

## Case update: Residential tenancies



### What is a section 21 notice?

Section 21 of the Housing Act 1988 provides landlords the ability to gain possession of a property occupied under an assured shorthold tenancy agreement ('AST'). A section 21 notice is often referred to as a 'no fault' notice because landlords do not need to give a reason for seeking possession.

This does not mean recovering possession by serving a section 21 notice is straightforward.

### What are the requirements for serving a section 21 notice?

For most ASTs there are a number of prescribed requirements to satisfy, including:

- Serving the notice in the prescribed form
- Providing the tenant with a copy of the 'How to rent' guide
- Placing any tenant deposit in a Tenancy Deposit Scheme
- Providing a gas safety certificate
- Providing an energy performance certificate ('EPC')

These prescribed requirements apply to all ASTs granted on or after 1 October 2015.

### What about ASTs entered into before 1 October 2015?

On 1 October 2018 a transitional period was introduced with the aim of applying these prescribed requirements



to all ASTs.

Until the Court of Appeal's decision in *Minister v Hathaway [2021]* it was unclear whether certain prescribed requirements applied to ASTs granted before 1 October 2015.

This case concerned a tenancy, initially granted on a fixed term basis for one year in March 2008 and continuing on a statutory periodic basis. In December 2018, the landlord served a section 21 notice. The tenant challenged the validity of the notice as they had not been provided with an EPC before receiving the section 21 notice. The tenant believed this was required as their tenancy was in existence on 1 October 2018.

The Court of Appeal found in favour of the landlord, holding the requirement to provide an EPC (and gas safety certificate) before serving a section 21 notice does not apply where an AST is granted before 1 October 2015.

Although the transition period provided the Secretary of State power to extend the reach of the prescribed requirements to pre-October 2015 ASTs, this power had not been exercised.

## What does this mean in practice?

Whilst this is a welcome decision for landlords and receivers looking to serve a section 21 notice, careful consideration is still required as to which statutory obligations need to be complied with depending on the type of tenancy.

Both landlords and tenants will need to be mindful of recent changes concerning section 21 notices. Here is a link to our blog about [the return to pre-pandemic notice periods](#) for seeking possession of residential tenancies.



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