

Section 21 Procedure

Ben Fullbrook

Introduction



- What is an Assured Shorthold Tenancy?
- The section 21 procedure: what, how and when to serve?
- What is the effect of the notice?



What is an Assured Shorthold Tenancy?

- Section 21 applies only to assured shorthold tenancies (AST)
- An AST is an:
 - Assured Tenancy
 - Which satisfies additional criteria
- The vast majority of private sector residential tenancies are AST

What is an Assured Shorthold Tenancy?

What is an Assured Tenancy? (1)



Section 1 of the Housing Act 1988 (HA 1988)

*“(1) A **tenancy** under which a **dwelling-house** is **let as a separate dwelling** is for the purposes of this Act an assured tenancy if and so long as—*

*(a) the tenant or, as the case may be, each of the **joint tenants is an individual**; and*

*(b) the tenant or, as the case may be, at least one of the joint tenants occupies the dwelling-house as his **only or principal home**; and*

*(c) the tenancy is **not one which, by virtue of subsection (2) or subsection (6) below, cannot be an assured tenancy.***

(2) Subject to subsection (3) below, if and so long as a tenancy falls within any paragraph in Part I of Schedule 1 to this Act, it cannot be an assured tenancy;...”

What is an Assured Shorthold Tenancy?

What is an Assured Tenancy? (1) 'The conditions'



- A **'tenancy'** – i.e. not a license
- A **'dwelling'** – a place where a person lives or resides. Quite broad. Does not require presence of cooking facilities *Uratemp Ventures v Collins* [2002] 1 AC 301
- Let **'as a separate dwelling'** – beware shared facilities *Parkins v Westminster* (1998) 30 HLR 894
- Tenant **'an individual'** – i.e. an actual rather than a legal person – so not a company
- Occupation as **'only or principal home'** – no requirement that it be only home or constantly occupied. Just principal or main home.
- Not fall into one of the exceptions

What is an Assured Shorthold Tenancy?

What is an Assured Tenancy? (2) 'The exceptions'



- Schedule 1 to the 1988 Act
 - Note that there is no limit on length of the tenancy
 - Tenancies at a low rent are excluded (below £1,000/a in London and £250/a elsewhere)
 - Also...

Tenancies at high rent (i.e. rent exceeding £100,000/a)



Some student lettings



Holiday lettings



What is an Assured Shorthold Tenancy?

Specific criteria for an AST



- Section 19A of the HA 1988
- All assured tenancies which
 - Entered on or after 28 February 1997 or
 - Entered into before 28 February 1997 but meet the criteria in s.20 including service of notice in prescribed form
- And none of the exceptions in Schedule 2A apply, which include:
 - where landlord serves notice that the tenancy shall not be an AST
 - Assured tenancy by succession from Rent Act tenant
 - Statutory periodic tenancy arising from assured tenancy (where parties the same)



The Section 21 Procedure

- Section 21 provides an automatic right to possession on on two calendar months' notice:
 - During a fixed term tenancy (where there is a break clause)
 - At the end of a fixed term tenancy (s.21(1))
 - During a **contractual periodic tenancy** (s.21(4))
 - During a **statutory periodic tenancy**
- But note that there are barriers to the exercise of this right in certain circumstances (see next presentation)

The Section 21 Procedure

The end of a fixed term



“21.— Recovery of possession on expiry or termination of assured shorthold tenancy.

*(1) Without prejudice to any right of the landlord under an assured shorthold tenancy to recover possession of the dwelling-house let on the tenancy in accordance with Chapter I above, **on or after the coming to an end of an assured shorthold tenancy which was a fixed term tenancy**, a court shall make an order for possession of the dwelling-house if it is satisfied—*

(a) that the assured shorthold tenancy has come to an end and no further assured tenancy (whether shorthold or not) is for the time being in existence, other than an assured shorthold periodic tenancy (whether statutory or not); and

*(b) the landlord or, in the case of joint landlords, at least one of them has given to the tenant **not less than two months' notice in writing** stating that he requires possession of the dwelling-house.*

...

*(2) A notice under paragraph (b) of subsection (1) above may be given **before or on the day on which the tenancy comes to an end**; and that subsection shall have effect notwithstanding that on the coming to an end of the fixed term tenancy a statutory periodic tenancy arises.”*

The Section 21 Procedure

The end of a fixed term



- The general position in respect of fixed term tenancies is that s.21 will be available where:
 - The fixed term has (or will) come to an end
 - No new tenancy has (or will) been granted (other than a periodic tenancy)
 - The tenant has been given not less than 2 months' notice in writing. This notice may be given before the termination date. There is no need for the notice to specify a termination date

The Section 21 Procedure

During a contractual periodic tenancy



Section 21(4)

*“(4) Without prejudice to any such right as is referred to in subsection (1) above, a court shall make an order for possession of a dwelling-house let on an assured shorthold tenancy **which is a periodic tenancy** if the court is satisfied—*

*(a) that the landlord or, in the case of joint landlords, at least one of them has given to the tenant a notice in writing stating that, after a date specified in the notice, being **the last day of a period of the tenancy and not earlier than two months after the date the notice was given**, possession of the dwelling-house is required by virtue of this section; and*

*(b) that the date specified in the notice under paragraph (a) above is **not earlier than the earliest day on which, apart from section 5(1) above, the tenancy could be brought to an end by a notice to quit** given by the landlord on the same date as the notice under paragraph (a) above.*



The Section 21 Procedure

During a contractual periodic tenancy



NOTE: Section 21(4) applies to contractual Periodic Tenancies granted in England BEFORE 1 October 2015 where notice is given BEFORE 1 October 2018. The effect is that the notice must set a date for termination of the tenancy which is...

- a) At least 2 months from the date on which the notice is given (i.e. **received**)
 - b) Not earlier than the date on which a landlord could serve a notice to quit (i.e. gives a whole period of the tenancy except for a yearly tenancy which 6 months)
 - c) The last day of a period of the tenancy (so a one month period running from 4th of the month will terminate on the 3rd of the following month). Period usually runs from rent day but be careful: **Salford CC v Garner** [2004] EWCA Civ 364
- The date must be stated as being “**after**” not “**on**” **Notting Hill v Roomus** [2006] EWCA Civ 407
 - One way around (c) is to use a ‘saving provision’ in the alternative, e.g.:
“after 01/01/2012 or at the end of your period of tenancy which will end next after the expiration of two months from the service upon you of this notice” **Spencer v Taylor** [2014] H.L.R. 9

The Section 21 Procedure

During a contractual periodic tenancy



- For contractual periodic tenancies granted in England on or after 1 October 2015 and all contractual periodic tenancies still in existence on or after 1 October 2018 s.21(4ZA) provides:

“In the case of a dwelling-house in England, subsection (4)(a) above has effect with the omission of the requirement for the date specified in the notice to be the last day of a period of the tenancy.”

- In other words don't need to specify a date which coincides with the end of a period.

The Section 21 Procedure

During a statutory periodic tenancy



- Applies to a tenant holding over at the end of a fixed term
- You may serve notice under s.21(4) or s.21(1): **Spencer v Taylor**
- Therefore use s.21(1)!!
 - Simply requires notice period of not less than two months and not earlier than the date on which a landlord could serve a notice to quit (i.e. a whole period). No need to worry about end of period
- BUT be careful about contractual continuation. Unclear whether s.21(1) can be used for this so better to use s.21(4).

The Section 21 Procedure

Exceptions



- Section 21 also provides the window at the beginning of an AST in which a notice *cannot* be given. Section 21(4B) states:
 - “*(4B) A notice under subsection (1) or (4) may not be given in relation to an assured shorthold tenancy of a dwelling-house in England—*
 - (a) in the case of a tenancy which is not a replacement tenancy, within the period of four months beginning with the day on which the tenancy began, and*
 - (b) in the case of a replacement tenancy, within the period of four months beginning with the day on which the original tenancy began.”*
- “Replacement tenancy defined” in s.21(7): essentially same parties, same premises
- **NB s21(4B)-(4E) only apply to ASTs granted on or before 1 October 2015. Although, from 1 October 2018, these provisions will apply to all ASTs.**

The Section 21 Procedure

The notice



- There is now a prescribed form for all tenancies in England beginning on or after 1 October 2015 and all tenancies in existence on or after 1 October 2018: s.21(8) HA 1988 and Assured Shorthold Tenancy Notices and Prescribed Requirements (England) (Amendment) Regulations 2015
- Form 6A;
 - https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/515658/Form_6A_INTERACTIVE_FINAL_Possession_property.pdf

FORM 6A Notice seeking possession of a property let on an Assured Shorthold Tenancy

Housing Act 1988 section 21(1) and (4) as amended by section 194 and paragraph 103 of Schedule 11 to the Local Government and Housing Act 1989 and section 96(2) and (3) of the Housing Act 1996

Please write clearly in black ink. Please tick boxes where appropriate.

This form should be used where a no fault possession of accommodation let under an assured shorthold tenancy (AST) is sought under section 21(1) or (4) of the Housing Act 1988.

There are certain circumstances in which the law says that you cannot seek possession against your tenant using section 21 of the Housing Act 1988, in which case you should not use this form. These are:

- (a) during the first four months of the tenancy (but where the tenancy is a replacement tenancy, the four month period is calculated by reference to the start of the original tenancy and not the start of the replacement tenancy – see section 21(4B) of the Housing Act 1988);
- (b) where the landlord is prevented from retaliatory eviction under section 33 of the Deregulation Act 2015;
- (c) where the landlord has not provided the tenant with an energy performance certificate, gas safety certificate or the Department for Communities and Local Government's publication "How to rent: the checklist for renting in England" (see the Assured Shorthold Tenancy Notices and Prescribed Requirements (England) Regulations 2015);
- (d) where the landlord has not complied with the tenancy deposit protection legislation; or
- (e) where a property requires a licence but is unlicensed.

Landlords who are unsure about whether they are affected by these provisions should seek specialist advice.

This form must be used for all ASTs created on or after 1 October 2015 except for statutory periodic tenancies which have come into being on or after 1 October 2015 at the end of fixed term ASTs created before 1 October 2015. There is no obligation to use this form in relation to ASTs created prior to 1 October 2015, however it may nevertheless be used for all ASTs.

1

Form 6A

The effect of a s.21 notice

Possession proceedings

- Once the landlord has given the requisite notice he is (unless barred) automatically entitled to possession
- He must issue proceedings within 6 months of the date on which the notice was given (unless the notice period required was more than 2 months in which case he must commence proceedings within four months of the date specified in the notice): s21(4D)-(4E) HA 1988
- Proceedings must be brought under CPR Part 55 and may be brought under the accelerated possession procedure in CPR r.55.11 if all of the conditions in CPR r.55.12 are met.
 - Conditions include a requirement that there be a written tenancy agreement
 - Procedure avoids a hearing and generally quicker and cheaper

The effect of a s.21 notice

Common issues



Vs.



The effect of a s.21 notice

Common issues



- Agent acting as claimant instead of landlord
- Agent signing statement of truth on the claim form
- Failure to exhibit s.21 notice
- Claim for rent arrears (if accelerated procedure used)
- Defects in the notice (e.g. name of tenant, address, notice period)

The effect of a s.21 notice

Costs



- Fixed costs apply if:
 - Accelerated possession procedure (r. 45.1(2)(e))
 - An additional ground is rent arrears (r.45.1(2)(d))
 - The tenant gives up possession (r.45.1(2)(c))
- UNLESS :
 - the tenancy agreement makes provision for recovery of costs (if reasonable – r.44.5); or
 - The Defendant disputes liability



bfullbrook@landmarkchambers.co.uk



This seminar paper is made available for educational purposes only. The views expressed in it are those of the author. The contents of this paper do not constitute legal advice and should not be relied on as such advice. The author and Landmark Chambers accept no responsibility for the continuing accuracy of the contents.

