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42 BEDFORD ROW Housing Law BULLETIN

BULLETIN No10

Retaliatory Evictions: Scheduled changes to the section 21 possession procedure

Section 33 of the Deregulation Act 2015 comes into force on 1 October 2015. The effect of this section is to provide assured shorthold tenants, who have complained about the condition of rented premises, protection from what many have called "retaliatory eviction". Private sector landlords in England should prepare for these changes now.

The explanatory notes to the Deregulation Act 2015 ("the Act") say that the policy rationale for this change is to prevent assured shorthold tenants from feeling unable to complain about poor property conditions because they fear eviction. Some tenants report that when they have raised such complaints, they have been served notice under section 21 of the Housing Act 1988. In such cases, landlords do not need to rely on any grounds for eviction (although they may alternatively choose to do so, for instance where rent is unpaid).

Under section 33 of the Act, however, the landlord's ability to serve a section 21 notice will be restricted where the tenant has complained in writing about the condition of the premises and/or the common parts and the local authority has served relevant notice. The tenant must not have breached their own obligations.

Landlords will be required to respond to the tenant's initial complaint within 14 days. They will need to respond 'adequately' by proposing a plan of action to address the complaint and carry this out within a reasonable timescale. If this does not happen, the tenant can escalate their complaint to the local authority. The complaint should be about the same matter or 'substantially the same' matter. It will then be for an environmental health officer to decide whether to serve a relevant notice or not - defined as an improvement notice or emergency remedial action notice.

It follows that when an assured shorthold tenant complains about a property, it is in the landlord's interests to look into the matter promptly. Any section 21 notice served when the landlord has failed to respond within 14 days of the initial complaint, or to respond adequately, and where a local authority is considering the complaint, will be invalid. Notice will also be invalid if served within 6 months from the day on which a local authority serves notice – or, if the operation of the notice is suspended, within 6 months from the date on which the suspension ends. Landlords should therefore seek to avoid tenants' complaints reaching local authority level.

These changes will only apply in England as housing matters have been devolved to Wales. Furthermore, the requirement for a tenant's complaint to be in writing will not apply if the tenant did not know the landlord's email or postal address or if the tenant made reasonable efforts to contact the landlord to make the complaint, but was unable to do so. It is therefore also in the landlord's interests for tenants to have adequate means of contacting them.

Landlords should also be aware that section 36 of the Act, which also comes into force on 1 October 2015, will give most assured shorthold tenants an initial six months of protection from the section 21 procedure.

This practice note has been produced by Peter Jolley, who is currently undertaking pupillage at 42 Bedford Row