

Employing a Section 21 Notice to end an Assured Shorthold Tenancy – Look Before You Leap



It may surprise you that the Chairman of the London Association of District Judges recently commented that a staggering seven out of ten Section 21 Notices to Quit are being thrown out of Court because they are invalid.

The message to Landlords could not be clearer – this is **not** a straightforward area of law and the motto “Look Before you Leap” could not be more accurate.

Have you protected your tenant’s deposit?

You must protect your tenant’s deposit by transferring it to one of the three Tenant’s Deposit Protection Schemes (as below:-

Tenancy Deposit Solutions Limited	www.mydeposits.co.uk
Tenancy Deposit Scheme	www.tds.gb.com
Deposit Protection Service	www.depositprotection.com

If you serve a Section 21 Notice without having first protected the deposit and sending your tenant prescribed information relating to this, your Notice will be invalid. Furthermore, any County Court application for possession will be unsuccessful and you may be ordered to pay costs.

Your tenant can also make an application for deposit compensation of 3x the deposit. It doesn’t stop there. Even ex-tenants can apply for this compensation under current legislation. You have been warned.



Have you provided a UK address in the Notice?

Failure by landlords to provide a UK address in the Notice has resulted in Section 21 Notices being unenforceable.

So even if you permanently live overseas, you must have a UK ‘Care Of’ address (for example, solicitors, managing agents, family) that you can use.

Know the difference between an Assured Shorthold Tenancy and a Periodic Tenancy?



Knowing the difference is instrumental in serving a valid Section 21 Notice.

Ask yourself this: has the Assured Shorthold Tenancy Agreement expired?

If it is ongoing, it will usually be an Assured Shorthold Tenancy.

If it has expired, it will usually be a Periodic Tenancy.

This information defines the date you require possession as stated in the Section 21 Notice. Get this date wrong and your Notice may once again be invalid.

The Two Month from Service Rule – a common mistake

As well as applying your understanding of the rule above, you must also give a full two months notice of possession. This starts from the date the notice is received by the tenant.

Many landlords appear unaware that this is sometimes not the date that the Notice was sent and accordingly do not account for it in their calculations. This is a fatal mistake.

Consider how and when your Section 21 Notice is going to be served, so that you can state a valid possession date. The favoured approach is to despatch it by courier if there is any likelihood of a dispute.



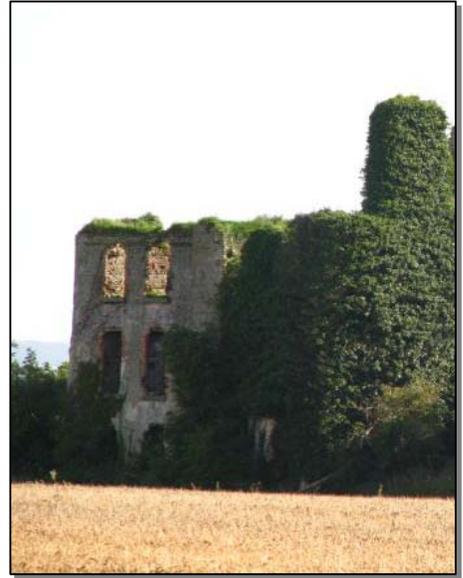
Housing Disrepair – the lurking Achilles heel

Does your tenant have a history of claiming housing disrepair?

Have your tenant's solicitors been in contact with you to discuss maintenance issues?

Have Environmental Services formally requested you carry out remedial works or maintenance?

If you answer YES to any of the above, be warned that you may face a Housing Disrepair Counter Claim to your claim for possession in the County Court should your tenant fail to leave the property voluntarily. This will inevitably cause delay and additional costs. Although you cannot prevent such a Counter Claim, you can exercise damage limitation by ensuring that any statutory maintenance and repair obligations have been complied with.



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