RESIDENTIAL TERMINATION UPDATE

- *ASTs and other recent changes*

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by

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"Very knowledgeable and really bends over backwards for clients and instructing solicitors" (Legal 500, 2015)

"An effective advocate, who offers practical advice and is good with difficult clients." (Chambers UK 2015)

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Introduction

This seminar will address the substantial legislative changes that have come about in relation to Assured Shorthold Tenancies ("AST").

In particular, it will address:

Deregulation Act 2015

Immigration Act 2014

This legislation represents perhaps the biggest change to the AST regime since its inception. Taken together with tenancy deposit provisions originally introduced by the Housing Act 2004 (ss. 213 to 215), it represents a huge additional burden on landlords.

Deregulation Act 2015

Three major aspects of this legislation insofar as it impacts upon ASTs:

1. Further refining and clarification of the provisions of tenancy deposits (insertion of new sections 215A to 215C into the Housing Act 2004);

2. Preventing retaliatory eviction etc: further incursions into the ability of landlords to serve section 21 notices;

3. Prescribed forms of section 21 notices.

1. Tenancy deposits

These new provisions of the Housing Act 2004 came into force on 26 March 2015

Need for clarification was triggered by two Court of Appeal decisions:

1. *Superstrike v Rodrigues [*2013] 1 WLR 3848

   L granted a tenancy for a term of 1 year, less one day. A deposit was taken but the provisions of the HA 2004 regarding tenancy deposits were not yet in force. The fixed term tenancy came to an end and was replaced by a statutory periodic tenancy. Neither party took any steps in relation to the deposit. Subsequently, the L sought to serve a section 21 notice.

   L argued that there was nothing in the legislation, which indicated that the provisions were to apply to a deposit taken before the commencement date.

   T argued that when the new statutory periodic tenancy arose because the provisions of the HA 2004 had, by that time, come into force, L was obliged to protect the deposit. Having failed to do so, L could not serve a valid section 21 notice.

   Court found for T

2. *Charalambous v Ng* [2015] HLR 15

   L received a deposit in respect of a series of fixed term tenancies. A statutory periodic tenancy arose in 2005 (before commencement of the tenancy deposit provisions in the HA 2004). That tenancy continued until 2012 when L purported to serve a section 21 notice.

   T argued that the section 21 notice was invalid. L argued that the statutory periodic tenancy had arisen prior to the requirement to protect the deposit and therefore the section 21 notice was valid. Court disagreed and found for the T on the basis that the deposit had to be held in an authorised scheme at the time the section 21 notice was served.

Section 215 HA 2004 is amended to make clear that:

> Where a tenancy deposit is paid before, on or after 6 April 2007, no section 21 notice may be given in relation to the tenancy at a time when the deposit is not held in accordance with an authorised scheme
>
> Where a tenancy deposit was paid on or after 6 April 2007, no section 21 notice may be given in relation to the tenancy until such time as section 213(3) has been complied with. Section 213(3) requires L to comply with the initial requirements of an authorised scheme with the period of 30 days beginning with the day on which the deposit was received.
>
> If L has not complied with section 213(6) by giving the prescribed information, no section 21 notice can be served until such time as the landlord provides the prescribed information.

New sections 215A and 215B clarify the position where a tenancy deposit was received (i) prior to 6 April 2007 (being the date on which the provisions of the Housing Act 2004 came into force) (section 215A) and (ii) after that date (section 215B)

Section 215B addresses concern regarding the decision in *Superstrike*. In short, provided all of the requirements of section 215B are met, if the landlord receives a deposit on or after 6 April 2007 and complies with the legislation at the time when he first receives it, he will be deemed to comply with sections 213(3), (5) and (6) even though the tenancy is replaced by a new tenancy or tenancies.

2. Retaliatory eviction etc

Provisions came into force on 1 October 2015. Currently, they only apply to tenancies granted after that date. However, they will apply to all tenancies (whether granted before, on or after 1 October 2015) from 1 October 2018: section 41 DA 2015.

Section 33 DA 2015 states:

(1) Where a relevant notice is served in relation to a dwelling-house in England, a section 21 notice may not be given in relation to an assured shorthold tenancy of the dwelling-house—

> *(a) within six months beginning with the day of service of the relevant notice, or*
> *(b) where the operation of the relevant notice has been suspended, within six months beginning with the day on which the suspension ends.*

(2) A section 21 notice given in relation to an assured shorthold tenancy of a dwelling-house in England is invalid where—

> *(a) before the section 21 notice was given, the tenant made a complaint in writing to the landlord regarding the condition of the dwelling-house at the time of the complaint,*
> *(b) the landlord—*
> > *(i) did not provide a response to the complaint within 14 days beginning with the day on which the complaint was given,*
> > *(ii) provided a response to the complaint that was not an adequate response, or*
> > *(iii) gave a section 21 notice in relation to the dwelling-house following the complaint,*
> *(c) the tenant then made a complaint to the relevant local housing authority about the same, or substantially the same, subject matter as the complaint to the landlord,*
> *(d) the relevant local housing authority served a relevant notice in relation to the dwelling-house in response to the complaint, and*
> *(e) if the section 21 notice was not given before the tenant's complaint to the local housing authority, it was given before the service of the relevant notice.*

(3) The reference in subsection (2) to an adequate response by the landlord is to a response in writing which—

(a) provides a description of the action that the landlord proposes to take to address the complaint, and

(b) sets out a reasonable timescale within which that action will be taken.

(4) Subsection (2) applies despite the requirement in paragraph (a) for a complaint to be in writing not having been met where the tenant does not know the landlord's postal or e-mail address.

(5) Subsection (2) applies despite the requirements in paragraphs (a) and (b) not having been met where the tenant made reasonable efforts to contact the landlord to complain about the condition of the dwelling-house but was unable to do so.

(6) The court must strike out proceedings for an order for possession under section 21 of the Housing Act 1988 in relation to a dwelling-house in England if, before the order is made, the section 21 notice that would otherwise require the court to make an order for possession in relation to the dwelling-house has become invalid under subsection (2).

However, a section 21 notice will be valid where:

The disrepair complained of is due to failure of the tenant to use the property in a tenant-like manner;

The property is “genuinely on the market for sale”; or

A mortgage was granted prior to the tenancy and the mortgagee is entitled to exercise its power of sale.

(see section 34)

Sections 38 and 39 DA 2015 insert new sections 21A and 21B into the Housing Act 1988

Section 21A precludes the service of a section 21 notice where L has not complied with such legal requirements as may be prescribed by any enactment which relates to:

(a) The condition of dwelling-houses;

(b) The health and safety of occupiers of dwelling houses;

(c) The energy performance of dwelling-houses.

Furthermore, section 21B precludes the service of a section 21 notice where L has not provided certain prescribed information to T.

The Assured Shorthold Tenancy Notices and Prescribed Requirements (England) Regulations 2015 make provision for such legal requirements and prescribed information as are referred to under sections 21A and 21B:

L must comply with requirements to provide information pursuant to:

- Regulation 6(5) of the Energy Performance of Buildings (England and Wales) Regulations 2012 (requirement to provide an energy performance certificate to a tenant or buyer free of charge); and
- Paragraph 6 or 7 (as the case may be) or regulation 36 of the Gas Safety (Installation and Use) Regulations 1998 (requirement to provide a gas safety certificate)

L must provide the document entitled *"How to rent: the checklist for renting in England"*, as published by the DCLG (available at **www.gov.uk/government/publications/how-to-rent**)

3. Prescribed forms of section 21 notices

Section 37 DA 2015 amends section 21 HA 1988 to make provision for prescribed forms of section 21 notices. The prescribed forms (which must be used for tenancies granted on or after 1 October 2015) can be found in The Assured Shorthold Tenancy Notices and Prescribed Requirements (England) Regulations 2015.

Immigration Act 2014

The Immigration Act 2014 introduced a requirement for landlords of private rental accommodation to conduct checks to establish that new tenants have the right to remain in the UK (ss 20 to 37). The requirement came into force across the UK on 1 February 2016.

Under section 22 IA 2014, landlords *"must not authorise an adult to occupy premises under a residential tenancy agreement if the adult is disqualified as a result of their immigration status."*

Pursuant to section 21, adults are disqualified if they do not have unlimited or a time-limited right to remain in the UK, or if they have a right to remain but are barred from renting property as a condition of their immigration status.

In order to check T's immigration status, L will have to view original immigration documentation in the presence of the applicant, make copies of the documents and keep copies for 12 months after the tenancy expires.

Where a person has no time limit on their stay in the UK, checks may be undertaken at any time prior to the residential tenancy agreement being granted. However, where a person has a time-limited right to remain, the checks can take place no more than 28 days before the commencement of the tenancy agreement.

Further legislation is on the way providing further penalties for non-compliance with the statutory scheme, including imprisonment.

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