

Service of Section 21 Notices

This information sheet applies to valid assured shorthold tenancies, created under the Housing Act 1988. Section 21 of the Housing Act 1988 provides for repossession by the landlord if the landlord has served on the tenant appropriate notice that possession is required. No reason need be given.

The tenant should vacate the property on the date of expiry of the notice period given under the Section 21 Notice. The notice normally states that the landlord requires possession after a certain date. With the agreement of the landlord, the tenant may surrender possession at an earlier date. If the tenant does not have the agreement of the landlord to surrender early, they must pay rent up to the day on which possession is sought. If the tenant stays in the property beyond the day on which possession is sought, the landlord may accept further rent without jeopardising their claim for possession.

Different terms

Two different situations may prevail at the time when the landlord first serves notice on the tenant that possession is sought. Either the tenancy will be within a fixed term, or it will be periodic.

A **fixed term tenancy** is one where a date is shown on the tenancy agreement on which the tenancy is to end, or the tenancy is for a term certain (a specified number of months or weeks) beginning on a particular day. It is best if the fixed term is for a precise number of periods (usually months or weeks). Thus a fixed term tenancy of five months beginning on 23 January, would end on 22 June. A fixed term tenancy of 20 weeks beginning on Sunday 19 January 2003, would end on Saturday 7 June 2003.

A fixed term is **fixed** for both the tenant and the landlord. Neither party can end the tenancy early unless the other party agrees (or there is express provision, in the form of a "break clause", in the tenancy agreement.)

A **periodic tenancy** is a tenancy of no defined length which simply runs from one period to another, (a monthly tenancy runs from month to month, a weekly tenancy runs from week to week). The period of the tenancy is the period

for which rent is payable (usually a week or a month, but other periods, such as four-weeks, could be defined in the tenancy agreement). The period should not be confused with the term, which is the overall time the tenancy lasts.

Most landlords grant their tenants an initial fixed term tenancy with a written agreement. If there is no special provision to the contrary (sometimes the initial agreement contains specific provision for the tenancy to continue), at the end of the initial fixed term (or any subsequent fixed term) the tenancy normally continues in one of four ways:

1. No further written agreement is drawn up, a new tenancy then immediately arises on a periodic basis (known as a statutory periodic tenancy).
2. A written agreement is drawn up, similar to the first, for a further fixed term.
3. A written agreement is drawn up, similar to the first, but on a periodic basis (known as a contractual periodic tenancy).
4. An oral agreement is agreed for a further fixed term, or for a periodic tenancy, in which the terms vary from the original agreement (not recommended).

Minimum notice

The minimum length of notice to be given is always two calendar months from the day on which the tenant actually receives the notice document. Do not make the mistake of thinking eight weeks is equivalent to two months – it is not. If served during the fixed term, the day on which the tenant is asked to vacate cannot be earlier than the last day of the fixed term. If served during a periodic tenancy, the possession date on the notice must be a day which is the last day of a tenancy period (not the first day). Where possible make the length of the notice period more than the bare minimum of two months.

Example 1

The tenant has a six month fixed term tenancy that began on 14 January, and that has not yet expired. The tenancy agreement states that the rent is per month (so the 'period' of the tenancy is one month).

If the notice is served on the tenant on or before 13 May, the possession date cannot be sooner than 13 July (the last day of the fixed term).

If the notice is served on or after 14 May, (but before 14 July) the possession date must not be less than two calendar months from the date of service; to be on the safe side it is best to make the length of notice two months plus a few days (the notice period does not have to end at the end of a tenancy period in such a case).

Example 2

The tenant had a fixed term tenancy that began on 14 January, and it has now expired. The tenancy agreement stated that the rent is £225 per month (so that the 'period' of the tenancy is a month, running from 14th to 13th). The tenant has remained in the property after the end of the fixed term and continued to pay rent to the landlord; the tenancy is now a statutory monthly periodic tenancy.

The notice may be served on any day, but must expire on the 13th of a month (the last day of a tenancy period). So if the notice is served on the tenant on 20 July, possession would be required after 13 October (or it could be the 13th of any subsequent month).

Example 3

The tenant had a fixed term tenancy that began on Tuesday 1st May 2007. The tenancy agreement states that the rent is £50 per week (so that the 'period' of the tenancy is a week, running from Tuesday to Monday). The tenancy is for a fixed term of 6 months and therefore ends on Wednesday 31st October 2007; this is the date which should be used to end the fixed term tenancy. However if the tenant has remained in the property after the end of the fixed term, and continued to pay rent to the landlord; a new statutory periodic tenancy will have started on Thursday 1st November, thus creating a new weekly period which will run from a Thursday and end on a Wednesday. To end this tenancy, the notice period must be a minimum of 2 months and must end on a Wednesday. *(If unsure please phone our Advice Line).*

Example 4

The tenant had a fixed term tenancy that began on Tuesday 14 January 2003. The tenancy agreement states that the rent is £200 per four weeks (so that the 'period' of the tenancy is four weeks, running from the Tuesday to the Monday four weeks later, and so on). The tenant has remained in the property after the end of the fixed term and continued to pay rent every four weeks to the landlord; the tenancy is now a statutory four-weekly periodic tenancy.

The notice may be served on any day, but must expire after a day which is a Monday that is also the last day of a four-week period (the last day of a tenancy period). So if the notice is served on the tenant on Friday 22 August 2003, possession would be required after Monday 17 November 2003 (two months after 22 August 2003 is Wednesday 22 October 2003; counting four-weekly periods from Tuesday 16 January the next four-weekly period ending after 22 October ends on Monday 17 November 2003). In this example, the notice could equally well expire after 15 December 2003, 12 January 2004 etc, all of which are Mondays at the end of the four-weekly periods.

This last example shows how complicated it can get, best to stick to weekly or monthly tenancies for all lettings!

Quarterly tenancies

Quarterly tenancies are another problem altogether, and are best started on a usual quarter day. A minimum of three months' notice is required. Usual quarter days are 25 March (Lady Day), 24 June (Midsummer Day), 29 September (Michaelmas Day) and 25 December (Christmas Day).

The effect of housing benefit

Housing benefit is typically paid in different amounts from what is stated as the rent in the tenancy agreement, and at different intervals. No account should be taken of this. It is what is laid down in the tenancy agreement that counts in determining the relevant dates for possession purposes.

New Requirements under the Housing Act 2004

The 2004 Housing Act requires that any deposit taken must comply with the text below:-

Extract from Court Form N5b

The following section must be completed in all cases (delete as appropriate)

- (a) *a money deposit was received on or after 6 April 2007*
- (b) *If Yes, at the date of service of the Section 21 Notice:*
 - (i) *The deposit was held under a Tenancy Deposit Scheme (TDS) authorised under Part 6 of the Housing Act 2004*
 - (ii) *The initial requirements of the TDS had been complied with in relation to the deposit.*
 - (iii) *The claimant had given the defendant and anyone who paid the deposit on behalf of the defendant the prescribed information in relation to the deposit and the operation of the TDS*
- (c) *The claimant received a deposit in the form of property on or after 6 April 2007*
- (d) *If Yes, at the date of service of the section 21 Notice that property had been returned to the person from whom it was received.*

Our advice is to only serve a Section 21 when possession is required, you will have plenty of warning that things are going wrong. Therefore in a six month AST, as long as you serve notice before the end of month four you will be able to require possession after the last day of the fixed term tenancy.

Alternatively, there could be cases where you would rather send a simple (and reasonably friendly, if you wish) letter could be written on the following lines (this might well have been preceded by a verbal intimation to the tenant that possession would be required):

Mr A. Tenant,
Flat 1,
2, Any Street,
Anytown,
AB1 2CD

27 June, 2003

Dear Mr Tenant,
Flat 1, 2 Any Street, Anytown, AB1 2CD

As discussed last week, this is to inform you that, by virtue of Section 21 of the Housing Act 1988, I require possession of the above property after 1 September 2003. If convenient, I would like to do an initial check of the property, and the inventory, with you on Saturday 9 August. This should allow us time to sort out any discrepancies before the end of the tenancy.

On 9 August we can also discuss the exact arrangements for the hand back of the property on 1 September.

I hope you've been happy in the property and I wish you well for the future.

I will give you a ring shortly to confirm about calling round on 9 August.

Yours sincerely,

Betty Let
(Mrs B T Let)
(Landlord)

Joint landlords

With joint landlords, only one need sign the notice.

Joint tenants

The notice should be addressed to the joint tenants jointly (i.e. all their names, as shown on the tenancy agreement).

It is best if each of the joint tenants receives a copy, but not essential.

Proof of service

If court proceedings follow, it is essential to be able to prove that the Section 21 Notice was served.

This is best done by having the tenant sign a copy by way of receipt.

In order for you or your agent to leave the notice at the property, the tenancy agreement must contain a clause specifying this method of service.

In all cases it is as well to get these actions witnessed.

If Royal Mail is used, it should be first class with a 'Proof of Posting Certificate' obtainable from the Post Office.

Registered Post and Recorded Delivery should NOT be used.