

## **AST landlords: seeking possession just got a lot easier (and possibly a bit quicker)**

If you are an AST landlord or letting agent and you regularly serve section 21 notices to recover possession of AST properties, you will know that there has long been uncertainty about when to serve a section 21(1) notice and when to serve a section 21(4) notice.

A section 21(1) notice simply needs to give the tenant two months' notice of the landlord's intention to recover possession. No specific date needs to be given.

By contrast, a section 21(4) notice needs to specify an expiry date which is at least two months in the future, and which is also the last day of a period of the tenancy. Various questions arise about when periods start and end, and the position is often far from clear. This led to landlords sometimes resorting to a general form of wording (instead of specifying an actual calendar date) which was sufficient to meet the statutory criteria but which was largely meaningless to tenants.

Last year the Court of Appeal made an important decision in this area of law in the case of *Spencer v Taylor* [2013] EWCA Civ 1600. The court held that where there has been a fixed term tenancy (e.g. for one year) and the tenancy has become a statutory periodic tenancy after the end of the fixed term, a landlord need not comply with the more stringent requirements of section 21(4).

For some time it was considered unsafe to rely on this decision because of the risk that it would be overturned by the Supreme Court but that is now no more.

The Supreme Court has refused permission to appeal, so the Court of Appeal decision stands. The position is therefore:

- As long as there has at some point been a fixed term tenancy, the landlord can rely on section 21(1). The landlord cannot, of course, recover possession any earlier than the end of the fixed term unless he is also able to exercise a break right in the tenancy agreement.
- The only situation where a landlord needs to comply with the more stringent provisions of section 21(4) is where there has never been a fixed term period. That is, where the tenancy has always been a periodic one.

Although this clears up one aspect of uncertainty, landlords must still ensure that other statutory requirements have been met, including compliance with tenancy deposit and HMO legislation, before serving a section 21 notice. Legal advice should always be taken.

For further advice about residential possession proceedings, please speak to:

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