

Section 21 Notices just got a lot harder

Thanks to recent legislation, serving a valid Section 21 Notice in England just got a lot harder, writes *Tim Briggs*, founder of tenant eviction company, *LegalMentor.co.uk*.

The difficulties firstly depend on when the assured shorthold tenancy (AST) began. There are 2 periods to bear in mind:

1. For ASTs that started before 1 October 2015

The old rules for serving Section 21 Notices still apply until 1 October 2018. Landlords can still serve a valid Section 21 Notice at any time during the fixed term of the tenancy. There is no change to the form of the Section 21 Notices used, and you can use the new Form 6A Section 21 Notice.

There is no time limit after which a Section 21 Notice expires – unless you give your tenants a new fixed term tenancy, or arguably if you change the terms and conditions of the tenancy.

2. For ASTs starting on or after 1 October 2015

The Section 21 Notice cannot be served until four months have passed from the start of the tenancy. However, if the AST is a replacement AST, you can serve the Notice so long as 4 months have passed from the start of the initial tenancy.

The Notice has a 6-month time limit from the date of service, after which time it will expire, and a new Notice needs to be served. You need to use the new Form 6A Section 21 Notice.

You also need to provide the following documents to tenants before serving a Section 21 Notice: (a) Gas appliance safety certificate (arguably this needs to be done before the start of the tenancy), (b) an Energy Performance Certificate, and (c) the document called 'How to rent: The checklist for renting in England' from the Government website (www.gov.uk/government/publications/howtorent)

The part most open to abuse is that any complaint in writing from the tenant about the condition of a property has to be responded to by the landlord within 14 days. The landlord has to set out in their reply



Tim Briggs, founder of LegalMentor.co.uk

what he or she intends to do, and the timeline for doing the repair work.

If the landlord then either fails to reply to the written complaint, or gives an inadequate response, or serves a Section 21 Notice, the tenant can complain to the local authority who must inspect the property, and may serve a remedial notice or carry out emergency remedial action. At this point the landlord's rights to evict under Section 21 will be held in limbo, and no Section 21 Notice can be served for 6 months, or until the council withdraws any improvement notice or prohibition order they may have served on you. Of course, the landlord can still serve a Section 8 Notice, but given the allegations of disrepair, some tenants may counterclaim and delay the landlord from getting possession.



Other issues to remember

- Some older assured shorthold tenancy agreements still state that the Section 21 has to expire on the last day of a rental period. Make sure you add two months and move the expiry date to the last day of a rental period.
- No Section 21 Notice will be valid if the property requires either a selective 'landlord' licence from the local authority or an HMO licence, and you have not yet applied for one.
- Section 21 Notices cannot be served for reasons linked to a tenant's disability.
- If you took a deposit after 6 April 2007, even for previous tenancies with the same tenants in the same property, but missed getting it registered by 23 July 2015, almost certainly the deposit will need to be returned to the tenant in order to serve a Section 21 Notice.
- If the prescribed information relating to the deposit has not been given to the tenants and relevant persons within 30 days of the deposit being received, the landlord cannot serve a Section 21 Notice until it is.

- Never expect the deposit scheme to provide all or any of the 'prescribed information' to the tenants. If you are not clear what you need to do, ring the scheme.

Conclusion

This is just a snapshot of the changes, but the difficulties landlords face in serving valid Section 21 Notices are a far cry from the simplicity of the 1988 Housing Act. Pressure on housing, criminal property owners and get-rich-quick workshops have turned the screw on decent landlords. This poor legislation just adds costs, which means higher rents. What we really need is for more properties to be built, so tenants can get a better deal. ■

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