

Section 21 claims



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- What is section 21?
- Will it be around for much longer?

10 point checklist for section 21 claims

1. Nature of tenancy
2. Stage of tenancy
3. Timing
4. Length of notice
5. Form of notice
6. Prescribed legal requirements (EPC, GSC and HtR)
7. Deposit
8. Licensing
9. Tenants Fees Act 2019
10. Retaliatory Eviction

1. Nature of tenancy

- Fixed term v contractual periodic tenancy
- S.21(1) v s.21(4)
- Contractual periodic: the date given in the notice must not be earlier than the earliest date that the tenancy could be brought to an end by a notice to quit given on the date of the s.21 notice.

2. Stage of tenancy

- Notice that expires during the fixed term
- Notice served during the fixed term that expires after the fixed term

3. Timing

(1) Cannot have possession order taking effect earlier than 6 months from date of grant of original tenancy (s.21(5))

(2) Cannot give notice within 4 months of when original tenancy began (s.21(4B))

(3) Must issue within six months from when notice was given (s.21(4D))

[NB.

Extensions for notices served between 29 August 2020 and 31 May 2021

Extensions for s.21(4) notices]

4. Length of notice

- Minimum of 2 months
- Exception 1: covid notices
 - From 26 March 2020 to 28 August 2020: 3 months
 - 29 August 2020 to 31 May 2021: 6 months
 - 1 June 2021 to 30 September 2021: 4 months
 - After 1 October 2021: reverted to 2 months
- Exception 2: s.21(4)
- Cannot start proceedings until the notice has expired

5. Form of notice

- Prescribed Form: Form 6A
- Errors in the notice: *Pease v Carter* [2020] EWCA Civ 175 at [39]

6. Prescribed legal requirements

- Only applies to tenancies granted on or after 1 October 2015 (*Minister v Hathaway* [2021] EWCA Civ 936)
- Energy performance certificate: can be complied with any time before service of the s.21 notice
- Gas safety certificate: can be complied with any time before service of the s.21 notice
- How to rent booklet: can be complied with any time before service of the s.21 notice

7. Deposit

- When LL receives deposit, they must do do things:
 - Protect it and comply with initial requirements of scheme, within 30 days of receipt
 - Give the tenant the prescribed information within 30 days of receipt
- if fail to do that, financial penalty

- What is the effect on ability to serve s.21 notices?
 - If failure to protect deposit/lrs within 30 days, **return** deposit before serving s.21 notice
 - If failure to give prescribed information within 30 days, provide info before serving s.21 notice (or return deposit)
 - Exception: s.215B

8. Licensing

- Mandatory, additional or selective licensing
- Cannot serve s.21 notice if required to be licensed and not licensed.
- Unless:
 - Temporary exemption notice; or
 - Valid application for licence has been made

9. Tenant Fees Act 2019

- No s.21 notice if the LL has breached the Act by requiring a prohibited payment and not repaying it
- Only in respect of payments charged by a **landlord**, not a letting agent
- Permitted payments =
 - Rent
 - Rent is less than £50,000 annually, deposit of no more than 5 weeks rent
 - Rent is £50,000 + annually, deposit of no more than 6 weeks rent
 - Holding deposit that is refundable and not more than one week's rent
- Returning of PP can be done by applying it to the rent account, but only with the consent of the tenant (not unilaterally by the landlord)

10. Retaliatory eviction

(1) Service of improvement notice or notice of emergency remedial action served by local authority

→ six month moratorium period when s.21 notice cannot be served.

(2) Written complaint by tenant to landlord, landlord does not provide adequate response within 14 days, tenant then complains to local authority, landlord serves a s.21 notice, local authority serves a notice before possession order is made

→ s.21 notice becomes invalid.

Thank you for listening

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