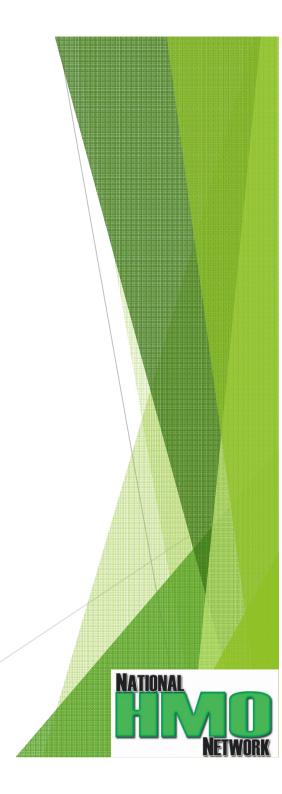
Section 21 and Retaliation

David Smith
Partner
Head of Operations
Anthony Gold Solicitors





All Change

- Deregulation Act 2015 makes big changes to s21
- In force for new and renewed tenancies after 1 October 2015
- Main changes
 - Prevents use of s21 where condition complaint made
 - Standard form s21 notices
 - Time limits on s21



Condition

- Assertion was that landlords were using s21 instead of dealing with legitimate tenant complaint about property condition
- New restrictions on service of an s21 where there is a complaint about condition in the property

NB. this is not about disrepair.

Condition refers to the status of the property under the HHSRS which is more restrictive



Limits

- Local Authority Improvement Notice (including suspended)
- Local Authority Emergency Remedial Action

No s21 can be served for 6 months



Tenant Complaint

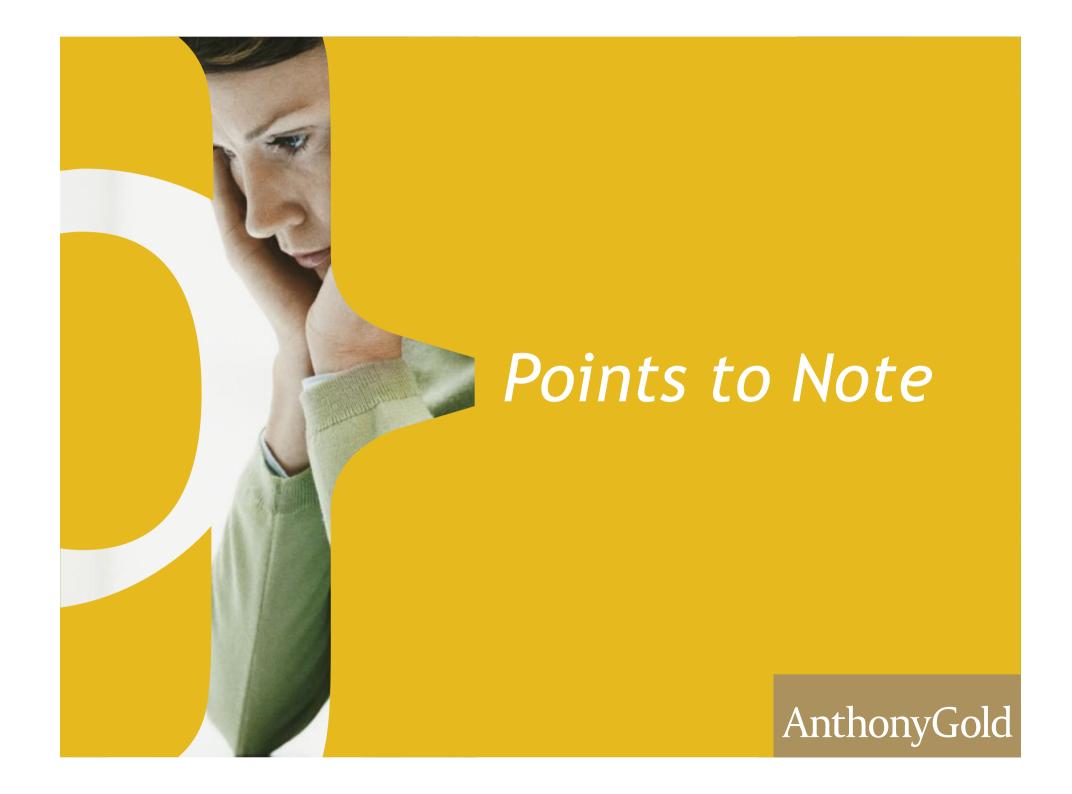
- Tenant can complain about condition in writing
- Landlord must respond in writing within 14 days
 - Stating what they intend to do
 - And timescale for doing it
- If there is no response or an inadequate one or an s21 is served
 - Tenant can complain to local authority
 - Who can then serve an Improvement Notice
 - And any s21 served will be invalid



Exemptions

- Very limited exemption to condition
 - ► Only where a genuine sale planned
- Substantial anti-avoidance provisions
 - So sale must be to a totally unconnected third party





The Landlord Reply

- Landlord reply within 14 days is in a sense irrelevant
- Its existence does not stop the tenant complaining
 - ► And many probably will regardless of a reply
- DCLG has indicated existence of reply should weigh into decision on which notice to serve
 - ▶ But no guidance
- Operating and enforcement guidance for HHSRS also badly out of date



The Right Notice

- Inevitable pressure on LHA over notice
- Service of a HAN gives tenant no protection
 - ▶ But service of an Improvement Notice may be overkill
 - Note Kassim v Liverpool
 - Importance of a 2 stage test
 - Assessment of the hazard score
 - Then consideration of the tenant's desires, the property, and the actual risk in this case
 - Key factors
 - Intention to evict rather than do works
 - ► Tenant behaviour, a notice where a tenant is in arrears and is adding to the problems would probably be inappropriate
 - ▶ Landlord cooperation militates against notice



Suspended Notices

- Odd situation with Suspended notices
- Notice can be served while suspended
 - ▶ But not when suspension ends
- Probably not intended
 - But actually works better this way in practice



Costs

- Formal notice allows charging of LHA costs
 - ▶ Not all LHAs do this but more probably will
 - ► Cost may be more accurately charged
- Still an issue of collection however
- Some LHAs may eschew informal action
 - ▶ But the Regulator's Code requires it



Pressure and Appeals

- LHA in middle of different wants from landlord and tenant
 - ► Tenant wants Improvement Notice
 - ► Landlord wants HAN
 - ► Formal notice justifies LHA costs
- Landlord's might be best to always appeal
 - Cost is low
 - ▶ It takes less time than the 6 month exclusion
 - ▶ They may well win- especially as it's a re-hearing



Court

- More hearings are likely to consider these issues
- A tenant asserting in accelerated matters that they have made a complaint will likely need a hearing
- Does the Court service have capacity?
 - Especially during a period of cuts
- More hearings may cause collapse of accelerated possession mechanisms
 - And will have knock on effects





Standard Form s21 and Time Limits

- New standard form s21 which must be used
 - Sets out the tenant's rights
- Additionally no s21 can be given in first 4 months of initial tenancy
 - In practice makes it hard for a 6 month tenancy to end at end of fixed term
- If an s21 is given then it ceases to be useable 6 months after service
 - So they have a use it or lose it provision



Additional Requirements

- Section 21 can only be given once certain requirements have been complied with
- These are service of
 - EPC
 - Landlord's Gas Safety Certificate
 - How to Rent guide
- Independent of criminal aspects
- Guide can be sent by email



Contact Me

David Smith Anthony Gold Solicitors

david.smith@anthonygold.co.uk

LinkedIn: uk.linkedin.com/in/dsnsmith

@hmolawyer

