circumstances where some occupants might in fact be identifiable.

The Justice of the Peace of Thuin clarified that a unilateral petition for eviction is admissible only where it is absolutely impossible to identify any of the individuals concerned by the eviction. If some occupants are known or can be identified, the claimant must initiate adversarial proceedings, at least with respect to those persons. Absolute necessity is assessed strictly. In this case, the municipality provided a report from the mayor on the steps taken to identify the persons occupying the premises, which proved unsuccessful, but evidence demonstrated that some occupants could indeed be identified. As a result, the Justice of the Peace declared the unilateral petition inadmissible.

This decision confirms that a unilateral petition for eviction of squatters is only permitted when not a single occupant can be identified, despite reasonable efforts. Where any individuals are identified or can be identified, adversarial proceedings must be brought against them; otherwise, the claim will be inadmissible.



Conclusion

Whether pursuing eviction of a tenant under a residential lease in Brussels or recovering possession from squatters, strict compliance with procedural safeguards – such as serving valid formal notice or choosing the right type of petition – is non-negotiable. Failure to observe these formalities will render the claim inadmissible.

These decisions underscore the importance of scrupulous compliance with procedural requirements from the outset of judicial proceedings in order to prevent unnecessary setbacks in court.



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