



# PUMP COURT

CHAMBERS

## **Section 21 Possession**

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# Introduction

- Section 21 and section 8 of the Housing Act 1988 (for ASTs).
- No-fault evictions and reform.
- A possession claim under section 21 if:
  - a) the tenancy is an AST;
  - b) the fixed term has expired;
  - c) the deposit has been paid into an appropriate scheme and the tenant given notice of the relevant details;
  - d) there has been compliance with the prescribed requirements;  
and
  - e) the correct notice of termination of the tenancy has been provided to the tenant.

# Tenancy deposit schemes

- Sections 212 – 215 Housing Act 2004.
- Deposit must be protected under a government-authorized scheme and prescribed information provided within 30 days (post 6 April 2012) or 14 days (pre 6 April 2012).
- There are two general sanctions for failing to comply with the deposit requirements:
  - 1) Section 21 notice will be invalid if deposit not protected and/or prescribed information not provided. However, this can be remedied by returning the deposit to the tenant and/or providing the information prior to the notice;
  - 2) The landlord may be required to pay money to the tenant under section 214.

# Prescribed requirements

- ASTs granted after 1 October 2015 (*Minister v Hathaway* [2021] EWCA Civ 936).
- Section 21 notice will be invalid unless the landlord has provided:
  - 1) Energy performance certificate;
  - 2) Gas safety certificate; and
  - 3) How to Rent Booklet.
- *Trekarrell House Ltd v Rouncefield* [2020] EWCA Civ 760.

# Tenant Fees Act 2019

- Section 3(1) prohibits all payments in connection with a tenancy except payments which are expressly permitted.
- Permitted payments can be found in Schedule 1. (rent, deposit, default fees etc).
- Section 21 notice will be invalid if the landlord is in breach.
- Importantly, tenancy deposits are capped at 5 weeks' rent where the annual rent is less than £50,000. Anything more is a prohibited payment and will invalidate a section 21 notice.

# Retaliatory evictions

- Section 33 of the Deregulation Act 2015.
- Section 21 notice will be invalid if:
  - 1) the tenant has made a complaint about the condition of the property or the common parts of the building which the premises form part of;
  - 2) the landlord has not provided an adequate response within 14 days of receiving the complaint or has responded by serving a s.21 notice;
  - 3) as a consequence of the landlord's failure to provide an adequate response within the given time frame, the tenant has then made a complaint to the local housing authority about the condition of the property; and
  - 4) the local housing authority has then served a "relevant notice" on the landlord in response to the tenant's complaint.
- Proceedings must be struck out (section 33(6)).
- But there are a number of exemptions:
  - 1) the condition of the property has been caused by the tenant's failure to use the premises in a tenant-like manner;
  - 2) where the landlord intends to sell the property and at the time of the s.21 notice the property is genuinely on the market for sale;
  - 3) where the landlord is a private registered provider of social housing; and
  - 4) where LPA Receivers have been appointed.

# Section 21 notice

- Form 6A - prescribed form (section 37 of the Deregulation Act 2015), to be used for all ASTs in England whenever granted.
- Section 21(1) = served during the fixed term. Can be served before the tenancy expires to take effect on the date the tenancy expires. Must be more than 4 months after commencement of tenancy.
- Section 21(4) = served after the fixed term i.e. during periodic tenancy.

- Notice period and the Coronavirus Act 2020

*Usually 2 months*

*26 March 2020 until 28 August 2020 – 3 months*

*29 August 2020 until 31 May 2021 – 6 months*

*1 June 2021 until 30 September 2021 – 4 months*

*1 October 2021 onwards – 2 months*

- Duration of validity

*Usually 6 months*

*29 August 2020 until 31 May 2021 – 10 months*

*1 June 2021 until 30 September 2021 – 8 months*

*1 October 2021 onwards – 6 months*

# Accelerated procedure

- CPR 55, Part II.
- PD 55C, paragraphs 6.1 and 6.2 only apply to claims issued up until 30 June 2022.
- Form N5B. Notice must have expired before proceedings are issued.
- No hearing (likely) but no money judgment.



# The hearing

- Possession list.
- Up to date rent schedule and mesne profits.
- Exceptional hardship.
- Interest and costs.
- Is there a clause in the tenancy?
- If not, CPR 45.5 and 45.6 (plus court fee).



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