

HOW TO... GET SECTION 21 AND DEPOSITS RIGHT

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THE SCENARIO: BOB AND SYLVIA

- You have a client called Bob; he is the landlord of a house in South London
- The house is currently occupied by a tenant, Sylvia, who moved in on 12 July 2019 under a 6-month AST; she paid a deposit on the same date
- Bob now wants to serve a section 21 notice on Sylvia

QUESTION 1: things to think about

- What do you need to ask Bob about the deposit, before you can advise him on whether he can serve a section 21 notice?

ANSWER

A lot! You will need to know:

- How much is the weekly rent? How much is the deposit?
- Was the deposit placed into a tenancy deposit scheme (a "TDS")? If so, when was that done?
- Was the prescribed information provided? If so, when was that done?
- Has there been a renewal fixed-term tenancy? If so, is it still within its fixed term?
- Has the landlord (or tenant) changed from one fixed-term tenancy to the next?
- Has the description of the premises substantially changed from one fixed-term tenancy to the next?
- Has the TDS changed from one fixed-term tenancy to the next?

QUESTION 2: timing of tenancy protection

- If Bob did protect Sylvia's deposit (which she paid on 12 July 2019), in a TDS, what is the last date that Bob could have placed the deposit into the TDS, in order to comply with the law?

ANSWER

- 30 days: 11 August 2019

QUESTION 3: payment to agent

- What difference would it make if Sylvia paid her deposit to Tony, Bob's letting agent, not to Bob personally?

ANSWER

- None: it doesn't matter that the deposit was paid to an agent; it must still be protected within 30 days of receipt (by the agent)

QUESTION 4: effect of non-protection

- What is your advice to Bob, if the deposit was not put into a TDS by 11 August 2019?

ANSWER

- If Bob wants to serve a valid section 21 notice, he must return the deposit to Sylvia first, before serving the notice

QUESTION 5: prescribed information

- If Bob did put the deposit in a TDS, and did so in good time, when should he have provided Sylvia with the "prescribed information"?

ANSWER

- Same deadline: 30 days, 11 August 2019

QUESTION 6: the "relevant person"

- What difference would it make, if Sylvia's mum Doreen paid the deposit on Sylvia's behalf?

ANSWER

- If Doreen paid the deposit, she would be the "relevant person", so she would also have to be served with the prescribed information (as well as Sylvia)

QUESTION 7: effect of non-provision

- What is your advice to Bob, if the prescribed information was not provided to Sylvia or Doreen by 11 August 2019?

ANSWER

- This is not so serious as non-protection: so long as Bob has served the prescribed information on the tenant and the “relevant person” before he serves the section 21 notice (or even if it is served at the same time), the section 21 notice will be valid

QUESTION 8: replacement tenancy

- Sylvia’s original AST came to an end after 6 months (on 11 January 2020), and you ask Bob if Sylvia ever signed a new fixed-term tenancy agreement after that; why does that matter?

ANSWER

- It only matters if Sylvia is still within a fixed term (because then, the section 21 notice must not expire before the end of the fixed term)
- Since the *Deregulation Act 2015* came into force, it no longer matters if the deposit was protected under an earlier tenancy, and there has been a replacement fixed-term tenancy: so long as the landlord, the tenant, the premises, and the TDS have not changed, the original protection still applies
- But if – when the new fixed-term tenancy was signed – the landlord did change, or the tenant, or the description of the premises (substantively), or the deposit was moved into a different scheme, then the deposit **does** require new protection within 30 days from the date of the new tenancy, with renewed service of the prescribed information

ANOTHER SCENARIO: TREVOR AND JILL

- You have another landlord client, Trevor, who owns a ground floor flat in a Finchley tower block
- His tenant, Jill, moved in under a 6-month AST on 30 January 2020, with a rent of £400 per week
- Trevor took a deposit of £2,500 on the date Jill moved in; he put the deposit into a TDS on 7 February, and provided the prescribed information on 14 February
- There hasn't been a new fixed-term tenancy, so Jill's tenancy became a statutory weekly tenancy at the end of June 2020

QUESTION 9: the Tenant Fees Act

- Can Trevor serve a valid section 21 notice?

ANSWER

- No: for a deposit taken since the coming into force of the *Tenant Fees Act 2019* (i.e. 1 June 2019), the maximum deposit is **five** times the weekly rent (for any tenancy whose annual rent is below £50,000: that is, below £961.54 per week)

QUESTION 10: high rent tenancies

- What difference would it make if Trevor's flat were not a ground floor flat in a Finchley tower block, but a Kensington penthouse with 2 parking spaces, at a weekly rent of £1,000?

ANSWER

- The maximum deposit cap under the *Tenant Fees Act 2019* is **six** times the weekly rent, for any tenancy whose annual rent is £50,000 or above: that is, £961.54 per week or more
- So, in this scenario, Trevor can take a deposit of up to £6,000 from Jill

QUESTION 11: pets

- What difference would it make if Jill were moving into the penthouse with 2 French bulldogs?

ANSWER

- None: the cap applies irrespective of whether or not the tenant has pets. Even if the landlord wants to take an extra pet deposit, the maximum must still be either 5 weeks' rent or 6 week's rent (depending on the annual rent amount)