

Housing Management Law School – Autumn 2015

Wednesday 25th November 2015

Housekeeping



- » Government Policy
 - » Extension of the Right to Buy



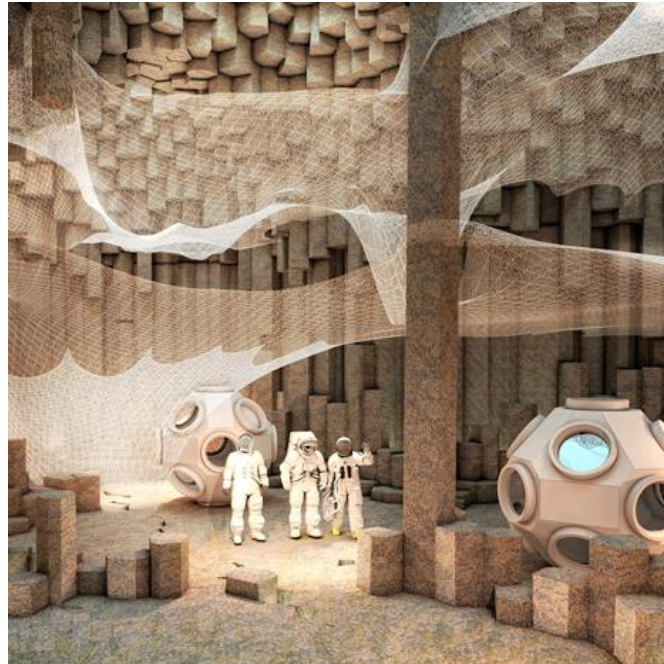
The News – with Simon Thirtle

- » Government Policy
 - » Pay to Stay

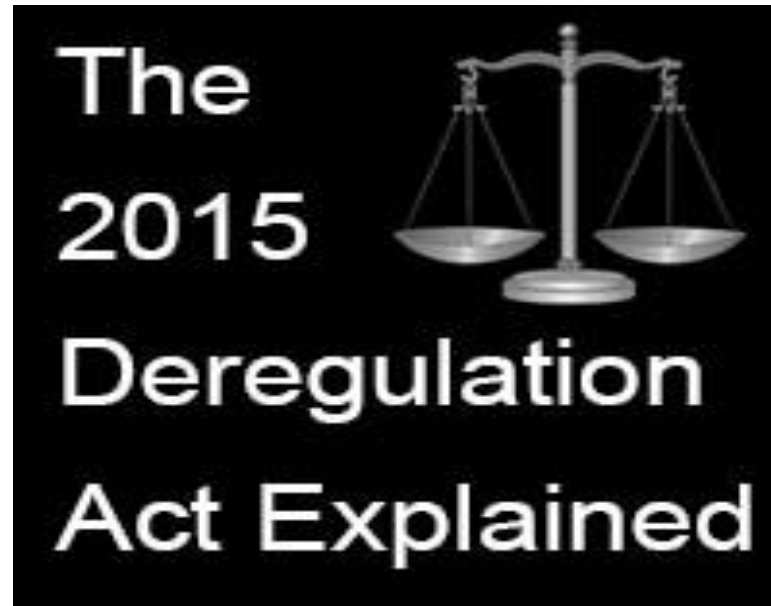


- » Government Policy

- » Homes (Fitness for Human Habitation) Bill 2015



» The Deregulation Act 2015



» Homelessness

- » R (on the application of Brooks) v LB Islington [2015] EWHC 2657 (Admin)



- » Homelessness and Hazards
 - » *Firzoomand v LB Lambeth* [2015] EWCA Civ 952



- » Service charges and money judgments - is there a conflict between the Tribunal and the Court?
 - » *Cowling v Worcester Community Housing Limited* [2015] UKUT 496 (LC)



- » A Ground 7A possession claim - our first one to report!
 - » Goode v Paradigm Housing (October 2015)



Vexatious Complainants – every organisation can have challenging customers

Simon Thirtle, Solicitor

S. 21 Housing Act 1988, as amended by ss 33 - 41
Deregulation Act 2015

John Murray, Partner

What this seminar will cover

- » Review of Assured Shorthold Tenancies (AST)
- » Reminder of the procedure to terminate an AST under S. 21 of the Housing Act 1988 for ASTs pre 1 October 2015
- » Overview of the Deregulation Act 2015 (DA)
- » Changes to the S. 21 notice procedure as introduced by DA

Overview

- » The Deregulation Bill introduced in the House of Commons on 23 January 2014
- » The Deregulation Act 2015 (DA) came into force on 1 October 2015 having received Royal Assent on 26 March 2015.
- » The DA is made up of 17 parts (lengthy piece of legislation)
- » Sections 33 – 41 DA relevant to rented property
- » S. 8 of the Housing Act 1988 unaffected
- » Amendments applicable to all new ASTs granted on or after 1 October 2015 and to all ASTs three years after implementation

Headline changes

- » New provisions in relation to notices ending ASTs under Section 21 of the Housing Act 1988 (s. 21 notice)
- » The Assured Shorthold Tenancy Notices and Prescribed Requirements (England) Regulations 2015
- » Retaliatory evictions
- » Prescribed form S.21 notice (form no. 6A)
- » Timing
- » Statutory right to claim back any unused portion of rent

Assured Shorthold Tenancies

- » What is an AST?
- » Starter tenancies
- » S. 21(1)(b) Housing Act 1988 – terminating a fixed term AST
- » S.21 (4) Housing Act 1988 – termination of a periodic tenancy
- » Statutory periodic tenancies
- » DA does not affect ASTs granted prior to 1 October 2015 even if they become a statutory periodic tenancy after 1 October 2015
- » Tenancy deposit scheme

Structure

- » SS 33 – 41 Deregulations Act 2015
- » Core issues:
 - » Amendments in respect of the prescribed information
 - » Retaliatory evictions
 - » New rules around s. 21 notices

- » S 33 new retaliatory eviction rules
- » S 34 further exemptions to ss 33
- » S 35 notice to be provided in relation to ASTs
- » S 36 time limits in relation to s 21 notices and proceedings
- » S 37 Prescribed form of s.21 notices
- » S 38 Compliance with prescribed legal requirements
- » S 39 Requirement for landlord to provide prescribed information
- » S 40 Repayment of rent where tenancy ends before end of a period
- » S 41 Application of ss 33 - 40

S. 41 DA – the application of sections 33 - 40

- » Apply to all ASTs of a dwelling house in England
- » Granted on or after 1 October 2015
- » Not applicable to fixed term ASTs in existence prior to 1 October 2015
- » Applicable to all ASTs from 2018
- » In effect two S. 21 notice procedures in place until 2018

Retaliatory Evictions (S.33)

- » S.33 (2) – when a S. 21 notice will be invalid
- » Prevents retaliatory evictions
- » Landlord unable to rely on a S. 21 notice if a tenant has:
 - » made a written complaint to the landlord in relation to the condition of the premises before a s. 21 notice is given; and
 - » The landlord has not responded within 14 days beginning with the date on which the complaint was given; or
 - » The response is inadequate; or
 - » The landlord responds with a s. 21 notice

Inadequate response (s. 33(3))

- » A response will be adequate under the DA if:
- » It provides a description of the action that the landlord proposes to take to address the complaint; and
- » Sets out a reasonable timescale within which that action will be taken

Tenant's recourse to the Local Housing Authority (LHA)

Tenants are now able to follow up a written complaint to the LHA who can:

- » Inspect the property to verify the tenant's complaint
- » Serve either an improvement notice or a notice of remedial action
- » Any enforcement notice served will invalidate a S. 21 notice if this was not given to the tenant before the complaint
- » Landlord then cannot evict the tenant for 6 months
- » LHA may engage informally with the landlord to resolve the issue
- » The court **MUST** strike out an order for possession where a S. 21 notice has been invalidated by S. 33(2)

S. 34 – further exemptions to S. 33

- » A tenant will not be assisted by the new provisions where:
 - » The tenant is in breach of its duty to use the premises in a tenant like manner;
 - » The tenant is a private registered provider of social housing; or
 - » The premises were charged before the grant of the new tenancy and the mortgagee wishes to exercise its power for sale and requires vacant possession.

S. 35 Notice to be provided in relation to ASTs

- » S. 35 DA inserts a new ss 4ZA to the Housing Act 1988
- » Ss 4ZA removes the requirement for a landlord to specify in a s. 21 notice the last day of a period of the tenancy as the date on which the tenancy comes to an end

S. 36 – time limits in relation to S. 21 notices and proceedings

- » S. 36 inserts a new subsection 4B to the Housing Act 1988
- » A landlord is now unable to serve a s. 21 notice at the start of an AST
- » In the case of a tenancy which is not a replacement tenancy, notice cannot be served within the first four months of the tenancy beginning on the day when the tenancy began
- » In the case of a replacement tenancy, within 4 months beginning on the day on which the original tenancy began
- » All ASTs now require at least 2 months' notice with no requirement for the AST to end on the last day of the period of a tenancy

Court proceedings – timescales

- » A possession claim cannot be issued after the end of 6 months from the date that the S. 21 notice was given
- » Where the notice period is greater than two months a possession claim cannot be started more than 4 months after the date specified in the notice

S. 37 – Prescribed form of S. 21 notice

- » S. 37 enables the Secretary of State to make regulations prescribing the form of a S. 21 notice
- » The Assured Shorthold Tenancies Notices and Prescribed Requirements (England) Regulations 2015/1646 came into force on 1 October 2015
- » Regulation 4 inserts a new regulation 3(f)(a) to the Assured Tenancies and Agricultural Tenancies (forms) (England) Regulations 2015 prescribing Form No. 6A

Form No. 6A

- » Form No. 6A to be given to end an AST under s. 21
- » No obligation to use the prescribed form notice for ASTs created prior to 1 October 2015 but it may be used in these circumstances
- » The prescribed form **must** be used to terminate ASTs which started on or after 1 October 2015
- » Landlord must comply with the tenancy deposit legislation to use Form No. 6A

Cannot be used where:

- » The tenant has resided in the property for less than 4 months
- » The landlord is prevented from retaliatory eviction under s. 33 DA
- » The landlord has not complied with the requirements under the Assured Shorthold Tenancies Notices and Prescribed Requirements (England) Regulations 2015/1646 came into force on 1 October 2015

Regulation 2 provides that the landlord must:

- » Provide the tenant with a free energy performance certificate; and
- » A copy of a gas safety certificate

Regulation 3 provides that the landlord must:

- » Supply the tenant with a copy of the document "How to rent: the checklist for renting in England".
- » Except when the landlord is a private registered provider of social housing;
- » Where the tenancy is a replacement tenancy and the document was provided under an earlier tenancy; and
- » The version of the document provided to the tenant under an earlier tenancy is the same version which is in effect on the first day of the new tenancy.

S. 38 - Compliance with prescribed legal requirements

- » S. 38 inserts a new S. 21A – compliance with prescribed legal requirements
- » S. 38 prevents a landlord from serving a s. 21 notice where it has failed to comply with the statutory obligations (Regulation 2)

S. 39 – Requirement for landlord to provide prescribed information

- » Inserts a new S. 21B to the Housing Act 1988 - requirement for landlords to provide prescribed information (Regulation 3)
- » S. 21 notice may not be served when a landlord is in breach of this duty

S. 40 Repayment of rent

- » Inserts a section 21C to the Housing Act 1988
- » Provides for repayment of rent where the tenancy ends before the end of a period
- » Tenant is entitled to repayment of rent, calculated on a daily basis
- » Repayment of rent paid in advance for that period
- » Formula set out in S. 40:
$$\frac{R \times D}{P}$$
- » R - Rent paid for the final period
- » D - number of whole days of the final period for which tenant was not in occupation
- » P - the number of whole days in that period

Summary and key information

- » Respond adequately, and within 14 days, to any complaints about maintenance or the property condition
- » Provide the prescribed information, gas certificate and EPC at the beginning of the AST to ensure requirements are satisfied
- » Do not serve notice within first 4 months of the AST
- » Be pro-active in issuing proceedings if the tenant does not vacate by the date specified in the S.21 notice to avoid losing the right and having to serve a new notice
- » Application of DA from 2018 to all ASTs
- » Use form 6A in respect of terminating ASTs which were granted on or after 1 October 2015
- » Continue to use in house s. 21 notices for all other tenancies for the time being to avoid confusion

Case studies – starter tenancies

- » In the following two case studies, you are the Housing Services Manager for a starter tenant, and are asked by the local housing officer to sign off a Notice of Seeking Possession.
- » Will you sign?
- » What are the implications?
- » What are the alternatives?

Case studies – starter tenancies

- » 1. Justin Bieber was granted a starter tenancy on the 1st February this year. You have received anonymous complaints that he has been playing loud music and growing cannabis in his flat, but the complainants are not willing to go on the record as they say that they are intimidated by his behaviour. He is in rent arrears having failed to complete forms for housing benefit. He is not accepting any support that you have arranged from an independent agency.

- » 2. Hannah Montana is a starter tenant who moved into her home on the 1st September this year. She is part of a Girl Gang who have been terrorising the residents of a sheltered scheme, asking for money, alcohol and cigarettes. You have pretty good evidence against her in the form of CCTV footage, and police witness statements.

Any questions?