



The property forums are filled with comments about the proposed abolition of Section 21 notices to bring assured shorthold tenancies to an end. In this newsletter we share our opinion on the matter.

The Section 21 notice is known as the non fault notice and was designed to be used by a landlord who wished to terminate a tenancy agreement but perhaps had no real reason for doing so. It gave a landlord the “upper hand” and consequently gave mortgage lenders a layer of comfort regarding security of tenure when considering advancing mortgage monies.

Since its inception by the 1988 Housing Act there has been a marked move to further protect tenant rights and there is possibly and understandably a general reluctance by Courts to evict someone from their home.

Many landlords have therefore elected to use the certainty of a Section 21 Notice rather than to rely on perhaps discretionary grounds applicable to a Section 8 notice.

Significant numbers of landlords have used the Section 21 notice when there is a default by the tenant. This notice has been used, as the perception by the landlord is that it will more likely result in the termination of the tenancy with the minimum of fuss and without incurring the potential risk of a defence by the tenant.

Having been involved with probably 1,000 tenant evictions in my time, I believe that less than 1% of those were initiated without there first being a significant default by the tenant. Why would a landlord wish to evict a good tenant? The truth is they don't!

The government have promised that the consultation on this process will include the improvement of the Court process both in terms of timescales and the provision of additional grounds under Section 8 of the Housing Act.

Without such improvements we believe that many landlords would be nervous about

The landlord, as owner of the property, should be able to recover possession of the property if they have a genuine issue with their tenant. The mandatory grounds of Section 8 are not currently sufficient enough to cater for all such circumstances which is why the Section 21 continues to be used as the “catch all” method.

To support this view I want to consider three examples that I have experienced either myself as a landlord or on behalf of Clients for which a Section 21 was served and for which if Section 21 was not available, the landlords would be left in a rather unenviable position given that Section 8 would not provide a straightforward route to possession.

My first example is a tenant who made repeated claims of damp at her property. It was not damp, it was condensation caused by the drying of clothes on the radiators, numerous pets, a non vented tumble drier and four vivarium tanks. The relationship between landlord and tenant broke down as the tenant wanted the landlord to undertake some damp prevention works whilst the landlord wanted the tenant to act in a “tenant like manner” and comply with their tenancy. This would doubtless be a difficult case under Section 8 and therefore a Section 21 was used.

A further example is a tenant who objected to a planning and listed building application for a property in which he was residing. The landlord clearly wanted to maintain and improve their property yet the tenant put significant effort into obstructing such works. Again, a difficult one to resolve without the ability to use a Section 21 Notice.

My final example shows how the notices can benefit the tenants themselves. A landlord, following an inspection of their premises, noticed that a tenant had started hoarding items and had been extinguishing cigarettes on the carpet. The tenant had been resident

contacted social services to see if they could speak with the tenant about the issues she was clearly facing. Social services swiftly intervened and determined that the tenant should be relocated to assisted living accommodation for their own safety. In order to make the tenant a higher priority, the landlord was requested to serve the tenant a section 21 notice. Whether she would have received the help she needed without such a notice is uncertain.

I do not believe that any landlords would be distressed to learn that they could not evict a good tenant who pays their rent on time and who observes all the obligations of the tenancy agreement.

The issue is that in its current format, Section 8 claims do not allow a clear and straightforward path to possession for all issues of tenant default. Until that changes we are opposed to the outright abolition of the Section 21 notice.

We would be happy to hear your views on the matter or assist any readers who are facing tenancy issues with their properties. We can be contacted at [kent@grahamkinnear.com](mailto:kent@grahamkinnear.com)



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