

FACT SHEET

The Section 21 Procedure and Considerations Prior to Issuing a Notice

KEY CONTACT



Sam Cook

Partner

t: 01279 712517

e: scook@nockolds.co.uk

Section 21 of the Housing Act 1988 (s.21) is often the procedure of choice for landlords wanting to obtain possession of a rented property as it requires the court to issue a possession order without a landlord establishing a 'ground' for possession. Landlords should, however, be aware of the restrictions and requirements on serving a valid s.21 notice introduced by the Deregulation Act 2015 (the '2015 Act').

The 'new' requirements are now compulsory for all assured shorthold tenancies.

The New Requirements

Prior to serving a s.21 notice, the landlord needs to show that they have sent the following information to the tenant before the s.21 notice was served:

- » The government booklet: 'How to rent: the checklist for renting in England'.
- » Gas Safety Certificate
- » Energy Performance Certificate

This information does not have to be sent out at the outset of the tenancy but it would be advisable to do so in all cases to avoid complications later on.

In order to serve a valid s.21 notice, it is still a requirement for the landlord to protect any deposit and to provide the tenant with the necessary prescribed statutory information within 30 days of receiving the deposit monies. If the landlord has not protected the deposit and provided the necessary prescribed information, the landlord may need to return the deposit to the tenant before they serve a s.21 notice.

KEY CONTACT



Alex Haddad

Legal Director

t: 020 3892 6805

e: ahaddad@nockolds.co.uk

In some cases, the landlord and tenant have maintained an amicable relationship and the tenant has told the landlord that they will not object to possession proceedings, perhaps because their circumstances have changed and they want to be re-housed by the local authority. However, even if the tenant does not raise an objection to the possession proceedings, the court may still find that the s.21 notice is invalid because a judge will review the possession claim and the supporting documentation appended to it.

Timings

The new procedure places strict timelines on landlords, which must be complied with. In summary:

- » Tenants are currently given 4 months' notice to vacate before a landlord may apply for possession. The notice period has been changed a number of times since March 2020 to take account of the pandemic but the notice period will revert to 2 months from 1 October 2021. You should check the notice period which applies before serving a section 21 notice
- » Section 21 notices cannot be served within the first four months of a fixed term
- » In order to obtain possession on the basis of a section 21 notice served on or after 29 August 2020, a possession claim must be issued within 4 months of the end date specified in the notice but the position is likely to be reviewed at the end of September 2021.

As a result of changes introduced by the 2015 Act, the notice no longer needs to expire at the end of a rental period if the term of the tenancy has expired and a month-to-month statutory periodic tenancy has arisen. Landlords should, however, check the wording of the tenancy agreement carefully as the tenancy may stipulate different requirements for the service of notices, especially as some tenancy agreements have been drafted with the old procedure in mind and stipulate that any notice must expire at the end of a rental period.

The s.21 notice must expire after the fixed term has ended and cannot be served within the first four months of a fixed term. The reason for this change is to put a stop to landlords serving a s.21 notice at the start of tenancies, which they could then rely on at any time.

Complaints about the Condition of a Property

It used to be the case that if the landlord had complied with all of the requirements of s.21 notice then there was no defence a tenant could raise and the court must have made a possession order. However, the new s.21 procedure now prevents landlords being able to serve s.21 notices in retaliation where tenants have raised complaints about the condition of the property.

Where a tenant raises a complaint about the condition of a property in writing, the landlord will have 14 days to respond setting out what they intend to do and the timeframes for carrying out any remedial work. If a landlord fails to respond or gives an inadequate reply, the tenant may complain to the local authority. If the local authority serves an improvement notice or carries out emergency remedial work, any s.21 notice already served will be invalid and the court will strike out any subsequent possession proceedings. No further notice can be served for a period of six months.

This provision offers, much needed, protection for tenants whose properties are in a state of disrepair. The concern for landlords, however, is that it may lead to tenants making increased complaints about the property, which may sometimes be tactical especially if they have allowed rental arrears to accrue. Whatever the circumstances, the important requirement for the landlord is to respond adequately within 14 days.

Compliance with the Tenant Fees Act 2019

The Tenant Fees Act 2019 (the '2019 Act') restricts the type and amount of fees that can be charged in connection with the administration of rented property. The 2019 Act applies to all tenancies granted on or after 1 June 2019. There is a grace period of one year for existing tenancies, which runs from 1 June 2020, but the provisions will apply to all tenancies entered into before 1 June 2019 that have a term of more than one year. The 2019 Act prohibits all charges in connection with a tenancy except for those which are permitted in Schedule 1 to the 2019 Act.

A valid s.21 notice cannot be served upon a tenant if the landlord has charged a tenant for any sums that are prohibited by the 2019 Act or is holding an unauthorised deposit. The 2019 Act caps the amount of deposit at the equivalent of five weeks' rent if the annual rent is less than £50,000 and six weeks' rent if the annual rent is £50,000 or more.

Court Procedure for Possession

If the tenant has not vacated the property by the expiry of the s.21 notice, the next step is for the landlord to apply to the County Court for possession of the property.

Where the accelerated possession procedure is used, it is not usually necessary for a court hearing to take place. There are certain criteria that need to be in place for the accelerated procedure to be used and if these criteria are not met, the landlord will have to use the standard procedure and a court hearing would usually take place.

A possession order will be made if the judge is satisfied that the tenancy has been correctly brought to an end by service of the correct form of s.21 notice and the claim form has been served on the tenant. The court will usually order the tenant to give up possession of the property within 14 days. However, in cases of exceptional hardship this can be extended up to six weeks.

The next step is to apply for a warrant of possession, which will result in bailiffs attending the property to evict the tenant.

Summary

Overall, the new procedure does offer some much needed protection to tenants if the property is in disrepair and the form does make the procedure more straightforward for landlords. Landlords should, however, exercise caution, diarise and comply with all deadlines, act on any complaint about the condition of a property and make sure that they have complied with all the necessary requirements. Failure to do so will undoubtedly result in the process having to be repeated and subsequently further time and costs being spent and, in most cases, further rent arrears.