

# Section 21: defences from 1 October 2018

## Footnotes

<sup>1</sup> where original fixed term was for fewer than 4 months and has been replaced by a statutory periodic tenancy, s.21 can be served at any point.

<sup>2</sup> or within 4 months of date of *expiry* of s.21 notice for quarterly or annual periodic ASTs.

<sup>3</sup> where AST started before 1 October 2015 (and not renewed since), the Regulations are unclear if this applies where the claim for possession was started before 1 October 2018.

<sup>4</sup> where there is a court hearing on or after 1 October 2018, the Regulations are unclear whether a retaliatory eviction defence is available in relation to relevant notices served before or after 1 October 2018 following a tenant complaint about repairs and a section 21 notice served before 1 October 2018.

<sup>5</sup> unless the court hearing was on or after 1 October

## Defences: all ASTs:

- notice not in writing
- notice period less than the statutory minimum
- notice served within the first 4 months of the original tenancy start date<sup>1</sup>
- non-compliance with tenancy deposit legislation
- the property is subject to licensing and at the time the notice is served, no licence, no application and no temporary exemption in place
- claim for possession not started within 6 months of date of service<sup>2</sup> of section 21 notice.<sup>3</sup>

## Additional defences:

### AST started before 1 October 2015 (and not replaced with a fixed term since)



#### Section 21 notice served before 1 October 2018

- retaliatory eviction where section 21 is served within 6 months of local authority relevant notice<sup>4</sup>
- (where contractual periodic tenancy), notice must end on last day of a period of tenancy<sup>5</sup>
- none of the other 'new' defences are available (see below).



#### Section 21 notice served on/after 1 October 2018

- retaliatory eviction where section 21 is served within 6 months of local authority's relevant notice
- retaliatory eviction where section 21 is served after a written complaint about disrepair and followed by a relevant notice
- none of the other 'new' defences are available (see below).

### AST started on/after 1 October 2015

#### 'New' defences

- no EPC before the tenant moved in
- no gas safety certificate before the tenant moved in
- no 'How to rent guide' (no time limit for compliance as long as provided before section 21 notice is served)
- notice not on form 6A
- retaliatory eviction defences (subject to exemptions – see article).

### Prohibited tenant fees

If the tenant has been charged a prohibited payment under the Tenant Fees Act 2019 (including a deposit above the prescribed threshold) on/after 1 June 2020, any section 21 notice will be invalid until the payment is:

- returned to the tenant, or
- (with the tenant's permission) credited towards their rent or tenancy deposit.

Between 1 June 2019 and 31 May 2020 this applied only to tenancies that started or were renewed on/after 1 June 2019.