

PROPERTY UPDATE

Make sure your Section 21 notices are correct !

With effect from and including the 1st October 2015, new provisions came into force relating to Section 21 notices.

The provisions of the Deregulation Act 2015 (“the Act”) and the Assured Shorthold Tenancy Notices and Prescribed Requirements (England) (Amendment) Regulations 2015 (SI 20115/1725) (“Regulations”) effectively introduced new requirements for serving a valid Section 21 notice.

The relevant transitional provisions will apply to all *new* AST’s starting on or after 1st October 2015 although, it should be noted that as of 1st October 2018 the provisions will apply to *all* AST’s in existence at that time.

By way of summary, the new requirements as of 1st October 2015 are as follows;

Prescribed Form of Section 21 notices

- Section 21 notices in relation to new AST’s granted after 1st October 2015 must be in the prescribed form although it is not necessary to use it if the *new* tenancy is simply a statutory periodic tenancy that arises following the expiry of a fixed term AST granted prior to the 1st October 2015.

Time Restrictions

- A Section 21 notice cannot be served until four months from the commencement of the tenancy. In the context of replacement tenancies (new tenancies with the same parties and the same property) the notice cannot be served within four months of when the original tenancy began.
- Following a Section 21 notice being given under a fixed term AST or a periodic AST possession proceedings must be commenced within six months of the date the notice was given (Section 36 Deregulation Act 2015) although in certain instances where a periodic tenancy exists the relevant period may be greater than two months from the expiry of the notice.
- The requirement for expiry of notices to a periodic tenant to expire on the last day of the period of the tenancy has been removed.

Prescribed Information

- Landlords are required to provide tenants with certain prescribed information by way of a copy of the Department for Communities and Local Government’s booklet entitled “How to rent: the checklist for renting in England”.

Retaliatory eviction

- A Section 21 notice will be invalid if served after the tenant has complained in writing to the landlord concerning the conditions in the property and the landlord has not responded adequately within fourteen days, and following on from this, where the tenant makes a complaint to the local authority, who then serve a 'relevant notice' on the landlord.
- A Section 21 notice cannot be served for six months where a landlord has been served with a 'relevant notice' although certain landlords may be exempt.
- A Section 21 notice cannot be served where a landlord has failed to provide a gas safety certificate or an electrical performance certificate.

Tenant leaving an assured shorthold tenancy

- A tenant leaving following the expiry of a Section 21 notice, will be entitled to a repayment of any rent which has been paid in advance in respect of the period after the end of their occupation which is calculated on a pro-rata basis.

***George Patros
Property Barrister***

***Clerksroom
218 Strand
London***