The housing advice bulletin from Shelter for the National Homelessness Advice Service

Housing matters

Issue 108 October 2015

NHAS National Homelessness Advice Service

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Housing matters
Housing matters is produced by Shelter for the NHAS and aims to provide a source of up-to-date housing and homelessness news, focus on important case law, cover key legal issues, and produce information for public use.

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Housing matters welcomes contributions from NHAS members. If you would like to provide an article or update for *Housing matters* please email **JackieL@shelter.org.uk**

National Homelessness Advice Service
The National Homelessness Advice Service (NHAS) is a partnership between Shelter and Citizens Advice funded by the Department for Communities and Local Government.

The service aims to prevent homelessness and remedy other housing problems through increasing public access to high-quality housing advice in England, including online information on the NHAS website at **www.nhas.org.uk**

The NHAS provides the following to local authorities, CABx and around 100 other advice agencies in England:

- **a national telephone housing advice consultancy service** for local authorities, CABx and around 100 other advice agencies in England. Call **0300 330 0517** 9am–8pm, Monday to Friday, or send in an enquiry using the online enquiry form available on the members' areas of **www.nhas.org.uk**
- **housing debt casework** - specialist support for cases relating to mortgage arrears and other problems with housing affordability, including welfare benefits issues. Call **0300 330 0517** or use the online enquiries form (see above for details)
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- **written briefings**, articles in *Housing matters* and *Adviser*, information on housing issues and other written materials
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Contact details
For more information about NHAS training, please email **JoanneK@shelter.org.uk** or call **0344 515 1676**.

For general enquiries about the NHAS service, please email **nhas@shelter.org.uk** or call **0344 515 2268**.

Alternatively, please use the 'contact us' page at **www.nhas.org.uk**

What's new?

Assured shorthold tenancies

With effect from 1 October 2015 and for assured shorthold tenancies (ASTs) granted in England on or after that date only:

- a section 21 notice must be in the prescribed Form No. 6A (as set out in the Schedule to the Assured Shorthold Tenancy Notices and Prescribed Requirements (England) Regulations 2015 SI 2015/1646
- there is no requirment for a section 21 notice served on a periodic tenant to expire on the last day of a period of the tenancy (section 35 Deregulation Act 2015)
- section 36 Deregulation Act 2015 provides that: (a) a section 21 notice cannot be served until four months have elapsed from the start of the tenancy; (b) possession proceedings must be started within six months of service of the section 21 notice (or within four months of the expiry date of the section 21 notice served on a periodic tenant where the period of the tenancy is greater than two months)
- a section 21 notice may be invalid when the landlord has served the notice following a complaint from the tenant about the condition of the property (ie a retaliatory eviction) and specified conditions are met (section 36 Deregulation Act 2015)
- a landlord cannot serve a section 21 notice where s/he has failed to provide the tenant with a copy of: (a) energy performance certificate (EPC) (b) gas safety certificate, (c) the government guide '*How to rent: the checklist for renting in England*' (Assured Shorthold Tenancy Notices and Prescribed Requirements (England) Regulations 2015 SI 2015/1646)
- a tenant who leaves the property following the expiry of a section 21 notice is entitled to a rent repayment from the landlord for each full day that s/he is no longer in occupation, and for which s/he had paid rent in advance. (section 40 Deregulation Act 2015).

All ASTs in England will become subject to these provisions from 1 October 2018.

See our articles 'The end of retaliatory eviction?' and 'Section 21 notices and the Deregulation Act 2015' on pages 2 and 4 of this issue for more details of the changes affecting assured shorthold tenancies from 1 October 2015.

Unfair terms in consumer contracts

The Consumer Rights Act 2015 provides a new legislative framework for determining whether a term in a consumer contract made on or after 1 October 2015 is 'fair'. The Act revokes the Unfair Terms in Consumer Contracts Regulations 1999 SI 1999/2083 in respect of consumer contracts, including tenancy agreements made after that date. Under the Act:

- the fairness requirement is extended to include individually negotiated terms
- in addition to the previous requirement that key terms of the contract (those setting out subject matter and price) must be 'transparent', they must also be 'prominent' - this means that an average consumer would be aware of them
- a court must consider the fairness of a contractual term even if not asked to do so.

The Competition and Markets Authority (CMA) provides guidance on unfair contract terms in '*Guidance for lettings professionals*' (CMA31) and in '*Unfair contract terms*' (CMA 37). Both can be found at **tinyurl.com/GuideUT** Although from 1 October 2015 the CMA ceases to 'adopt' the Office of Fair Trading's unfair terms in tenancy agreements guidance (OFT 356) in respect of contracts made after that date, examples of unfair terms in that guidance will still be useful.

Smoke and carbon monoxide alarms

With effect from 1 October 2015, under the Smoke and Carbon Monoxide Alarm (England) Regulations 2015 SI 2015/1693 non-exempt landlords in the private rented sector must ensure that, where a property is occupied under a tenancy, there is provided:

- a smoke alarm on each storey of a property that contains a room used as living accommodation
- a carbon monoxide alarm in any room used as living accommodation which contains a solid-fuel burning appliance.

An alarm must be in working order at the start of a new (not including a renewal or statutory periodic) tenancy, after which the tenant is responsible for checking it. The government's Q&A guidance to the regulations can be found at **tinyurl.com/q-aCO-smoke**

The end of retaliatory eviction?

In this article Jayne Atherton looks at the new provisions in force from 1 October 2015 that aim to reduce the use of 'retaliatory' evictions in the private rented sector, and considers whether the amended legislation is strong enough to address the underlying problem.

Jayne Atherton is a training and support officer at Shelter.

Retaliatory eviction has been a problem in the private rented sector ever since the assured shorthold tenancy (AST) became the default tenancy for private tenants. Retaliatory eviction is where a landlord evicts an assured shorthold tenant using the 'section 21' procedure in response to the tenant trying to assert her/his legal rights. Section 21 of the Housing Act 1988 does not require the landlord to give either the tenant or the court any reason for seeking possession. While retaliatory eviction may be unfair, it has, until now, been legal.

Retaliatory evictions occur for a number of reasons including arguments about deposit protection or a refusal by the tenant to agree to a rent increase. Research commissioned by Shelter in 2013[1] indicated that a major reason was tenants complaining about conditions or disrepair in their homes.

The same research indicated that eight per cent of private tenants had avoided asking their landlord to carry out repairs for fear of retaliatory eviction.

A successful campaign by Shelter has brought about legislative changes[2] that restrict the use of section 21 to evict tenants who have complained about disrepair.

Who is affected?

Initially, the changes outlined below apply only to ASTs granted on or after 1 October 2015. They do not apply to any AST granted earlier, including statutory periodic tenancies arising on or after that date if the fixed-term began before 1 October 2015.[3]

From 1 October 2018 all ASTs, including those granted before 1 October 2015, will be brought under the new rules.[4]

The changes only apply to ASTs in England.

Section 21 after 'relevant notice'

The landlord cannot serve a section 21 notice within six months of the date of service by the council of a 'relevant notice',[5] ie an improvement notice[6] or an emergency remedial action notice[7] under the Housing Health and Safety Rating System (HHSRS).

In some cases the council might serve an improvement notice but then suspend its operation until a particular trigger event.[8]

This might occur, for example, where a hazard within a property is sufficiently serious to warrant an improvement notice but the current occupiers of the property are not in a vulnerable group as defined by the HHSRS (vulnerability in this context relates to the age of potential occupiers and is not related to vulnerability in its wider sense).

The improvement notice may be suspended until there is non-compliance with an undertaking given to the authority or a change in occupancy.

The six-month prohibition on the use of section 21 will run from the date that a suspension is lifted. It is important to note that the landlord can serve a section 21 notice at any point whilst enforcement under the HHSRS is suspended.[9]

Section 21 after complaint to landlord

Alternatively, a section 21 notice will be invalid where all of the following conditions apply:[10]

- before the service of the notice the tenant complained to the landlord or agent in writing about the condition of the property (including its common parts if the landlord has control over them), unless they do not know the landlord's (or agent's) postal or email address and have made reasonable efforts to contact her/him (it is unclear whether a text message would satisfy the requirements for a written complaint)
- the landlord failed to respond within 14 days OR failed to give a written response indicating what they propose to do and setting out a reasonable timescale for repairs OR responded with a section 21 notice OR remained un-contactable despite the tenant's reasonable efforts
- the tenant made a follow-up complaint to the council about the same, or substantially the same, issue

- as a response to the tenant's complaint the council's environmental health department served a 'relevant notice' on the landlord.

A section 21 notice served following an initial complaint from the tenant to the landlord about disrepair in the property remains valid up until the council serves a 'relevant notice' on the landlord.

Court's powers

The court must strike out the landlord's claim for possession where a section 21 notice has become invalid because it was served between the tenant's initial written complaint to the landlord and the service of a 'relevant notice' by the council.[11]

The legislation does not specify that section 21 proceedings must be struck out where the section 21 notice was served within six months of the council serving a relevant notice. However, as service of a section 21 notice is prohibited within six months of a 'relevant notice' being served,[12] it is clear that in this situation proceedings must also be struck out.

An order for possession made under section 21 must not be set aside if a 'relevant notice' was served after the order was made.[13]

Is this the end of retaliatory eviction?

The answer, sadly, is no. The legislation is a small step in the right direction but is limited in its scope.

Only assured shorthold tenants with a tenancy granted on or after 1 October 2015 are initially protected by the new provisions.

Those with existing ASTs will remain unprotected until 1 October 2018. Excluded occupiers or those with only basic protection from eviction are not covered at all.

Disrepair and housing conditions are only one area of landlord and tenant law where tenants have rights which can be difficult to enforce because of limited security of tenure.

There is nothing to prevent a retaliatory eviction for refusing to agree to a rent increase, for example, and some landlords may prefer to return a deposit and evict the tenant using the section 21 procedure if a tenant complains that a deposit has not been protected in an authorised scheme.

Even where the legislation potentially applies, a retaliatory eviction might occur where the matter has not led to enforcement action by the local authority either because the repair issue is not serious enough to be considered a 'hazard' under the HHSRS (a hazard awareness notice does not trigger the retaliatory eviction provisions), or because the council chose to take a more pragmatic approach with the landlord, perhaps because there is nobody vulnerable in the property.

Where a tenant complains face-to-face or over the phone and the landlord serves a section 21 before the complaint is put in writing, it will be valid regardless of whether a relevant notice is served later.

Furthermore, other exemptions apply so that a section 21 remains valid where:[14]

- the tenant has caused the disrepair complained of
- the section 21 notice is served in relation to a property that is genuinely on the market (but not if the landlord wants to sell it to an 'associated person', including her/his family members, business partners, or employees)
- the property has been repossessed by the landlord's lender, the mortgage predates the tenancy, and the lender intends to sell the property with vacant possession
- the landlord is private registered provider of social housing/housing associations.

Tactical advice for advisers

The possibility of enforcement action by the council may be sufficient to argue for a possession hearing to be adjourned, or to obtain a right to a hearing instead of the court making its decision under the accelerated process.

Where the landlord issues a possession claim under accelerated proceedings, if the council has not decided whether to serve a relevant notice the tenant should explain on the defence form that this is a potential case of retaliatory eviction and ask for the case to be listed for a hearing.

Reasonable to continue to occupy?

Where a retaliatory eviction has been prevented in the short term, homelessness officers must still consider whether it is reasonable to continue to occupy. If it is not reasonable, then, irrespective of whether a section 21 notice is valid, the household will be homeless[15] and the council must make enquiries to see whether it owes any duty under Part 7 of the Housing Act 1996.[16]

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11.5.6.4 Assured shorthold tenancies.

Footnotes

[1] tinyurl.com/REtruescale

[2] s.33 Deregulation Act 2015.

[3] s.41(1)-(2) Deregulation Act 2015.

[4] s.41(3) Deregulation Act 2015.

[5] s.33(1) Deregulation Act 2015.

[6] ss.11-12 Housing Act 2004.

[7] ss.40-41 Housing Act 2004.

[8] Paras 5.24-5.29, HHSRS Enforcement Guidance: housing conditions, DCLG, 2006 - available at tinyurl.com/hrs-enforce

[9] s.33(1)(b) Deregulation Act 2015.

[10] s.33(2) Deregulation Act 2015.

[11] s.33(6) Deregulation Act 2015.

[12] s.33(1) Deregulation Act 2015.

[13] s.33(7) Deregulation Act 2015.

[14] s.34 Deregulation Act 2015.

[15] s.175(3) Housing Act 1996.

[16] s.184(1) Housing Act 1996.

Section 21 notices and the Deregulation Act 2015

In this article Jayne Atherton sets out the new provisions affecting service of a section 21 notice for tenancies that start on or after 1 October 2015, and draws attention to areas of the legislation that still require clarification.

Jayne Atherton is a training and support officer at Shelter.

Section 21 of the Housing Act 1988 requires a court to award possession of a property back to a landlord where it has been let on an assured shorthold tenancy (AST) and the landlord has served the tenant with two months' written notice that they require possession of the property.

A landlord does not need to give reasons to either the tenant or the court for wanting possession back. Section 21 is often described as the 'no fault' ground and is highly valued by landlords.

The Deregulation Act 2015 allows the Secretary of State to issue regulations prescribing:

- the form a section 21 notice should take
- the legal obligations that must be met prior to the issue of a section 21 notice
- the information which must be provided before a section 21 notice can be served.

Additionally, with effect from 1 October 2015, the Deregulation Act 2015 amends section 21 of the Housing Act 1988 regarding date of service, expiry dates and the period for which a notice remains valid.

AST Regulations 2015

New regulations affecting section 21 apply to ASTs granted in England on or after 1 October 2015.[1]

The regulations do not apply to a statutory periodic AST arising after that date if the fixed-term began before 1 October 2015, but they do apply to tenancies that are 'renewed' on or after that date. From 1 October 2018 the changes will be applied retrospectively to all ASTs in England regardless of the start date of the tenancy.[2]

The changes brought about by the regulations apply to ASTs granted by private and housing association landlords.

Prescribed requirements/information

For a new AST created on or after 1 October 2015, the landlord must provide the tenant with the following before serving a section 21 notice:

- current gas safety certificate
- valid energy performance certificate
- the government guide 'How to rent: the checklist for renting in England'.

As with all ASTs, advisers should also check that any tenancy deposit has been correctly protected in accordance with the rules on tenancy deposit protection.

Gas safety certificate

It is important to note that for the purposes of serving a section 21 notice, full compliance with the Gas Safety Regulations[3] is not required. Under those regulations, a landlord must arrange annual gas safety inspections by a Gas Safe registered engineer and provide a gas safety certificate to existing tenants within 28 days of the inspection, or to new tenants before they move in. Failure to do so is a criminal offence.[4]

In relation to serving a valid section 21 notice, the new AST regulations absolve landlords from the requirement to provide a gas safety certificate within 28 days of the inspection.[5] However, it is unclear whether a landlord's failure to provide a gas safety certificate before a tenant takes up occupation will invalidate a section 21 notice. If this is the case, a landlord would not be able to remedy the situation retrospectively and would be permanently prevented from using the section 21 procedure to evict. It seems unlikely that this would have been the government's intention so we may need to await case law to clarify the position.

Energy performance certificates (EPCs)

Landlords are already legally obliged to make available copy of a valid EPC free of charge to prospective tenants at the earliest possible opportunity,[6] and to ensure that a person who signs a tenancy is given a copy of the certificate.

EPCs are often overlooked - many tenants do not know they are entitled to one.

For ASTs affected by the changes, a landlord wanting to use the section 21 notice procedure must ensure that their tenant is given a copy of the EPC.[7] It is unclear when

the copy of the EPC must have been given for this purpose, but it is possible that it must have been given before the tenancy begins. Again, case law may clarify the position.

'How to Rent' booklet

Under the new AST regulations, landlords or agents in the private rented sector must provide the tenant with 'prescribed information' prior to service of a section 21 notice.[8] The information is the government's guide to the rights and responsibilities of assured shorthold tenants, '*How to rent: the checklist for renting in England*'. This can be provided as a paper copy, or by email if the tenant agrees. Housing associations are exempt from this requirement.

It would be useful for a tenant to receive this information at the start of their tenancy but the regulations do not require this – it can be given at any point before the section 21 notice. The landlord or agent should provide the tenant with the current version of the booklet but is not required to re-issue it if the tenancy is renewed or becomes statutory periodic, unless the guide has been updated since it was originally given.

Requirements of a section 21 notice

For ASTs beginning on or after 1 October 2015 the following requirements apply:

- a section 21 notice must be served using prescribed form No.6A,[9] or in a form substantially the same (the form may also be used for existing tenants)
- a notice served under section 21(4) is not required to expire on the last day of a rental period.[10] This brings most contractual periodic tenancies into line with statutory periodic tenancies in that only two months' notice will be required. The prescribed form suggests that the landlord should give two months and two days' notice to allow for service by first class post
- in a few cases where two months' notice would expire earlier than a hypothetical notice to quit, such as with a quarterly periodic tenancy, the requirements of section 21(4) for notice to expire on the last day of a period will still apply, unless the landlord adds a suitably worded 'savings clause'[11]
- the notice should cover at least one rental period, so tenants with a quarterly or yearly tenancy must be given a longer notice period.

Service and 'lifetime' of notice

A section 21 notice cannot be served during the first four months of the original tenancy.[12]

In most cases, proceedings must be started within six months of the section 21 notice being served.[13] For the few contractual periodic tenancies which will require a longer notice period, landlords have four months from the expiry date to start proceedings.[14]

Repayment of rent

An assured shorthold tenant who has paid rent in advance has the right to receive a pro-rata repayment of rent where the tenancy has ended before the end of a rental period 'as a result of the service of a notice under section 21'.[15]

Under this new provision, if the pro-rata repayment of rent has not been made when the court makes a possession order under section 21, the court must order the landlord to repay the amount of rent to which the tenant is entitled.

This is confusing because a tenant may remain in occupation until the bailiffs enforce the order and is liable for rent until the tenancy ends. This means that a judge would have to predict the date on which the tenant will cease to occupy the property to make the appropriate repayment order.

This provision can only apply where the tenant surrenders the property and agrees with the landlord a date to move out.

Conclusion

The changes will undoubtedly create some confusion for landlords, tenants and advisers not least because from 1 October 2015 for three years there will be a two-tier system – those covered by the old rules and those covered by the new rules.

Assured shorthold tenants covered by the new rules will have more chance of defending section 21 proceedings as there will be more scope for landlords making mistakes.

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11.5.6.4 Assured shorthold tenancies.

Footnotes

[1] Assured Shorthold Tenancy Notices and Prescribed Requirements (England) Regulations 2015 SI 2015/1646, as amended by Assured Shorthold Tenancy Notices and Prescribed Requirements (England) (Amendment) Regulations 2015 SI 2015/1725.

[2] s.41(3) Deregulation Act 2015.

[3] Gas Safety (Installation and Use) Regulations 1998 SI 1998/2451.

[4] s.33(3) Health and Safety at Work Act 1974.

[5] reg. 2(2) Assured Shorthold Tenancy Notices and Prescribed Requirements (England) Regulations 2015 SI 2015/1646.

[6] reg. 6(2) Energy Performance of Buildings (England and Wales) Regulations 2012 SI 2012/3118.

[7] reg. 2(1)(a) Assured Shorthold Tenancy Notices and Prescribed Requirements (England) Regulations 2015 SI 2015/1646.

[8] reg 3 Assured Shorthold Tenancy Notices and Prescribed Requirements (England) Regulations 2015 SI 2015/1646.

[9] See it in Schedule to Assured Shorthold Tenancy Notices and Prescribed Requirements (England) (Amendment) Regulations 2015 SI 2015/1725.

[10] s.35 Deregulation Act 2015.

[11] s.21(4)(b) Housing Act 1988.

[12] s.21(4B) Housing Act 1988, as inserted by s.36 Deregulation Act 2015.

[13] s.21(4D) Housing Act 1988, as inserted by s.36 Deregulation Act 2015.

[14] s.21(4E) Housing Act 1988, as inserted by s. 36 Deregulation Act 2015.

[15] s.21C(1) Housing Act 1988, as inserted by s.40 Deregulation Act 2015.

Students: problems with private renting

As a new academic year begins, Aisling Traynor considers the most common problems facing university students seeking and living in private sector accommodation, including the particular problems faced by overseas students, and how best to support them.

Aisling Traynor manages the Private Housing and Advice team at the University of London.

Introduction

Students are a vulnerable group. Most are young and inexperienced and those arriving from abroad also face language and cultural barriers. Many undergraduates are offered accommodation in university halls of residence in their first year but after this they usually need to turn to the private rented sector as they continue their studies. In the academic year 2013/14, 32.5 per cent (516,220) of students lived in privately rented accommodation.[1]

Finding accommodation

Many universities offer support to students looking for private sector accommodation and can provide advice on popular areas and cost of renting, as well as offering detailed assistance with budgeting.

The first port of call for students who want to move into the private sector should be a university-run letting agency, or any scheme the university operates to help offer reliable housing options. Many universities work with local landlords and agents, often requiring them to meet certain standards, for example, signing up to a code of good practice and providing gas safety certificates, before they can advertise their properties to students via the university.

Some university landlord schemes are run in conjunction with local authorities, eg Snug in Sheffield.[2] Checks and quality control requirements vary widely from scheme to scheme, but none the less these schemes provide a form of regulation that does not generally exist in the open market.

There has been a large increase in the last ten years in purpose-built privately-owned student halls. These are a popular option for some students, although affordability in some parts of England can be an issue. Accreditation Network UK (ANUK) accredits many developments via its National Code.[3]

International students

International students often book accommodation from abroad. Aside from university halls and accredited private halls, this is not advisable.

Many students fall victim to increasingly sophisticated online property scams. There is no longer an automatic right to a cooling-off period for students booking accommodation from a distance.[4] This means that students have no option to cancel accommodation arranged from abroad if they don't like it when they arrive unless they can prove that they were actively misled into signing up to the property.[5]

Problems with agents

Negotiating with agents can be daunting for young people. Agents can pressurise students into paying holding deposits before they have discussed the terms of an agreement, and many students fall victim to disputes. Spiralling agency fees are making rent-upfront accommodation increasingly unaffordable for students in some areas.

Lettings agents must belong to a redress scheme approved by the government to deal with complaints about the agency.[6] Trading standards can impose fines of up to £5,000 on agents who fail to do so.

Agents must:[7]

- display a full list of fees and penalties (inclusive of VAT) to prospective tenants
- tell tenants which redress scheme they belong to
- publicise whether or not they are in a client money protection scheme.

This information must be on the agency's website and clearly displayed in their offices.

The government has published guidance to consumer protection law for lettings professionals,[8] which gives detailed information about the legal duties of lettings' agents in relation to all aspects of signing up a tenant.

Guarantors and references

Most landlords and agents require a UK-based guarantor from students, and the alternative in areas where the market is tough is to pay 6-12 months' rent in advance.

Students new to the UK can find it difficult to supply references to agents and landlords.

Newcomers may not have a bank account, and transferring money takes time and costs, which can make securing accommodation difficult when things need to move quickly.

Students who have lived in halls of residence can supply a landlord reference from their university. Some universities also operate a guarantor scheme to save their overseas students needing to locate a UK guarantor.

Sharing accommodation

University is most students' first experience of living away from home and sharing with non-family members. In many places in England it is necessary to book student flats and houses 6 to 9 months ahead of moving in to ensure accommodation is secured. This can mean committing to a joint tenancy with people who have only known each other for a short period.

Understandably, even if the students are still friends nine months later, disputes are common, arising in particular in connection with payment of utility bills, partners staying at the property, cleaning and bedroom sizes.

Many tenancies prohibit assignment and subletting,[9] so when tenants fall out and one wants to leave before the end of a fixed-term agreement landlords often do not wish to cooperate with any change of tenants.

Students often require help to negotiate with landlords and offer a suitable replacement tenant. In certain parts of the UK it is virtually impossible to find a replacement tenant mid-academic year, which can leave students stuck either living where they are unhappy, or continuing to pay rent even if they move out.

The National Union of Students (NUS) gives advice to students who are looking for accommodation, including advice on relationships with flat or housemates.[10]

Houses in multiple occupation (HMOs)

Students often choose to live in large properties as this can be cost-effective.

Many of these (three-storeys, five unrelated occupiers[11]) fall under the mandatory HMO licensing regime, which require landlords to meet certain standards, including with regard to health and safety.

It is sometimes the case that a landlord puts four students on the tenancy agreement but allows five to live there, and if questioned by the council claims the students moved an additional person in without permission.

Although a landlord cannot avoid the HMO licensing requirements in this way, this practice can result in students living in poor quality and unsafe accommodation, especially when it comes to fire precautions.

Many local authorities have introduced, or are consulting on introducing, additional and selective licensing within the private rented sector, which will bring many more student properties within the scope of a licensing regime.

Damp and mould

The NUS *Homes Fit for Study* research published in March 2014[12] found that 76 per cent of those students surveyed had experienced at least one problem with the conditions of their privately rented home.

It found that 61 per cent of student tenants experienced an issue with damp, mould or condensation in their private rented accommodation. This is no surprise as many students live in accommodation that was originally designed to have less adult occupiers. Although students should be advised to heat and ventilate their properties this may do little to address the problem, and landlords tend to point the finger at the tenants. In addition, these issues can fall outside a landlord's repairing obligations under section 11 of the Landlord and Tenant Act 1985. A referral to the local council's environmental health department for a 'hazard' assessment[13] can be very useful in persuading the landlord to take action.

Deposits

In *Homes Fit for Study* the NUS also found that only around half of students surveyed were sure that their tenancy deposit had been protected.

Where a deposit has not been correctly protected in a government-backed scheme the sanctions around landlords using the section 21 notice procedure are not often useful for students, who are not usually looking for long-term security. However, penalty claims[14] are worth considering where a deposit is not protected.

A thorough inventory with photographs at the beginning and end of the tenancy will help where a dispute arises around returning a deposit, and particularly where a referral to a deposit scheme's alternative dispute resolution service becomes necessary.

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11.5.25.10 Student Housing - assured shorthold tenants.

Footnotes

[1] tinyurl.com/HESAstat

[2] tinyurl.com/SnuginSheffield

[3] tinyurl.com/NC2ode the national code is a voluntary scheme whereby providers of large student developments commit to meeting minimum professional standards.

[4] Consumer Contracts (Information, Cancellation and Additional Changes) Regulations 2013 SI 2013/3134 replacing the Consumer Protection (Distance Selling) Regulations 2000 SI 2000/2334.

[5] Under the Consumer Protection from Unfair Trading Regulations 2008 SI 2008/1277.

[6] The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014 SI2014/2359.

[7] s.83 Consumer Rights Act 2015.

[8] Consumer protection law for lettings professionals, CMA31, Competition and Markets Authority, June 2014.

[9] Potentially an unfair contract term – see para 4.23 Guidance on Unfair Terms in Tenancy Agreements, OFT356, Office of Fair Trading, September 2005.

[10] tinyurl.com/NUShousing

[11] s.254 Housing Act 2004.

[12] tinyurl.com/ver-inf

[13] Under the Housing Health and Safety Rating System (HHSRS) - see Housing Health and Safety Rating System Operating Guidance, DCLG, Feb 2006.

[14] Under s.214 Housing Act 2004.

Leaflet

Possession proceedings: Court powers

This is the second of three leaflets about landlords' possession proceedings and the eviction process.

This leaflet looks at the decisions the court can make when your landlord takes you to court.

Your landlord must usually go to court and get a possession order before evicting you.

Get advice

You may have a defence to your landlord's claim for possession so it's very important that you seek legal advice as soon as possible, no matter what stage of the procedure you've reached. The sooner you act the more chances you have to keep your home, but it's never too late.

If you're on a low income or in receipt of benefits, you may be eligible for legal aid and a housing solicitor could represent you at court. Check if you're eligible by calling the Civil Legal Advice helpline on 0345 345 4 345.

What can the court decide?

The court may:

- dismiss your landlord's claim for possession - in this case your landlord will have to restart the possession procedure from the beginning
- adjourn (postpone) the claim indefinitely 'on terms' - the court may order you to meet certain conditions, such as paying a sum towards your rent arrears each week
- adjourn the case for a fixed period so that you can return with more evidence, such as letters about your benefits
- if your case is complicated, set out a timetable to allow you to get advice if you've not had it, and to get detailed evidence before a further hearing
- make a possession order against you.

What type of possession order?

The order the court makes depends on the type of tenancy you have and the legal reason for your landlord's claim.

A possession order can be:

- **outright** - normally you'll be ordered to leave your home within 14 days of the order, or 42 in cases of 'exceptional hardship'. Ask for extra time when you send in your defence form or at the hearing. If you don't leave by the date ordered your landlord can apply for the court bailiffs to evict you.
- **suspended** - you can stay in your home but you must stick to any conditions the court sets out, such as paying current rent plus an amount towards rent arrears. If you break any of the conditions your landlord can apply straight away for the court bailiffs to evict you.
- **postponed** - as for suspended orders above, except that if you breach a condition of the order your landlord must go back to court to fix a date when you must leave. After that date has passed, your landlord can ask the court bailiffs to evict you.

The court will also decide if you must pay any of your landlord's legal costs.

Varying the conditions of the order

You must get advice if you are not able to keep to a condition of a suspended or postponed order as the court could agree to change its terms.

What happens next?

If your landlord obtains a 'warrant' from the court authorising the bailiffs to evict you, the bailiffs will write to tell you when they are coming. If your landlord changes the locks, threatens you or harasses you to leave before the bailiffs evict you this is illegal and a criminal offence.

Even at this late stage the court may have the power to prevent you being evicted by the bailiffs, so get advice on asking the court to suspend the bailiff's warrant.

Help from the council

If you think the council may have to provide you with accommodation as a homeless person, do not move out before the bailiffs evict you as the council may find you 'intentionally homeless'. You have a legal right to remain in the property until you are legally evicted by the bailiffs.

Further advice

You can get further advice from Shelter's free* housing advice helpline (**0808 800 4444**), a local Shelter advice service or Citizens Advice bureau, or by visiting **shelter.org.uk/advice** or **adviceguide.org.uk**

*Calls are free from UK landlines and main mobile networks.

A Shelter and Citizens Advice service. Funded by UK Gov.

citizens advice bureau

Registered charity number 279057.

Shelter

Registered charity in England and Wales (263710) and in Scotland (SC002327).

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