

OCTOBER 2023



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### WILL THE BILL TO END NO- FAULT EVICTIONS EVER SEE THE LIGHT OF DAY?

As most landlords and agents will be aware, the Government first announced its proposal to ban s.21 evictions (more colloquially known as 'no-fault evictions') many years ago in 2019.

Perhaps understandably, these plans quickly went on the back-burner during the pandemic and instead legislators were focused on introducing emergency legislation, for example the moratorium on evictions that lasted more than six months

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Updated How to Rent checklist released 2 October 2023

Over the course of the last year the proposed end to no-fault evictions has once again become a live issue on the Government's agenda, and a White Paper was introduced in 2022 and the Renters Reform Bill was subsequently introduced in 2023 and was given its first reading in the House of Commons on 17 May 2023.

So will the abolition of no-fault evictions ever come to fruition?

There has been much speculation that the rather slow progress of the Bill is due to opposition from MPs within the Tory party, and the Government is still under pressure from numerous landlord groups who are keen to ensure that the new legislation strikes a fair balance between landlords and tenants.

The Bill had its second reading in Parliament on 23 October 2023. Simultaneously, the Government has announced an indefinite delay to the introduction of the abolition which it says is "vital" in order for the court system to be reformed. Housing Secretary Michael Gove stated that the ban cannot be enacted until a number of improvements are made to the court system, including moving more of the process online and prioritising certain types of cases (e.g. anti-social behaviour).

The news will undoubtedly have come as a relief to many landlords and property professionals who are involved with this type of work, but many groups (including Labour) have criticised the move and have accused the Government of caving in to Tory backbenchers who opposed the reform.



# TOP POSSESSION PITFALLS OF AUTUMN 2023

## 1. Contractual rent reviews

Remember that even if your tenancy agreement contains a contractual rent review provision allowing you to increase the rent, it is important to follow the procedure set out within the agreement and be aware of any conditions (for example that the procedure can only be used to increase the rent once per year).

## 2. Incomplete records

The s.21 claim form (Form N5B) is the prescribed claim form which must be used if you are seeking to follow the accelerated possession procedure. The form is extremely prescriptive and requires a vast amount of information and documentation. This has meant that complete record-keeping is more important than ever. We have found that some landlords, particularly those who don't use a managing agent, just do not have full records to be able to evidence that they have complied with all the requirements in order to serve a valid s21 notice. The result of incomplete records is an incomplete claim form, and this is likely to present a real risk that the Judge considering the claim will decline to order possession.

## 3. Local authorities and tenants being made voluntarily homeless

As many will be aware, it is common for local authorities to advise that a residential tenant should remain in occupation of a property even in circumstances where they accept they need to vacate and find new accommodation (for example if they accept they cannot afford the rent). Often the local authority will advise that the tenant should remain in occupation until a possession order has been granted and a bailiff appointment set, and that if they vacate before then they will have made themselves voluntarily homeless and therefore will not be rehoused. Some landlords find it hard to believe that the local authority would advise a tenant to ignore a formal eviction notice and wait for the court process to run its course, but this practice is commonplace (presumably to 'buy' the local authority another few months of not having to house the tenant when presumably they are already under-resourced).



# HOW TO REGAIN POSSESSION IF IN BREACH OF TENANCY DEPOSIT LEGISLATION

Since April 2007, landlords in England and Wales have been required to join an authorised tenancy deposit scheme (TDS) on creation of a new assured shorthold tenancy and place their tenant's deposit into the TDS within 30 days of receiving the deposit payment. The aim of tenancy deposit protection is to ensure that tenants are treated fairly in that their money is kept safe and they are returned monies due to them on termination of a tenancy agreement.

In addition to exposing themselves to the risk of facing financial sanctions, landlords cannot serve a valid Section 21 Notice on a tenant if they have not protected their tenant's deposit, or they have not protected the deposit within the requisite period of 30 days. What can landlords do when they find themselves in this situation?

## Service of a Section 8 Notice

Failing to protect a tenant's deposit does not preclude a landlord from serving a Section 8 Notice on their tenant. Like a Section 21 Notice, a Section 8 Notice is a notice to evict a tenant and take possession of the tenanted property. However, a Section 8 Notice can only be made if the landlord has at least one 'ground for possession'. Some examples include if the tenant has breached the tenancy agreement through owing rent, damaging the tenanted property, or anti-social behaviour.

So what if Section 8 is not an option?

## Returning the deposit

There are circumstances where serving a Section 8 Notice will not be an option for landlords, for example if no breach of the tenancy has occurred.

Should they wish to evict their tenant, usually the landlord will need to return the unprotected deposit before being able to serve a valid Section 21 Notice. This may not sound overly complicated, but it can be in some situations. The Housing Act 2004, which is the legislation that is relevant to this area, does not define what is meant by a deposit being 'returned'. As such, there may be situations where a landlord has not been deemed to return a deposit. Tenants may also argue that they refused to accept the payment due to the method used.

## Best practice

In summary, it is strongly advised that landlords protect their tenants' deposit with an authorised TDS within the timescales stipulated by the legislation. This will avoid uncertainty should they wish to obtain possession later down the line. However, should they fail to do so, steps can be taken, but care is needed.



# SECTION 13 NOTICES: CAN A TENANT DISPUTE A RENT INCREASE NOTICE?

Section 13 of the Housing Act 1988 allows a landlord to increase the rent on assured shorthold tenancies (ASTs) that have become a periodic tenancy.

## How and when is a section 13 notice served?

The notice must be served by the landlord in a prescribed form (known as a Form 4 notice) and must provide key information such as the current rent, the proposed rent and when the new rent period is to begin.

There are also minimum notice periods prescribed under section 13 depending on the length of the tenancy. Where a fixed term tenancy has expired and is subsequently a monthly periodic tenancy, the notice period will be one month.

## What if the tenant disputes the proposed rent?

Under Section 13(4)(a) of the Housing Act 1988, if the tenant disagrees with the proposed rent, they may ask the Residential Property Tribunal ("the Tribunal") for an assessment of the open market rent. In assessing the open market, the tribunal will ignore any improvements carried out by the tenant. The tribunal can order that the rent stays the same, be increased by a different amount, or even set a lower rent.

Additionally the tenant may (in certain circumstances) apply to the Tribunal for a rent review if they believe the rent is excessive compared to the open market ([section 22\(1\)](#) of the Housing Act 1988). This right only applies if the tenant considers the rent being charged to be 'significantly higher' than the rent for comparable tenancies.

It is also important to note, that if the rent has previously been increased by virtue of section 13 or by a determination by the Tribunal, a landlord is not able to serve another notice for a period of 52 weeks after the date on which the increased rent took effect (section 13(3B) Housing Act 1988).

The tenant can challenge the Tribunal's decision but only in limited circumstances, for example if the Tribunal have interpreted law incorrectly.

## What if the tenant does not dispute the proposed rent?

If the tenant does not dispute the new rent, then it will become payable on the expiry date of the notice.

The cases of [R \(on the application of Lester\) v London Rent Assessment Committee \[2003\] EWCA Civ 319](#) and [Robertson v Webb \[2018\] UKUT 235 \(LC\)](#) have also confirmed that the Tribunal has no power to extend the time limit in which the tenant can dispute the rent.

The result of the above cases is that if the tenant does not dispute the rent within the notice period under the s13 notice, then the new rent is likely to become binding.

# UPDATED HOW TO RENT CHECKLIST RELEASED 2 OCTOBER 2023

The Government released an updated version of the How to Rent guide 'How to rent: the checklist for renting in England' on 2 October 2023.

The How to Rent checklist provides a guide to landlords and tenants in the private rented sector to ensure that both understand their rights and responsibilities.

As landlords and agents will be aware, it has been mandatory to give the latest version of the How to Rent checklist to the tenant since the Deregulation Act 2015 came into force on 1 October 2015, and the ideal time to serve the guide is usually at the same time as granting the tenancy. The checklist can be given in either hard copy or electronic format by agreement with the tenant.

The updated How to Rent checklist is available on the Government website:-

<https://www.gov.uk/government/publications/how-to-rent>



If you would like to discuss or need any help or support on any of the issues above then please contact the Machins' Team on 01582 514 000 or by using the email address below.

We offer fixed fees for s21 and s8 possession claims up to and including the first possession hearing. Please email Holly Baker for a copy of our fixed fee schedule or to find out more.



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