**North Leicestershire Landlord Updater**

**Section 8 notice.**

In April 2016 a new section 8 notice was issued that **must be used for all possession applications from 1st December 2016.** Old ones will be invalid. The new one contains the additional grounds for possession that were ushered in by the Anti-Social behaviour, Crime and Policing Act.

The period will be 2 weeks or two months, depending on which of the grounds are being used.

**Section 21 notice.**

Radical changes have come in over this notice over the past couple of years.

S21s have to be for a minimum of 2 months and are now in a prescribed form for the first time (Form 6A) but there are a range of factors which can invalidate these notices.

**Retaliatory eviction.**

This is the legislation brought in as a response to public concerns that landlords would use the no-fault S21 procedure to evict a tenant when they complained to the council about the property condition.

Many in the landlord community feel this is a nonsense and blame Shelter for marketing the brand as a non-existent problem but government have responded.

Where a defect is flagged up by the tenant in writing the landlord has 14 days to respond, stating what the works will be and setting out a reasonable timescale to fix it.

Complaints are also considered made if the tenant complained to a person acting on behalf of a landlord

If the landlord doesn’t respond, if the landlord’s response is inadequate, or the landlord cant be traced then the tenant can complain to the local authority.

If the council serve a relevant notice then the trigger to invalidate the S21 is the date the council served the relevant notice, so any S21 served after that will be invalid

Once the council have visited and serve a ‘relevant notice’ on the property the notice will effectively block service of a section 21 notice for a 6 month period following service of the relevant notice or if the relevant notice has been suspended, within 6 months of the date of suspension.

A s21 notice would also be invalid if the tenant cannot get a satisfactory response from the landlord within 14 days and complains to the council and the landlord serves notice before the council serve the relevant notice.

This is an interesting requirement as many times the environmental health officer may seek to contact the landlord about the complaint beforehand, perhaps to arrange an inspection, which would alert the landlord to the tenant’s complaint.

A s21 is not invalidated if it was served before the tenant contacted the council.

Complaints about the condition of the common parts of a building are also covered as long as the landlord has a controlling interest in the common parts.

Section 34 (3) of the Deregulation Act 2015 provides an exemption to an invalid s21 notice where a relevant notice has been served and that is where the property is genuinely up for sale but handily the act goes on to say that it will not be considered genuinely up for sale if the proposal is to sell to:

* A person associated with the landlord
* A business partner of the landlord
* A person associated with a business partner of the landlord
* A business partner of a person associated with the landlord.

S21 will also not be invalid if at the time the notice is given, whether in breach of the relevant notice rules or not, the mortgage lender or a receiver is in the process of selling or repossessing the property.

**Relevant notices.**

This isn’t just any housing notice, there are only 3 that are of any use in blocking retaliatory eviction:-

* A notice served under section 11 of the Housing Act 2004 (improvement notices relating to category 1 hazards),
* A notice served under section 12 of that Act (improvement notices relating to category 2 hazards)
* A notice served under section 40 (7) of that Act (emergency Remedial)

So if the council serve any other type of notice it wont invalidate the S21. This includes Environmental Protection Act notices or a standard hazard warning notices, both of which are very common causes for environmental health officer involvement.

This provision is only for new Assured Shorthold Tenancies granted after the 1st October 2015 for the next 3 years. From October 1st 2018 all ASTs will come under it’s orbit.

Where the defect is the result of tenant misuse then the relevant notice will not invalidate the s21, Sounds obvious but think of the arguments that surround condensation v damp and you can see how complex this could get.

**Section 21 and deposit protection regulation.**

As you know the deposit protection legislation of the past 8 years has been an absolute fiasco. It was worded so badly in the original 2007 format that it fell apart on every case that went through the court of appeal.

Government re-drafted into the Localism Act 2011, it fell apart again.

Third time lucky.

**The (Current) situation:-**

* Any deposits taken on an AST have to be protected within 30 days of receipt of deposit.
* Proscribed information of the scheme being used must also be served within 30 days of receipt of deposit.
* If the landlord has not done either of these things the tenant can sue them for a penalty of up to three times the amount of the deposit.
* If the deposit was not protected within 30 days or the prescribed information not served the landlord cannot serve a s21 notice until they have returned the deposit to the tenant.
* If the deposit was protected but the prescribed information was not served or was defective then the s21 cannot be served until the prescribed information has been served.

So far so simple but read on:

**Deposits taken before April 2007 and where the tenancy became a periodic tenancy also before April 2007**

* The deposit doesn’t have to be protected nor the prescribed information served and the landlord cant be sued for not having done either HOWEVER, the landlord cannot serve a s21 until they have either protected the deposit and served the prescribed information or returned the deposit.

**Deposits taken before April 2007 but where a periodic tenancy arose after April 2007.**

* The Deregulation Act amnesty stated that landlords had until the 23rd June 2015 to protect deposit and serve prescribed information. If landlords have done this then they are safe and can serve section 21, even though protection was technically late.
* If not protected they cannot serve a section 21 until the deposit has been returned.
* The tenant can sue the landlord for the penalty.

**Deposits taken between 6th April 2007 and 6th April 2012 (Localism Act changes)**

* Back then the time period for protection was 14 days. If deposit not protected within 14 days but protected late within the life of the fixed term tenancy it will be considered protected and Section 21 can be served.
* If deposit was not protected and the prescribed information was not served then S21 can only be served if the landlord returns the deposit to the tenant. The tenant can also sue for the penalty.
* Or if the deposit was protected but the prescribed information not served or is defective then the prescribed information needs to be served first if S21 is to be valid.

**Deposit taken after 6th April 2012.**

* If the deposit and the prescribed information was not protected or served within the 30 days then no S21 can served during the initial tenancy until the deposit is returned to the tenant. And the tenant can sue for the penalty.
* If deposit was protected and prescribed information served late but still within the original fixed term but the tenancy has been renewed or become a periodic tenancy then S21 can be served, although the tenant can still sue for the penalty.If deposit not protected or prescribed information served within the original fixed term then S21 cannot be served until deposit returned to the tenant. The tenant can sue for the penalty but note…the penalty can apply to any subsequent tenancies.

**Chalmiston Properties Ltd v. Boudia (2015)** – ***deposit returned just 1 day after serving s21 makes the notice invalid.***

A county court case so not true case law but it does emphasise the principal that a section 21 will not be valid if an unprotected deposit is not returned to the tenant before service of notice.

Here the landlords failed to protect the deposit in time but protected it much later with DPS.

* On the 10th February 2015 the landlords contacted the DPS and asked them to return the deposit to the tenant.
* On the 12th February 2015 the DPS contacted the landlord and said the deposit had been returned to the tenant through a bank transfer.
* On the 14th February 2015 the tenant received the S21 notice
* On the 15th February the deposit arrived in his bank account

Judge held that as the notice was served before the tenant had his money returned the s21 notice was invalid and the possession application failed.

**Timescales 1:**

* A S21 may not be given before 4 months into the original tenancy – this new one blows out the normal practice of the past 25 years in serving S21 the day the tenant moves in. Very common among letting agents, but no more.

**Timescales 2:**

* A S21 will only be valid for 6 months after service on a fixed term but only 4 months if the tenancy is a statutory periodic one, before it expires. Prior to this a s21 had no time limit and could just happily sit for years waiting to be used in court. This will now mean that a landlord will only serve S21 when they actually intend to seek possession, not use it as a Sword of Damocles to hang over a tenant’s head.

**S21 and Gas Safe**

* A S21 will be invalid if the landlord does not have a current gas safety certificate. The Health and Safety Executive can prosecute for having no certificate, one of the few areas of policing the private rented sector that isn’t covered by the local authority, so it will continue to be a criminal offence for a landlord not to have a certificate but this is separate to the issuing of a S21.
* If the landlord provides a gas safety cert then he can serve an S21 without further penalty, unless the HSE decides to take action independently. Any such action however wouldn’t invalidate the S21.

**S21 and EPCs**

* A S21 will be invalid if an EPC certificate is required and the landlord doesn’t have a current one.

**S21 and The ‘How to rent” booklet**

Late in 2015 the government produced a booklet called ‘How to rent’, which is a guide for tenants providing some useful advice on tenants rights and landlords obligations.

The requirement to give a copy to the tenant at the start of the tenancy was quickly written into the Deregulation Act where it is referred to as ‘Prescribed information’

However don’t confuse this prescribed information with the prescribed information that must be given to a tenant in relation to deposit protection, its not the same one.

As with a lot of the Deregulation Act what is meant to be a simple idea ends up being anything but.

The booklet is not available in hard copy. A landlord will have to access the PDF version online and print it off if they want to serve it on the tenant or the Act goes on to set out that it can be emailed to the tenant if the tenant notifies the landlord or agent that they are happy to have it in digital form..

There is a worrying line in the legislation which states:

“The information is the version of the document entitled “How to rent: the checklist for renting in England”, as published by the Department for Communities and Local Government, **that has effect for the time being.”**

This is because there will inevitably be changes in law which will mean the booklet will need to be updated and a landlord could find themselves with an invalid s21 simply because they served an older copy on the tenant when they moved in.

In February 2016, just 4 months after the booklet was first published a second version was created which now supersedes the October 2015 version.

The Act also states that it is not necessary for a landlord to serve a new booklet where a tenancy is a replacement tenancy signed between the same landlord and tenant unless the booklet has been updated, in which case the newer version must be served on renewal.