

Leasehold Property – The Deregulation Act 2015

Introduction

The Deregulation Act 2015 was passed on 26 March 2015.

This Act makes a number of changes to the law affecting residential landlords and tenants in assured shorthold tenancies (AST). It also seeks to clarify some issues on tenancy deposits which were unclear following the Court of Appeal decision in 2013 in *Superstrike Ltd v Rodrigues*.

This note represents a summary of the main changes affecting landlords resulting from this Act. As ever, advice tailored to your specific circumstances will always be required. This guide should not be relied upon as legal advice and you should contact us for advice on your specific circumstances.

Briefing Note

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For more information please contact:

Daniela Bushe
Senior Associate Solicitor

01323 435955

daniela.bushe@gabyhardwicke.co.uk

Key changes

The main changes are as follows:

1. **A landlord will not now be able to serve a section 21 notice at the start of a tenancy (s.36).** Landlords often did this so that they could then rely on it when they wished to recover possession of the property at the end of the term, so that they did not have to waste any time in waiting for a notice to expire before issuing proceedings for possession. A landlord will not now be able to serve a section 21 notice earlier than four months after the beginning of the tenancy. There are limited exceptions to this. This applies to assured shorthold tenancies granted on or after 1 October 2015.
2. **A section 21 notice will effectively become invalid if it is not used as the basis for a possession claim within six months of being served (s.36).** In practice this means that a claim for possession must be issued within 6 months of the notice being served. If not, a fresh section 21 notice will be required. This applies to assured shorthold tenancies granted on or after 1 October 2015.
3. **Prevention of retaliatory evictions (s.33 and s.34).** Where a tenant makes a written complaint to its landlord about the state of repair of the property and the landlord either fails to reply or give an adequate reply or responds by serving a section 21 notice, the tenant can prevent an eviction by reporting the matter to the local housing authority. If the local housing authority issue the landlord certain types of enforcement notice the section 21 notice served will become invalid and the landlord will not be able to serve a new section 21 notice within six months of an enforcement notice being served. Again, there are limited exceptions to this. This applies to assured shorthold tenancies granted on or after 1 October 2015.
4. **There is now a new prescribed form of notice served under section 21 (s.37).** This is known as Form 6A. This form of notice **must** be used for an AST of a property in England created on or after 1 October 2015. The prescribed form may, however, also be used for tenancies created before this date if the landlord wishes to do so.
5. **Landlords are no longer required to serve a notice ending on the last day of a period of a tenancy where the tenancy is a periodic one (s.35).** This applies to assured shorthold tenancies granted on or after 1 October 2015.
6. **S.21 notices will not be valid where a landlord has failed to comply with certain legal requirements such as Energy Performance Certificates and valid Gas Safety Certificates (s.38).** This applies to assured shorthold tenancies granted on or after 1 October 2015.

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- 7. There will be an obligation on landlords to provide information about the rights and responsibilities of both the landlord and tenant under an AST (s.39).** This is known as the How to Rent Checklist. This is a prescribed leaflet which can be found on the Department for Communities and Local Government website.
- 8. Tenants will have a statutory right to claim back rent they have paid in advance in respect of a period after a section 21 notice brings the tenancy to an end where the tenant is not in occupation of the property (s.40).** This applies to assured shorthold tenancies granted on or after 1 October 2015.
- 9. Section 30 clarifies that it is acceptable to provide the details of the agent who protected the deposit for the landlord at the outset instead of the landlord's details in the prescribed information.**

The above provisions only apply to England and will not affect AST's where the fixed term was granted before these provisions came into force, even if they became statutory periodic tenancies after the date the provisions came into force. However, after the end of the period of three years from the date the provision came into force (i.e. 3 years from 1 October 2015 being October 2018), the provisions will apply to any AST in existence.

Deposits

- These provisions (contained in s.30-32 of the Act) came into force on 26 March 2015 and make significant amendments to the Housing Act 2004.
- Where a deposit was paid before 6 April 2007 and the AST became a statutory periodic tenancy after 6 April 2007, the landlord will be safe if he protected the deposit and served prescribed information within 90 days of the Bill receiving Royal Assent i.e. within 90 days of 26 March 2015.
- Where a deposit was paid after 6 April 2007 and was protected and prescribed information was provided during the original tenancy (regardless of when exactly it was protected/provided) the landlord will be treated as having re-served the prescribed information on every renewal or at the start of a statutory periodic tenancy. The amendments will not assist a landlord who failed to protect the deposit and provide the prescribed information during the original tenancy.
- Where a deposit was paid before 6 April 2007 and a statutory periodic tenancy was created before that date it must be protected and prescribed information provided or repaid before a section 21 notice can be served. There are no time limits on this.

NB: Only the deposit provisions will have retrospective effect.

In addition, there are changes in Sections 44 and 45 of the Act, which came into force on 26 May 2015, which relax the existing restrictions on landlords renting out residential accommodation on a short-term basis.

If you would like to know more about this topic or our legal services, please contact Daniela Catuara on 01323 435900 or daniela.bushe@gabyhardwicke.co.uk

Gaby Hardwicke Solicitors
33 The Avenue
Eastbourne
East Sussex
BN21 3YD

Tel: 01323 435955
Fax: 01323 435901
www.gabyhardwicke.co.uk