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Retaliatory Eviction Guidance

On 1 October 2015 a number of provisions in the Deregulation Act 2015 will come into force. This means that it will be a legal requirement to follow them. These provisions are designed to protect tenants against unfair eviction.

Where a tenant makes a genuine complaint about the condition of their property that has not been addressed by their landlord, their complaint has been verified by a local authority inspection, and the local authority has served either an improvement notice or a notice of emergency remedial action, a landlord cannot evict that tenant for 6 months using the ‘no-fault’ eviction procedure (a section 21 eviction). A ‘no fault’ eviction is one where the tenant does not have to have done anything wrong, for example not paying the rent, to be asked to leave. The landlord is also required to ensure that the repairs are completed. The process the tenant should go through is set out in more detail below.

There are some additional new rules, particularly around the information which must be provided to tenants before landlords can serve the new section 21 form, which are set out in this note.

There are two separate procedures available to landlords who wish to regain possession of a rented property. They may follow the section 21 procedure or the section 8 procedure. These new measures do not affect a landlord’s ability to evict a tenant through the section 8 eviction procedure. In order to rely on the section 8 procedure, there are certain grounds that have to be met. These include where the tenant has not paid their rent for 2 months or more, or where they engage in anti-social behaviour. Full details of the grounds are set out in Schedule 2 to the Housing Act 1988 which can be accessed here: <http://www.legislation.gov.uk/ukpga/1988/50/schedule/2>.

What kinds of repairs are covered by this legislation?

These new rules allow tenants greater security than before. They allow tenants to make reasonable complaints about the property they are living in to their landlord without fear that they will be evicted as a result. The kind of complaints to which these rules apply concern a serious issue that might cause a potential risk of harm to the health or safety of the tenant, or a family member.

Examples of repairs that are covered by these rules would include a leak in the property or a problem with the heating, especially in colder weather. The sort of repair that would not be covered by these rules is a dripping tap, or changing a lightbulb. The vast majority of landlords will address these sorts of serious issues quickly. This legislation is targeted at those who not only fail to make these repairs, but then attempt to evict the tenant in response to their complaint.

In practice this means that if a tenant makes a complain about disrepair (in writing) which the landlord fails to respond to adequately, or responds by seeking possession, the tenant should approach their local authority to request an inspection to validate their need for a repair.

If the request is validated and the local authority serves a relevant notice, the landlord will be unable to serve a s21 notice for a period of 6 months.

When it comes to prescribed information, it is important to note that this has nothing to do with the prescribed information rules applicable to tenancy deposit protection legislation.

In this instance it concerns the information a landlord will have to provide their tenant if they wish to use the s21 procedure to end their tenancy.

At the start of a new tenancy, the landlord should provide a tenant with certain documents. These include the following:

A valid Energy Performance Certificate. An Energy Performance Certificate (EPC) contains information about how much it will costs to heat the property. It also offers recommendations about how to reduce energy costs and save money.

A valid annual Gas Safety Certificate. A Gas Safety Certificate is proof that the gas appliance has been checked by a Gas Safe registered engineer. Each gas appliance must be checked and certified each year.

A copy of the Department’s “How to rent: the checklist for renting in England” guide. This can be provided in electronic format as a pdf if the tenant has notified the landlord, or a person acting on behalf of the landlord, of an e-mail address at which the tenant is content to accept service of notices and other documents given under or in connection with the tenancy. Otherwise, the guide should be supplied in paper copy. This is a short booklet that gives tenants key details about their rights, and what they should expect from private renting. It also gives information about what to do if there is a problem during the tenancy. From 1 October 2015 it is a new requirement that every landlord must give a copy of this document to their tenant.  We recommend that this should be given at the start of a new tenancy. This guide is accessible for free on the Department’s website: <https://www.gov.uk/government/publications/how-to-rent>

The landlord is still required to provide mandatory information required by other legislation, including relevant tenancy deposit protection information.

What if a landlord does not provide these documents at the start of a tenancy?

The landlord should supply these documents at the start of each new tenancy. If they are not supplied at the start of the tenancy, they should be supplied as soon as possible thereafter. If these documents have not been supplied, the landlord cannot serve a section 21 notice.

As soon as the landlord supplies these documents this restriction is removed.

Further practical guidance about the best way to comply with these regulations will follow.

However, it is important to remember that this only applies to new tenancies (on or after 1 October 2015) and to note the last line

“As soon as the landlord supplied these documents this restriction is removed.”

Unlike similar rules associated with deposits this is not time limited and landlords who fail to comply at the beginning of a tenancy can serve provide the required documents at a later date without penalty.

In respect of properties which do not currently require an EPC for marketing purposes, for instance listed buildings, we are still awaiting clarification from DCLG and will relay this information as soon as we receive it.

Although not strictly prescribed information, a new required form has been produced. Form 6A is the new standard s21 notice which must be used in respect of all new tenancies (from 1 October 2015).

It may also be used with existing tenancies – but this is not mandated.