

AnthonyGold

Housing Update - Issue 9

Welcome to the latest newsletter from Anthony Gold's property team.

Landlords who have been waiting to recover possession of their properties will be relieved that the eviction ban came to an end on 31 May although most of the other protections given to tenants still remain in force including longer notice periods and changes to court procedure. To assist landlords and agents keep on top of these changes, in June we [produced a list of 10 key changes landlords need to know about](#). Since then, it has been announced that the temporary procedural rules contained in Practice Direction 55C will remain in force until November 2021, and the Government will not be extending the period of longer notice periods for section 8 notice and section 21 notices. From 1 October notice periods will revert to their normal pre-pandemic lengths. However the power to vary notice periods under the Coronavirus Act has been extended 25 March 2022, so Ministers can still reverse course and extend the notice periods again if required. Attention is also now turning to the Government's longer-term plans to reform the PRS and the Government's eagerly awaited White Paper on this subject is expected in the autumn.

In June, the Court of Appeal handed down judgment in a case concerning EPCs and section 21 notices, *Minister v Hathaway*. This was the second time the Court of Appeal had been asked to look at changes to the section 21 procedure brought in by the Deregulation Act in 2015 (the first time in the context [of gas safety certificates](#)). The Court was asked to decide whether providing a tenant with an EPC was a pre-condition for serving a section 21 notice in relation to older assured shorthold tenancies – those that began prior to 1 October 2015. [The Court of Appeal found in favour of the landlord, confirming that this rule did not apply to old ASTs.](#)

In the tribunal, as the popularity of rent repayment orders (RROs)

continues to grow we have seen an increasing number of decisions helping to clarify the provisions of the Housing and Planning Act 2016. In June, the Upper Tribunal gave judgment in an appeal concerning failure to license offences where the tenant had [substantial rent arrears](#) and some rent claimed was paid after the end of the offence committed by the landlord.

In July, the Court of Appeal heard its first case on RROs in the appeal of *Rakusen v Jepsen*. The issue before the court was whether RROs can be made against superior landlord and [the Court of Appeal ruled](#) that the legislation only allows orders to be made against a tenant's immediate landlord.

We will continue to provide updates on these legal developments as well as helpful tips on some of the practical issues surrounding RROs, for example, [whether an RRO can be paid in instalments?](#)

The *Debt Respite Scheme* is a particularly important recent development, and we provided some [analysis on the practical implications](#) for landlords of the scheme.

Finally, we also note [an interesting decision from the Property Ombudsman](#) regarding a complaint made by tenants who were refused a property because as a polyamorous group, they were deemed to constitute more than one household.

We hope now that restrictions have eased, we will be able to see you in person soon. In the meantime, if you require advice then please do not hesitate to get in touch and we would be happy to assist.



Robin Stewart
Senior Associate

Private Rented Sector Update – 10 key changes landlords need to know

The pandemic has affected the private rented sector (PRS) in many ways. In the last 14 months we have seen multiple changes to the law to protect renters during this difficult period including banning evictions and increasing notice periods. New rules come into force today, 1 June 2021, and to coincide with these latest updates we have put together a list of 10 key changes landlords in England should be aware of.

To read more click [here](#).

Court of Appeal rules on section 21 EPC requirements and ‘old assured shorthold tenancies’

In 2015 the Deregulation Act made significant changes to the section 21 ‘no-fault’ eviction procedure that applies to assured shorthold tenancies (ASTs) in England. For the first time landlords’ legal obligations to give tenants a gas safety certificate (GSC) and an energy performance certificate (EPC) were linked to their ability to serve a section 21 notice seeking possession. Landlords had to show they had complied with these obligations in order to serve a valid notice.

To read more click [here](#).

Rent Repayment Orders – Deposits, Arrears, Rent and Conduct

Introduction

The Housing and Planning Act 2016 introduced the remedy of rent repayment orders enabling tenants and local authorities to seek repayment of rent in cases where the landlord committed a relevant offence.

To read more click [here](#).

Superior landlords not liable for Rent Repayment Orders

In an earlier blog [“Who can a tenant bring a rent repayment order application against?”](#) I discussed who the ‘landlord/respondent’ may be in application for a rent repayment order brought by a tenant. This question is of importance as we live in a private letting world where we have various letting set-ups which may not make it easy for the tenant to identify their landlord. It is particularly relevant in rent-to-rent set-ups where you may have a chain of landlords; an intermediary business takes over the letting of

the Property in return for a guaranteed rent to the individual/entity letting the Property. This individual/entity is usually the owner of the Property, but this may not always be the case.

To read more click [here](#).

Can a rent repayment order be paid in instalments?

A [rent repayment order](#) is an order made by the First-tier Tribunal requiring a landlord to pay back up to one year's rent. Tenants (or local authorities where a tenant has received Universal Credit housing costs element or housing benefit) can apply to the Tribunal if they believe that the landlord has committed one of a number of criminal offences. If the Tribunal is persuaded to the standard of proof used in the criminal courts ("beyond reasonable doubt") that the landlord committed the relevant offence, it can make a rent repayment order. The procedure incorporates aspects of a criminal prosecution, with elements of a civil law compensation claim mixed in.

To read more click [here](#).

Standard Breathing Spaces – Q&A for Residential Landlords

We [previously discussed](#) the introduction of [the Debt Respite Scheme \(Breathing Space Moratorium and Mental Health Crisis Moratorium\) \(England and Wales\) Regulations 2020](#) ("the breathing space Regulations") which came into force on 4 May 2021 and introduced two types of breathing spaces, standard and mental health breathing spaces.

In this article, I answer some questions which residential landlords may have in relation to the standard breathing space and how it might affect section 8 or section 21 possession claims.

To read more click [here](#).

HMO law in practice: Unmarried partners in shared accommodation

One of the benefits of providing legal training is the questions course delegates will ask – questions which experienced practitioners might not think to ask.

During the pandemic I have been presenting [online courses](#) for MBL seminars (most recently on [HMOs and Property Licensing](#)), as well as delivering some bespoke webinars for agents, housing advisers, and trading

standards officers. One question which has been raised more than by once by delegates is whether or not couples living in shared accommodation will always count as one household for the purposes of HMO law. This topic always leads to an interesting discussion because while the legal definition of a 'household' can be explained fairly quickly, real life relationships are not so easily classified.

To read more click [here](#).

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