

A Section 8 or Section 21 Notice?

If a landlord wishes to regain possession of residential property, there are different types of notices that can be served on their tenants under section 8 or section 21 of the Housing Act 1988.

The basic difference between a section 8 and a section 21 notice is that a section 8 notice is served when a tenant is in breach of the terms of their tenancy (e.g. rent arrears) and a section 21 is served to end a tenancy agreement for the landlord to regain possession.

A Section 8 Notice

A section 8 notice is used to terminate an Assured Shorthold Tenancy agreement (AST) and can be used at any time during a tenancy.

There are a total of 17 grounds which can be relied on when issuing a section 8 notice. The grounds are listed in Schedule 2 of the Housing Act 1988, but the notice is usually used when a tenant is in breach of the tenancy, for example, if tenants:

- Have rent arrears
- Have damaged the property
- Gained the tenancy by providing false information
- Become a nuisance to neighbours
- Have used the property for criminal activities.

The section 8 grounds are separated into groups of mandatory or discretionary grounds. If a mandatory ground is relied upon, then the court must grant an order for possession if the ground is proven by the landlord, however the court have the final discretion to grant possession if a discretionary ground is relied upon. The most common mandatory ground for using a section 8 notice is rent arrears.

It is crucial that a section 8 notice is completed and issued correctly using the prescribed form to ensure that the notice is valid. Specific notice periods must be provided to tenants before court proceedings can be issued. These notice periods are dependent upon the ground being relied upon in the notice. These notice periods have changed throughout the Coronavirus pandemic, but since 1 October 2021 they have returned to the pre-pandemic periods. For example, if a notice is served based upon the ground of rent arrears, a minimum of 2 weeks' notice must be given.

A Section 21 Notice

A section 21 notice enables a private landlord to repossess their property from Assured Shorthold Tenants (AST) without having to establish any breach or fault on part of the tenant. The notice is sometimes referred to as the 'no-fault' ground for eviction.

A section 21 notice cannot be served within the first four months of the fixed term of an AST. Dependent on when the tenancy began, for a valid section 21 notice, the landlord must also ensure that they have complied with their obligations under the relevant tenant deposit protection legislation and provided the tenants with the property's Energy Performance Certificate, a current Landlord Gas Safety Record, an Electrical Safety Inspection report and the government's 'How to Rent' Guide.

Like a section 8 there is a prescribed form which must be used when serving a section 21 notice. A minimum of a 2 months' notice period must be provided to the tenants before court proceedings can be issued.

A landlord cannot evict their tenant without first obtaining an order for possession from the court. However, before a landlord can obtain an order for possession, one of the above notices must have been served on the tenant providing the requisite notice period.

If you are a residential landlord and require help in regaining possession of your property, please contact our Litigation Team on 01384 371622 who can provide you with assistance with all your Landlord and Tenant requirements.

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