

Section 21 and Retaliation

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All Change

- Deregulation Act 2015 makes big changes to s21
- In force for new and renewed tenancies after 1 October 2015
- Main changes
 - Prevents use of s21 where condition complaint made
 - Standard form s21 notices
 - Time limits on s21

Condition

- Assertion was that landlords were using s21 instead of dealing with legitimate tenant complaint about property condition
- New restrictions on service of an s21 where there is a complaint about condition in the property

NB. this is not about disrepair.

Condition refers to the status of the property under the HHSRS which is more restrictive

Limits

- Local Authority Improvement Notice (including suspended)
- Local Authority Emergency Remedial Action

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No s21 can be served for 6 months

Tenant Complaint

- Tenant can complain about condition in writing
- Landlord must respond in writing within 14 days
 - Stating what they intend to do
 - And timescale for doing it
- If there is no response or an inadequate one or an s21 is served
 - Tenant can complain to local authority
 - Who can then serve an Improvement Notice
 - And any s21 served will be invalid

Exemptions

- ▶ Very limited exemption to condition
 - ▶ Only where a genuine sale planned
- ▶ Substantial anti-avoidance provisions
 - ▶ So sale must be to a totally unconnected third party



Points to Note

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The Landlord Reply

- ▶ Landlord reply within 14 days is in a sense irrelevant
- ▶ Its existence does not stop the tenant complaining
 - ▶ And many probably will regardless of a reply
- ▶ DCLG has indicated existence of reply should weigh into decision on which notice to serve
 - ▶ But no guidance
- ▶ Operating and enforcement guidance for HHSRS also badly out of date

The Right Notice

- ▶ Inevitable pressure on LHA over notice
- ▶ Service of a HAN gives tenant no protection
 - ▶ But service of an Improvement Notice may be overkill
- ▶ Note *Kassim v Liverpool*
- ▶ Importance of a 2 stage test
 - ▶ Assessment of the hazard score
 - ▶ Then consideration of the tenant's desires, the property, and the actual risk in this case
- ▶ Key factors
 - ▶ Intention to evict rather than do works
 - ▶ Tenant behaviour, a notice where a tenant is in arrears and is adding to the problems would probably be inappropriate
 - ▶ Landlord cooperation militates against notice

Suspended Notices

- ▶ Odd situation with Suspended notices
- ▶ Notice can be served while suspended
 - ▶ But not when suspension ends
- ▶ Probably not intended
 - ▶ But actually works better this way in practice

Costs

- ▶ Formal notice allows charging of LHA costs
 - ▶ Not all LHAs do this but more probably will
 - ▶ Cost may be more accurately charged
- ▶ Still an issue of collection however
- ▶ Some LHAs may eschew informal action
 - ▶ But the Regulator's Code requires it

Pressure and Appeals

- ▶ LHA in middle of different wants from landlord and tenant
 - ▶ Tenant wants Improvement Notice
 - ▶ Landlord wants HAN
 - ▶ Formal notice justifies LHA costs
- ▶ Landlord's might be best to always appeal
 - ▶ Cost is low
 - ▶ It takes less time than the 6 month exclusion
 - ▶ They may well win- especially as it's a re-hearing

Court

- More hearings are likely to consider these issues
- A tenant asserting in accelerated matters that they have made a complaint will likely need a hearing
- Does the Court service have capacity?
 - Especially during a period of cuts
- More hearings may cause collapse of accelerated possession mechanisms
 - And will have knock on effects



Other Matters

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Standard Form s21 and Time Limits

- New standard form s21 which **must** be used
 - Sets out the tenant's rights
- Additionally no s21 can be given in first 4 months of initial tenancy
 - In practice makes it hard for a 6 month tenancy to end at end of fixed term
- If an s21 is given then it ceases to be useable 6 months after service
 - So they have a use it or lose it provision

Additional Requirements

- Section 21 can only be given once certain requirements have been complied with
- These are service of
 - EPC
 - Landlord's Gas Safety Certificate
 - How to Rent guide
- Independent of criminal aspects
- Guide can be sent by email

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