

Section 21: defences from 1 October 2018

Footnotes

¹ where original fixed term was for fewer than 4 months and has been replaced by a statutory periodic tenancy, s.21 can be served at any point.

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

³ where AST started before 1 October 2015 (and not renewed since) it is unclear if this applies where the claim for possession was started before 1 October 2018.

⁴ where there is a court hearing on or after 1 October 2018, it is 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.

⁵ unless the court hearing was on or after 1 October 2018.

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 date¹
- 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 service² of section 21 notice.³

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 notice⁴
- (where contractual periodic tenancy), notice must end on last day of a period of tenancy⁵
- 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
- no gas safety certificate
- 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).

AST started on/after 1 June 2019

Where the tenant has been charged a prohibited payment under the Tenant Fees Act 2019 (including a deposit above the prescribed threshold), 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.