

# Section 21 Notice Requiring Possession of an Assured Shorthold Tenancy

(The Housing Act 1988)

Under the Housing Act 1988, a landlord who has granted an assured shorthold tenancy has a legal right to get his property back at the end of the tenancy. In order to invoke this right, he is required to follow the correct legal procedure which includes service of a notice (under section 21 of the Housing Act 1988) on his tenant. Section 21 is divided into sub-sections with different rules applying to notice served during the fixed term of a tenancy and notice for possession that is served during a statutory periodic tenancy.

## Fixed Term Tenancies:

Section 21 of the Housing Act 1988 requires that the landlord provides tenants of an Assured Shorthold Tenancy (AST) with a minimum of two months' notice in writing that he/she wants possession of the property. Extra days should be added if the notice is to be sent by post as the two month period starts when the tenant receives the notice.

The notice must be served before possession action can be started. In the case of joint landlords the notice can be given by any one of them. Possession under this section cannot take place during the initial six months of the original tenancy. The provisions in section 21(1)(b) apply to fixed term tenancies. They state:

'Without prejudice to any right of the landlord under an assured shorthold tenancy to recover possession of the dwelling-house let on the tenancy in accordance with Chapter I above, on or after the coming to an end of an assured shorthold tenancy which was a fixed-term tenancy, 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 a statutory periodic tenancy; 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 stating that he requires possession of the dwelling-house.'

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Notice under this subsection can be served on a tenant at any time during the fixed term of the tenancy, but not before the fixed term begins, provided that the tenant receives a minimum of two months' notice. This is the case even if the two months' notice ends after the fixed term of the tenancy agreement has expired. For example, if notice requiring possession is served on the last day of the tenancy agreement, the tenant does not have to give up possession of the dwelling-house until at least two months after the date that the notice was served. Care should be taken with the issue of a s21 notice at the start of the tenancy. Notices issued on the day the tenancy started may be declared void where a tenant alleges that it was issued on the day but before the tenancy was created (*Turpitt v Elizabeth*). Similarly provisions with regard to HMO licensing under the Housing Act 2004 prevent section 21 notices being given where a house in multiple occupation (HMO), which is subject to mandatory or selective licensing, is not licensed. There are equivalent prohibitions in relation to section 21 notices with regard to tenancy deposits, if either a deposit is not held in accordance with an authorised scheme, or the initial requirements of a scheme have not been complied with.

The notice should be dated in accordance with the provisions above. Also, a notice should not be dated to expire on or before the last day of the tenancy as this would be invalid. For example, where the tenancy was due to expire on 31st December, then the section 21 notice could be served on or before 31st October, and the notice dated to expire 'after 31st December.'

## Periodic Tenancies:

S.21(4)(a) of the Housing Act 1988 applies to assured shorthold tenancies that have become periodic and states:

Without prejudice to any such right as is referred to in subsection (1) above, a court shall make an order for possession of a dwelling house let on an assured shorthold tenancy which is a periodic tenancy if the court is satisfied-

(a) that the landlord or, in the case of joint landlords, at least one of them has given to the tenant a notice stating that, after a date specified in the notice, being the last day of a period of the tenancy and not earlier than two months after the date the notice was given, possession of the dwelling-house is required by virtue of this section; and

(b) that the date specified in the notice under paragraph (a) above is not earlier than the earliest day on which, ....., the tenancy could be brought to an end by a notice to quit given by the landlord on the same date as the notice under paragraph (a) above.'

The procedure for serving notice under s21(4)(a) is slightly more complicated. A notice complying with the above section should only be given to a tenant whose tenancy has become a statutory or contractual periodic tenancy, a tenancy that continues after the expiry of a fixed term assured

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shorthand. A minimum of two months' notice is required and the day on which the notice expires must be the last day of a period of the tenancy. The period of a tenancy depends on how often the rent is paid. Thus, if the rent is paid monthly, then the period of the tenancy is one month. In order to find out what day is the last day of the period in a particular tenancy it will be necessary to refer to the original fixed term tenancy. The periodic tenancy begins immediately after the fixed term expires, e.g. if the period of the tenancy is monthly and if the first day of the current period is 3rd March then the last day of that period would be the 2nd April and so a notice served during the current period would need to be completed so as to expire on the last day of a period after a further two months, i.e. 2nd June.

As with a fixed term s21 notice, see above, care needs to be taken to ensure that the notice has been issued after a deposit has been protected and the necessary information provided and, where appropriate, HMO registration has been undertaken.

To recover outstanding rent and possession of a dwelling house, the landlord must seek possession by issuing a notice under section 8 of the Housing Act 1988, as amended by the 1996 Act and it is not necessary to issue a section 21 notice as well.

## Renewals / Validity:

A section 21 notice will remain valid indefinitely, until it is ended by a new tenancy agreement being signed with the tenant. After this the landlord will need to serve a new section 21 notice.

Where a s.21 notice is served during the initial term of the tenancy requiring possession at the end of the fixed term and the parties later agree to renew the tenancy for a further fixed term, a fresh notice will need to be issued to the tenant(s) before possession can be sought.

## Service of Notice:

A section 21 notice may be served by post or in person. The courts will recognise the day of postal service as the day on which the letter would normally have arrived. It is suggested that the sending of the notice is witnessed by a colleague. When using postal service, it is recommended that the notice be sent by either registered or recorded delivery and that a minimum of three working days is allowed for the notice to arrive. The Housing Act 1996 amended the section 21 of the 1988 Act by requiring the notice given to be in writing. There is still no prescribed form. The notice will be valid providing it contains the information required by the relevant section and sub-sections.

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