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Property news and review

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What does the future hold for Section 21 Notices?

Early in 2019 the Government announced that it intended to abolish Section 21 Notices. This effectively means an end to Assured Shorthold Tenancies as all future tenancies will be assured – either as fixed-term or contractual periodic arrangements. It is proposed that that the minimum fixed term will increase from the current six months to up-to two years.

The Government Consultation published in July 2019 has taken place (it closed in October 2019) and the results are awaited. The Queen's Speech in December 2019 included reference to a Bill to abolish Section 21 Possession claims.

A Section 21 notice provides an assured shorthold tenant with a minimum of two-month's notice to leave a property. Under the current Section 21 regime no reason for the eviction needs to be given ie "no fault eviction". Having said that, Section 21 Notices are commonly given to tenants when there are rent arrears as many landlords argue that it is an easier process than having to argue in court about the reasons for the eviction.

For a tenant, this means that the threat of eviction is just one step away, at any time, without any explanation being necessary. Provided the Section 21 Notice is valid, there is no recourse available to a tenant. The landlord just needs to tick the relevant boxes on the Claim Form and obtain a possession order without even having to attend before a District Judge.

The introduction of the Deregulation Act 2015 has made the Section 21 Procedure more complex for landlords as there are now many hoops to get through before a landlord can serve a Section 21 Notice (Gas Safety Certificates, Energy Performance Certificates, How To Rent Guide, HMO Licence, securing the tenant's deposit, compliance with the recent ban on letting fees) – the list is endless.

Recent cases have held that where a landlord has failed to comply with the provisions of the Deregulation Act (namely failing to provide a Gas Safety Certificate at the start of the tenancy) he is unable to rely on the no fault basis for termination of the tenancy ever, and will have to rely on another ground for possession (ie rent arrears).

The Government has proposed that the Section 8 procedure (where a reason for the eviction must be given) will be amended by adding three new grounds for possession.

The first two grounds are mandatory (so the Court must make a possession order if the ground is proven) are where a landlord wishes to sell or move a family member into the property. The third new ground (which is discretionary) is where the tenant prevents compliance with legal safety standards.

This means that landlords will still be able to end tenancies where they have a legitimate reason to do so. These proposed "new grounds" will be in addition to the existing grounds which allow landlords to evict tenants who don't pay the rent or commit anti-social behaviour.

Landlords need to have confidence that they will be able to regain their property quickly in cases where the tenant has broken the terms of their tenancy agreement or where the landlord has other reasonable grounds. This can only happen if there is a simpler and faster eviction process through the court system. The current court system does not lend itself to a speedy process. The Government needs to overhaul the court system before bringing in the proposed changes.

Whilst there is a need to provide more secure long term accommodation to vulnerable tenants there will be a concern amongst landlords that the new proposals will prevent them from regaining possession of their property as and when they require it. Without these assurances landlords may be prompted to leave the market, which would not help tenants.

In December 2017, the Scottish government abolished the equivalent of England's Section 21 and introduced new, indefinite tenancies for private tenants (Private Residential Tenancy). The general overview is that the new regime is working well provides tenants with a degree of security that they will not be evicted on short notice.

It is important that tenants in England, do not have to worry about not being able to find another decent and affordable home when they are asked to leave their current property. The constant threat of eviction is central to the insecurity of many assured shorthold tenants. Therefore the proposal to abolish the Section 21 Notice will bring peace of mind to the four million people living in the private rented sector and hopefully be the start of solving the housing crisis in England.

The Tenant Fees Act 2019 – changes ahead

Residential landlords should be aware of the new legislation that has been introduced to stop tenants being required to pay their landlords additional fees.

Currently the restrictions set out below apply to all new tenancies entered from **1 June 2019.** However, from 1 June 2020 it will apply to all private assured shorthold tenancies even ones entered prior to 1 June 2019.

The Tenant Fees Act 2019 states that landlords can only require tenants to make payment of the following:

Rent (which can still be paid in the manner agreed between the parties)

Tenancy deposit (up to maximum of 5 week's rent unless the annual rent exceeds £50,000)

Holding deposit (up to a maximum of 1 week's rent) which must be refunded unless the tenant pulls out of the tenancy

If the landlord pays bills such as utilities, council tax, TV Licence on behalf of the tenant they are entitled to reimbursement

A fee for the cost and inconvenience of a late payment of rent or replacement of a lost key is permitted providing this is set out in the tenancy agreement

Damages for breach of agreement e.g. where damage is caused to the property

Costs in connection with a tenant's request for a variation, assignment, or surrender of a tenancy. This is capped at a maximum of £50 unless the landlord can show further reasonable costs were incurred.

It is no longer possible to state that at the outset or on renewal of the tenancy agreement, that the tenant will have to pay a sum for the letting agent's costs as has been common over recent years. No other fees are allowed to be recovered from the tenant.

As a result of the above, landlords need to check their deposits. If they are holding more than 5 weeks rent they should provide a partial return of the deposit on or before **30 May 2020**.

If a landlord charges a fee (that does not fall within the permitted fees above) after the relevant date (ie after 1 June 2020) then he will not be able to evict his tenant until such time as the unlawful payment has been refunded.

In addition to the restriction on gaining possession, if a landlord is found to be in breach he could be fined up to £5,000 for a first breach. If a landlord is found to be in breach again within 5 years he can be subjected to an unlimited fine.

In addition to the above, if a landlord is found to have committed multiple breaches on the same occasion the fine is per breach. As such it is possible that very significant fines could be imposed even on a first time offender as it would be up to £5,000 per breach.

If a landlord is issued with a fine he can appeal the decision through the First Tier Property Tribunal but must act quickly, as he will only have 28 days from the final notice being served to make the appeal.

Cladding – The Valuation Trap.

It won't be lost on anyone that building regulations dealing with cladding safety became under review and in need of change. Home owners and buyers concerned about construction methods on new and existing flat developments.

The difficulty that any homeowner or buyer may face is the work that is undertaken through the Building Regulations purports to offer comfort that a certain limit of safety has been met in the course of construction of a building and in particular to external cladding.

Understandably the Grenfell Tragedy has led to investigations that has revealed certain cladding is not acceptable despite building regulations being signed off.

The problem with a number of developments including new blocks, is that cladding which was deemed compliant under Building Regulations at the time of construction may need to be updated as a result of changes to regulations issued in December 2018 which covers external walls.

Of course where you live in a building which now has "unsafe cladding" this will affect you and in particular if you are trying to sell or remortgage. The cost of replacing what was once deemed safe cladding will now need to be replaced which can take time and of course be expensive.

So what do you do? A number of Landlords have undertaken replacement cladding without cost. It will be worth liaising with your freeholder and managing agent over proposals to review cladding arrangements in light of changes to regulations and work out a suitable cost agenda. This may allow work to be undertaken with costs spread over a period of time and shared between the tenants and freeholder which may assist parties with selling the flats and give the comfort to flat owners that difficulties with mortgaging the flats can be avoided.

As a buyer you may well wish to agree with your Seller to set aside a pool of money, a retention to cover works of this nature that may be undertaking in the future, thus making it easier for a mortgage lender to agree to lend against property where cladding might not be deemed sufficient against todays regulations.

At first glance a flat that has fallen into a valuation trap, not adequate security for mortgage lenders may well be pulled out of it as a result of practical thinking on the parts of home owner and buyer. Of course regulations do change rapidly over time so it is important to give any purchase consideration with surveyors to enable you to make the right decisions when it comes to selling or buying, given the extent of requirements for buildings at the time of a sale.

If you have any questions about conveyancing or other residential property issues please call Stuart Wickham (*stuart.wickham@taylorwalton.co.uk*). Alternatively, you can call **01582 765111**.

For help navigating problems related to property litigation, then please contact James Carpenter (*james.carpenter@taylorwalton.co.uk*) or Tracey Taylor (*tracey.taylor@taylorwalton.co.uk*). Alternatively, you can call **01582 731161**