

# Section 21: pitfalls, problems and chaos

**Brooke Lyne**

## Introduction

- Section 21, Housing Act 1988:
  - “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.”
- No fault eviction – a straightforward route to possession?
- Deregulation Act 2015

## Prescribed Form

- Assured Tenancies and Agricultural Occupancies (Forms) (England) Regulations 2015.
  - Form 6A
  - “substantially to the same effect”
    - *Mannai Investment v Eagle Star* [1997] 2 W.L.R. 945

## The Notice

- Date
  - at least 2 months
- Signature
  - Bali v Manaquel Company Limited, County Court at Central London (HHJ Hand QC), 15th April 2016
- Timing
  - Not during the first four months
  - 6-month “sell-by date”

## Prescribed Information

- Section 21A
- Assured Shorthold Tenancy Notices and Prescribed Requirements (England) Regulations 2015

## Prescribed Information

- How to Rent booklet
  - To be given at the beginning BUT no apparent consequence for failing to give at the beginning
  - MUST be given before the s.21 notice is served
  - By email?
  - Does not apply for registered providers of social housing
  - Only applies to tenancies that began after 1 October 2015

## Prescribed Information

- Energy Performance certificate
  - Energy Performance of Buildings (England and Wales) Regulations 2012, regulation 6(5)

## Prescribed Information

- Gas Safety certificate - Gas Safety (Installation and Use) Regulations 1998, reg.36

“every landlord shall ensure that—

(a) a copy of the record made pursuant to the requirements of paragraph (3)(c) above is given to each existing tenant of premises to which the record relates within 28 days of the date of the check; and

(b) a copy of the last record made in respect of each appliance or flue is given to any new tenant of premises to which the record relates **before that tenant occupies those premises** save that, in respect of a tenant whose right to occupy those premises is for a period not exceeding 28 days, a copy of the record may instead be prominently displayed within those premises.”



## Prescribed Information

- 28-day period is disapplied
- Once and for all?
  - Caridon Property Ltd v Monty Shooltz, County Court at Central London (HHJ Luba QC), 2 February 2018
  - Rouncefield v Trecarrel House Ltd, County Court at Truro (HHJ Carr), 13 February 2019
    - Permission sought from CA

## Deposits

- Housing Act 2004, s.215(1):
  - “no section 21 notice may be given in relation to the tenancy at a time when the deposit is not being held in accordance with an authorised scheme.”
- Tenancy deposits have to be protected in an authorised scheme within 30 days
  - If not protected then you cannot serve a s.21 notice
  - Return it (s.215(2A))

## Deposits

- The “initial requirements” of the authorised scheme must be complied with within 30 days of the deposit being received
  - Otherwise, return the deposit (s.215(2A))
- Prescribed information must be given to the tenant within 30 days of the deposit being received
  - Late compliance possible
- *Sebastiampillai v Parr*, County Court at Central London (HHJ Gerald), 11 April 2019

## Property Licences

- Sections 75 and 98, Housing Act 2004
- A landlord of a premises that are required to be licensed (mandatory, additional or selective) may not serve a s.21 notice so long as the property is unlicensed.
- Apply for licence before serving the s.21 notice.

## Retaliatory Eviction

- Landlord cannot serve a s.21 notice within a period of 6 months from the date of service of a relevant notice
  - Notices under s.11 Housing Act 2004 (improvement notices for category 1 hazards)
  - Notice under s.12 (improvement notices relating to category 2 hazards) or
  - Notice under s.40(7) (emergency remedial action)
- Or, if a tenant complains in writing about the condition of the property AND the landlords does not adequately respond within 14 days AND then LA serves a “relevant notice”.

## Practical Issues

- Accelerated procedure – is it worth it?
- Serve a s.8 notice in the alternative (where possible)
- Check all the requirements before the claim is issued
- Witness statement that deals with **all** of the regulatory requirements
- Where there is problem, consider settlement from an early stage

## Costs

- Fixed costs
  - CPR 45.1(2)(e)
 

“the claim is a possession claim under Section II of Part 55 (accelerated possession claims of land let on an assured shorthold tenancy) and a possession order is made where the defendant has neither delivered a defence, or counterclaim, nor otherwise denied liability”
- Contractual right to costs
  - *Chaplain Ltd v Kumari* [2015] EWCA Civ 798

## The End of Section 21?

- On 15 April 2019 Secretary of State for Housing, Communities and Local Government, James Brokenshire, announced the Government's intention to abolish section 21:

*“By abolishing these kinds of evictions, every single person living in the private rented sector will be empowered to make the right housing choice for themselves not have it made for them. And this will be balanced by ensuring responsible landlords can get their property back where they have proper reason to do so.”*

- Consultation
- Policy of both of the main parties





**Thank you for listening**

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