

Property Law Briefing Note

Assured Shorthold Tenancies

A Court of Appeal decision has resolved the previous uncertainty as to which type of section 21 notice should be served once a fixed term assured shorthold tenancy (AST) has expired and the tenant remains in occupation on a statutory periodic tenancy.

The court confirmed that it is no longer necessary to comply with the additional requirements of section 21(4) if the fixed term tenancy has expired and the tenant is in occupation on a statutory periodic tenancy.

As a notice under section 21(1) does not have to expire on a particular date, this will make service of notices easier. It seems that section 21(4) notices will now only be required for ASTs where there was no initial fixed term and the periodic tenancy was granted contractually from the outset.

Terminating an AST after the fixed term has expired

On or after the end of a fixed term AST, the court can order possession of the property if both of the following apply:

- The AST has ended and no further AST exists, other than a periodic tenancy (whether statutory or not).
- The landlord has given the tenant at least two months' written notice that the landlord requires possession of the property.

Service of a notice requiring possession (section 21 notice)

A section 21 notice:

- Does not have to be in a prescribed form.
- Does not have to expire on a particular day.
- May be served before, or on the day that the tenancy expires, notwithstanding that a statutory periodic tenancy arises at the end of the fixed term.
- Does not have to specify any grounds for possession.

Terminating a contractual periodic AST

Where an AST is granted as a periodic tenancy from the outset, the court can order possession of the property if the landlord has given the tenant at least two months' written notice that the landlord requires possession of the property. The notice must expire on the last day of a tenancy period specifying that possession is required after that day. So the period of notice required will usually be more than two months.

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