**FAQ 7**

**Section 21 notices: what is the last day of a period of the tenancy where the period is different from the day on which rent is due?**

**The scenario**

An assured shorthold tenancy commenced on 1st June 2010 for a fixed term of 12 months. It has since continued as a statutory periodic tenancy. The tenancy agreement provides for the rent to become payable on the 15th day of each month.

The landlord now wishes to serve a notice requiring possession under section 21(4) of the Housing Act 1988, which must be expressed to take effect after the last day of a period of the tenancy. The question is what is the last day of a period, and whether this is governed by the day on which rent is due. Should a valid section 21 notice expire on the last day of the month, or on the 14th of the month?

 **Analysis**

The statutory periodic tenancy (SPT) takes effect "immediately on the coming to an end of the fixed term tenancy" (s.5(3)(a), HA 1988), ie, on 1 June 2011. It cannot take effect on15 July 2011, because there would then be a gap, and the SPT starts "immediately".

Rent is usually due on the first day of a period of the tenancy, but there is no reason why it cannot be due on a different day.

The periods of the SPT are "the same as those for which rent was last payable under the fixed term tenancy" (s.5(3)(d)). That period was monthly. The monthly period dates from the first day of the SPT, ie, 1 July 2011, and so the last day of a period is the last day of the month. The actual day on which rent is due is irrelevant. There is no mention in s.5(3)(d) of the date when the rent was last payable. The subsection refers to the "periods for which the rent was last payable", which is not the same thing at all.

*Salford City Council v Garner [2004] HLR 35* was a case about an introductory tenant, but the same issue arose in it. Lord Justice Chadwick, said (para 30):

"The provisions under the tenancy agreement are (i) that the rent is to be paid on each Monday; and (ii) the rent to be paid on each Monday is one week's rent. But that says nothing as to the period of seven days for which the rent is payable. There is, for example, no conceptual difficulty in an obligation which requires a tenant to pay, on the Monday, rent for a period of seven days which commenced on the previous Friday. When the rent is paid is simply a matter of accounting convenience for the landlord."

Shelter

July 2011