

## Working examples- Rent Deposits and PI

**Tenant A has been living in the property since February 2006 and signed a 12 month AST at the time. He paid a deposit in February 2006 but does not know where it is and not given any documents about it. He has never signed a renewal tenancy. He has received a s21 notice.**

- Landlord not required to protect the deposit.
- To gain possession of property the under section 21 the deposit must be protected or returned and prescribed information must be served before a valid section 21 notice may be issued.
- No financial penalty applies for late protection

**Tenant B entered into 12 month AST in April 2008. He paid a deposit but the landlord did not protect it and serve the PI until January 2009. The tenancy has been periodic since April 2009.**

- Landlord deemed to have complied with these requirements in respect of subsequent fixed term of periodic tenancies.
- Landlord not required to serve new PI as protected and served PI in initial term, although T may have claim for failure to protect deposit in the initial 30 days
- Where a deposit was taken, protected and the prescribed information served *within the fixed term*, this will be held to count for service of the prescribed information on any subsequent new tenancy (or statutory periodic) arising, so long as the deposit is with the same scheme.

**Deposit taken but not protected and 12 month AST commenced in January 2007. No renewal tenancy entered into since.**

- Landlord needed to have protected deposit and serve PI by 23/6/15 or otherwise in breach.

**Tenant C enters into a post April 2007 verbal periodic tenancy initially where deposit protected and PI given within 30 days and then a new written tenancy provided with no PI.**

- The 'initial requirements' of all the schemes require a written tenancy agreement and so the landlord could not be compliant in the 'oral periodic' period at all.
- S215B does not require an initial fixed term, but an initial tenancy. So, a written monthly periodic, later turned into a new fixed term tenancy would fall under S215B if the deposit was protected at any point during the life of the periodic tenancy with the penalty provisions for late protection still relevant.

**Post April 2007 AST the complete PI was not served but deposit was protected and the landlord wants to serve a S21.**

- PI needs to be complete. Late service of complete PI enables s.21 to be served subsequently.
- No need to return deposit if deposit was protected within the 30 days.

**The landlord took a deposit in February 2007 for a fixed term tenancy of twelve months. It has been renewed every February going forward but the deposit has never been protected.**

- Nothing in the Deregulation Bill protects that individual whatsoever because he has never protected the deposit. If he had allowed it to go statutory periodic at the end of the first fixed term then 215A would protect him but because he renewed each time 215C offers him no protection.

**Post 2007 tenancy. The original tenant remains at the property, but a second tenant joins them when a new fixed term AST is issued at the end of the original term.**

- The deposit will need to be re-secured and PI re-issued as the prescribed information will have changed.

**The landlord purchases the property from another landlord with a tenant in situ. Does the new landlord need to protect the deposit?**

- In purchasing the property the deposit must have been transferred or its effect is transferred from one landlord to the other. For the purposes of the Deregulation Act arguable this would count as a fresh receipt of the deposit and hence the obligation to protect and serve the prescribed information?

## **The Section 21 Notice**

A key change to the service of a Section 21 Notice is that the notice can only be served after the tenant has lived in the property for a minimum of 4 months. A new Section 21 Notice will be required every time a new fixed term is agreed. This should only be served after the new contract has been signed. This measure is to stop the frequent practice of landlords and letting agents serving a Section 21 Notice at the sign up of a tenancy.

Following the serving of a Section 21 Notice, all rent that has been paid for any period where the tenant ceases to live in the property must be repaid to the tenant unless the tenant has continued to live in the property for more than one whole day of that period. This has implications where a tenant who has paid their rent decides to leave when they receive the Section 21 Notice. Regardless of being given 2 months' notice by the landlord the landlord must refund the rent payment for any period where the tenant ceases to live in the property.

Section 36 also provides that a s.21 notice will only have a shelf life of 6 months after which possession proceedings cannot be issued on the notice. This is contrary to the previous approach that the Courts were taking that a s.21 notice could be relied on until it was waived.

## **Practical considerations at AST possession claim initial interview**

1. Confirm date the client moved in as well as the date of tenancy.
2. Confirm names of people who have lived in the property.
3. Establish if and when rent was increased.

4. Consider initial tenancy especially in respect to deposit and at the end of fixed period.
5. Consider s21 notice- dates, notice periods and method of service. Clients do say they never received s21 notice but need to show credibility of claim e.g. documents pertaining to problems with post etc.
6. Look at the details of the original registration of the deposit and PI because if the original registration is defective then none of the Deregulation Act protects the landlord.
7. Ensure that the identity of the landlord is established- land registry search may be required if concerned landlord has changed. Has agents been acting for the landlord throughout?
8. Establish if monies received by landlord was deposit or rent in advance.
9. Contact tenancy deposit scheme to verify deposit was protected and the date.
10. If taking instructions late and in advance of a hearing you want to raise a doubt whether the service of s21 notice was valid to at least get an adjournment and buy your client more time.
11. If the landlord is a social landlord (claim bought while a starter tenancy) seek copies of arrears/vulnerable tenant policies although not likely to be any issues of rent deposit and PI.
12. If cannot establish arguable disrepair counterclaim or gaps in housing benefit perhaps propose an arrears set off, if arguing landlord in breach of deposit protection/PI. If set off on basis of client giving vacate possession need to be careful with intentionality.