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LandlordTODAY

Goodbye to Section 21 - a short history

RENTAL REFORM

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By Scott Goldstein
Property Specialist Partner, Payne Hicks Beach

Housing has always been one of the most sensitive political issues, meaning that legislation in this area is unusually sensitive to changes in government and public priorities. Nowhere is this more evident than with residential security of tenure.

Residential tenants' rights reached their climax with the Labour government of the mid-1970s, but 10 years' later, Mrs Thatcher's Conservative government decided it was time to deregulate private sector tenancies. The Housing Act 1988 was enacted, including the first iteration of Section 21, allowing some residential landlords to evict tenants even when there was no breach of the lease.

This Section always applied to ASTs but for a number of years its impact was restricted by the fact that before the enactment of amendments in the late 1990s, it was necessary for a landlord and tenant to "opt in" to having an AST, rather than having one by default. However, from February 1997, a change in the law meant that most new tenancies became ASTs by default. Hence the Section 21 process immediately became available for use by far more landlords than previously.

However it was not long before the pendulum began to swing back in favour of tenants. The Housing Act 2004, Deregulation Act 2015 and Tenant Fees Act 2019 between them introduced a series of preconditions that the landlord had to satisfy before serving a Section 21 Notice. Failure to do so would render the Notice invalid.

The drive to streamline residential repossessions is assisted (in principle) by the accelerated possession procedure, which is the court process that a landlord can use to recover possession from tenants it has served with a Section 21 Notice. The procedure allows the Court to make a possession order without a hearing, the idea being that as long as the landlord has satisfied a checklist of preconditions set out in the Section 21 legislation, the Judge has no discretion and therefore no hearing is necessary.

However, the effect of the combined restrictions on Section 21 Notices meant that the process of recovering possession is often not as smooth as originally intended.

Predictably, the meaning and scope of the preconditions themselves have become the subject of hard fought cases, but a number of grey areas remain. One such question is the status of a Section 21 Notice that has been served in circumstances where the landlord has supplied a Gas Safety Certificate which did not comply with Section 36 of the Gas Safety Regulations. In a recent first instance decision on the point in the county court, the judge dismissed the possession proceedings due to there being missing information on the Certificate, but that decision will not bind another County Court. There will need to be binding authority from a higher court to determine the issue conclusively.

By the 2019 election there was broad consensus at Westminster favouring the abolition of Section 21 Notices. Then the pandemic struck and the county courts became sclerotic, with enormous reductions on the number of possession claims they could consider. The median average time for a landlord to repossess a property increased from 20.1 weeks in 2019 to 68.4 weeks in 2021.

Hence the Government's announcement in the Queen's Speech of the Renters' Reform Bill to abolish Section 21 Notices, comes as no surprise, nor is it necessarily bad for landlords.

The Government has yet to publish its draft Renters Reform Bill, but its press release earlier in the month indicated that it will try to keep disputes out of Court by creating a new Private Renters' Ombudsman to settle residential landlord and tenant disputes quickly, and at low cost.

There is also an indication that the Government will create a new Property Portal to help landlords understand their obligations, provide the tenants with performance information, and hold landlords to account for the quality of the properties they supply. These measures must be supported by adequate investment.

However by themselves, they will not be enough.

In 2019, commentators suggested that on abolishing Section 21 Notices the Government would also strengthen the Section 8 regime, by introducing new grounds on which a landlord might retake possession. These might include, for example, circumstances where the landlord wishes to sell the property, or occupy it himself. However, there does not appear to be any mention of these proposals in the Government's latest press release. This would seem to be a mistake.

In order to preserve the correct balance of power between landlords and tenants, landlords must have a wide discretion to recover possession, albeit on proof of satisfactory evidence. Now that the Government has finally decided to bury Section 21, it must ensure that for all parties the new system works better than the old.

**** Scott Goldstein is property specialist Partner in the Dispute Resolution team at law firm Payne Hicks Beach****

PAYNE | HICKS | BEACH

Payne Hicks Beach LLP
10 New Square, Lincoln's Inn, London WC2A 3QG
DX 40 London/Chancery Lane
Tel: 020 7465 4300 Fax: 020 7465 4400 www.phb.co.uk