

How to

Deal with a section 21 eviction notice

advicenow

Making sense of the law and your rights



Introduction

Has your landlord or their agent sent you an eviction notice telling you to leave your home? If this happens to you and you rent from a private landlord and the property you rent is somewhere in England, then this guide is for you.

This guide:

- explains what the notice really means,
- explains when and why you may be able to challenge the notice and your landlord's claim for a possession order, and
- helps you work out your options and decide what to do next.

First off – you may be feeling stressed or anxious, but try not to panic. Perhaps a friend, neighbour or family member can sit and read this guide with you. You may want to read it through more than once as you think about your options and decide what to do.



Contents

Tenancies	4
What is a section 21 notice?	5
What does a section 21 notice look like?	6
What getting a section 21 notice means for you	7
What do you want to do?	8
Pros and cons of challenging a claim for a possession order	9
Reasons you may be able to challenge your landlord's claim for a possession order	10
How to challenge your landlord's claim for a possession order	15
Getting legal advice	17
Further help	18
What does it mean?	19

Tenancies

A 'tenancy' or a 'tenancy agreement' is the same thing – a contract between you and your landlord which sets out the basis on which you are allowed to live in the property you rent. A contract doesn't always have to be in writing to count as a contract – but a tenancy or tenancy agreement usually will be. If you are living somewhere and paying rent you definitely have an agreement whether or not there is anything in writing, and the agreement is probably a tenancy agreement.

If you rent from a private landlord (not the Council or a Housing Association) you will probably have a particular kind of tenancy called an assured shorthold tenancy. The information in this guide only applies to you if your tenancy is an assured shorthold tenancy. If you're not sure what type of tenancy you have, you can use Shelter's Tenancy Rights Checker to find out: http://england.shelter.org.uk/get_advice/downloads_and_tools/tenancy_checker



What is a section 21 notice?



What is a section 21 notice?

If you have an assured shorthold tenancy, then a section 21 notice is the most common way of starting the eviction process. Giving you notice is how your landlord tells you that they want you to leave their property and the date they want you to leave by. A section 21 notice gets its name from the section of the Act of Parliament that created it. You may also hear it called an 'eviction notice', a 'notice to quit' or a 'notice seeking possession'.

Using a section 21 notice means a landlord doesn't have to give any reason for asking you to leave. And they can use a speedy route (lawyers and courts call it the 'accelerated possession procedure') to get a possession order that won't normally involve a court hearing, if you don't leave their property by the date given in the section 21 notice.

A possession order is an order made by a court ordering a tenant to leave their landlord's property on a particular date.

What does a section 21 notice look like?

The section 21 notice you get may look different depending on when your tenancy started.

If your tenancy began or was renewed on or after 1st October 2015, the section 21 notice you get must look like this:

www.gov.uk/government/uploads/system/uploads/attachment_data/file/515658/Form_6A_INTERACTIVE_FINAL_Possession_property.pdf. If it doesn't, then your landlord hasn't used

the correct notice and you can challenge their right to get a possession order.

If your tenancy began before 1st October 2015, your landlord can but doesn't have to use this form. Your section 21 notice must be in writing, for example a letter or email, and as long as it complies with all the rules about what the landlord must tell you and how much notice they must give, the notice will be correct.

What does a section 21 notice look like?

Department for Communities and Local Government

FORM 6A
Notice seeking possession of a property let on an Assured Shorthold Tenancy

Housing Act 1988 section 21(1) and (4) as amended by section 194 and paragraph 103 of Schedule 11 to the Local Government and Housing Act 1989 and section 98(2) and (3) of the Housing Act 1996

Please write clearly in black ink. Please tick boxes where appropriate.

This form should be used where a no fault possession of accommodation let under an assured shorthold tenancy (AST) is sought under section 21(1) or (4) of the Housing Act 1988.

There are certain circumstances in which the law says that you cannot seek possession against your tenant using section 21 of the Housing Act 1988, in which case you should not use this form. There are

What getting a section 21 notice means for you

1

Giving or sending you a section 21 notice just means that your landlord has the right to go to court and ask for a possession order if you don't leave their property by the date given in the notice.

2

Getting a section 21 notice doesn't mean you have to move out straight away.

If there is any chance that your local council will find you somewhere to live, you must not move out before you are evicted or until the council offers you housing. If you think this applies to you, tell your council that you've had a Section 21 notice straight away. Ask to speak to someone in the housing department who deals with homelessness.

In practice most tenants who can't get help from their council make arrangements to leave by the date given in the notice. If you don't and your landlord has to go to court to get you out, the court will order you to pay your landlord's legal costs.

3

Getting a section 21 notice doesn't mean you have done anything wrong.

You may have been the perfect tenant and paid your rent on time but section 21 allows your landlord to evict you without having to give a reason.

4

Getting a section 21 notice doesn't end your tenancy.

Your tenancy carries on until you leave voluntarily or you are evicted by the court.

5

Getting a section 21 notice doesn't mean you can stop paying your rent.

Your landlord is still entitled to the rent and you should carry on paying it until the day you leave the property. If you don't, your landlord is unlikely to give you a positive reference and you might need this in the future to get another home. Your landlord can also take court action against you to get back any rent you owe them.



What getting a section 21 notice means for you

What do you want to do?

- Do you want to leave or would you like to stay on in the property if you can? If you'd like to stay on, talk to your landlord – calmly and politely. Do they actually want you to leave? Sometimes landlords send a section 21 notice to protect themselves – so they can get you out if they want to – and they may not want to yet. Confirm what you are told or agree with your landlord or their agent in writing – by email or letter and keep a copy.
- Do you just want to look for somewhere else to live and move out by the deadline? If so, there's no need to panic because you have 2 months before you need to leave and even then you don't actually have to leave until your landlord gets a possession order and you are evicted by the court bailiffs. If there is any chance that your local council will find you somewhere to live you must not move out until eviction or the council re-houses you. Talk to your local council – ask to speak to someone in the housing department who deals with homelessness and find out if you are eligible for re-housing by them.
- If you find somewhere to live but can't move in until sometime after the section 21 notice date runs out, ask your landlord if you can stay on for a bit. Occasionally a landlord may agree to this. Confirm anything you agree with your landlord or their agent in writing – by email or letter and keep a copy.



- Do you want to challenge the section 21 notice? If you think you want to do this:
 - Weigh up the pros and cons of challenging your landlord's claim for a possession order. See **Pros and cons of challenging a claim for a possession order** on **page 9**.
 - Read the section 21 notice carefully to check for mistakes (the law calls these 'defects'). Are they serious enough to mean that you may be able to challenge the notice if your landlord applies for a possession order? See **Reasons you may be able to challenge your landlord's claim for a possession order** on **page 10**.
 - Get some legal advice to help you decide whether or not to challenge your section 21 notice and your landlord's claim for a possession order. See **Getting legal advice** on **page 17**.

What do you want to do?

Pros and cons of challenging a claim for a possession order

Pros 	Cons 
<p>You may be able to delay the eviction and ask to stay in the property a bit longer. This will buy you some time. How desperate are you to stay in the property for as long as possible?</p>	<p>Unless you are successful, the court will order you to pay the landlord's costs and you will still have to leave the property.</p>
<p>If there is any chance that your local council will accept you as homeless and find you somewhere to live, you should challenge your landlord's claim if there is a reason you can do this.</p>	<p>Even if you are successful this time, your landlord only has to start the process all over again and if they comply with all the rules next time round, you will still end up having to leave their property.</p>
	<p>You may not get a positive or any reference from your landlord.</p>

Pros and cons of challenging a claim for a possession order

Reasons you may be able to challenge your landlord's claim for a possession order

It's easy to assume your landlord knows the law and the section 21 notice you've had is correct. But in fact landlords and their agents make lots of mistakes. It's possible something is so wrong with the notice that a judge wouldn't grant a possession order if you challenge it when or if your landlord goes to court. So it's worth checking your notice very

carefully to see if you've got one or more reasons to challenge it. You should also think about getting some legal advice at this point. See **Getting legal advice** on **page 17**.

Use our list of reasons to work out if you may be able to challenge your landlord's claim for a possession order.



Reasons you may be able to challenge your landlord's claim for a possession order

Reason

1

You've been sent the wrong section 21 notice.

If your tenancy began or was renewed on or after 1st October 2015, the section 21 notice you get must look like this: www.gov.uk/government/uploads/system/uploads/attachment_data/file/515658/Form_6A_INTERACTIVE_FINAL_Possession_property.pdf

If your tenancy began before 1st October 2015, there is no set form for the section 21 notice, although it must be in writing.

Reason

2

You've been sent a section 21 notice before you've had your first tenancy of that property for 4 months. (This only applies if your tenancy began on or after 1st October 2015.)

If your landlord sends you a section 21 notice, for example, 3 months after your original tenancy starts, you can challenge their application for a possession order.

(continued)

Reason

3

You haven't been given enough notice (the law calls this getting 'short notice').

Your landlord must give you at least 2 months' notice. The 2 months' notice period starts on the date when the law says you have received the notice and ends on the date when the notice says you have to leave the property.

Your landlord may think they've given you at least 2 months notice but when you calculate the length of time between these two dates, it may not be long enough.

Your tenancy agreement will probably say how your landlord can get the notice to you, for example by leaving it at the property you rent or by posting it. It will probably also say when you will be taken to have received the notice. Landlords often get this wrong.

Example:

Trudy's tenancy agreement says that notices must be sent by first class post and will be assumed to arrive the following day. Trudy's landlord posts the section 21 notice to her on May 1st telling her that she has to leave on June 30th. The notice will be treated as arriving on May 2nd (even if it arrives later than that). Trudy's landlord has not given her enough notice. It is two days short of the required 2 months and so the notice is incorrect.



Reasons you may be able to challenge your landlord's claim for a possession order

Reason

4

You have a fixed term tenancy, and in the section 21 notice your landlord asks you to leave before the end of the fixed term.

A fixed term tenancy is a tenancy that only lasts a set amount of time, usually 6 months or 1 year. So if your tenancy last for 1 year and runs out in December, but the section 21 notice tells you to leave on a date in November, you can challenge your landlord's claim for possession.

Reason

5

The section 21 notice has expired because your landlord gave it to you more than 6 months ago. (This only applies if your tenancy began or was renewed after 1st October 2015.)

(continued)

Reason

6

You've been sent a section 21 notice after:

- (a) you complained about disrepair to your landlord in writing, and**
- (b) your landlord failed to reply positively in writing within 14 days setting out the steps they would take to fix the property.**

So long as your local council sends your landlord a notice telling them that they must carry out repairs or improvements before the court deals with your landlord's claim for a possession order, then you can challenge the section 21 notice and your landlord won't be able to send you a new notice for 6 months. (This only applies if your tenancy began or was renewed after 1st October 2015.)

The rules around this reason are complicated. If you think you may be in this situation, try getting some legal advice. See **Further help** on **page 18**.

Reason

7

Sometime in the last six months, the council has sent your landlord a notice telling them that they must carry out repairs or improvements to the property you rent from them.

(This only applies if your tenancy began or was renewed after 1st October 2015.)

Reason

8

Your deposit has not been put in a recognised tenancy deposit protection scheme.

A recognised tenancy deposit protection scheme is a government backed scheme set up to keep your deposit safe so that you get back what you're entitled to when your tenancy ends. If you are an assured shorthold tenant your landlord must have put your deposit in one of these schemes and told you which scheme it's in within 30 days of getting your money. You can check if your deposit is in a tenancy deposit protection scheme here: http://england.shelter.org.uk/get_advice/tenancy_deposits/tenancy_deposit_protection_schemes/deposit_protection_and_tenancy_deposit_schemes



(continued)

Reasons you may be able to challenge your landlord's claim for a possession order

Reason

9

At the time you receive the section 21 notice, you've not been given the information the law requires you to have about the protection of your deposit.

There are detailed rules about what information you should get. So for example, you must have:

- the name, address, telephone number, e-mail address and any fax number of the scheme looking after your deposit,
- information about how to get your deposit back when you leave,
- information about what happens if you or the landlord can't agree how much money you're going to be repaid at the end of the tenancy,
- information about how you can resolve this kind of dispute without going to court, and
- a deposit protection certificate signed by the landlord recording the amount paid, the address of the property, both your and the landlord's contact details, and information about how to contact you at the end of the tenancy.



Reason

10

You live in a 'house in multiple occupation' and your landlord doesn't meet any necessary licensing requirements.

Your landlord must have a licence or be in the process of applying for one if the property you rent counts as a large 'house in multiple occupation' (HMO). The property will be a large house in multiple occupation if:

- It is rented to 5 or more people who form more than 1 household (so, for example, if you are single and live in a house-share with two couples, that is a total of 5 people who between them form 3 separate households), *and*
- It is at least 3 storeys high, *and*
- The tenants share toilet, bathroom or kitchen facilities.

Even if the property you rent is smaller and rented to fewer people, your landlord may still need a licence depending on the particular rules made by your local council – check with your council. You can also ask the HMO licensing team at your local council to check if the property is registered as a 'house in multiple occupation'. The register may also be available online via your council's website.

Reasons you may be able to challenge your landlord's claim for a possession order

(continued)

<p>Reason</p> <p>11</p>	<p>Your landlord has not given you a valid gas safety record and an energy performance certificate for the property. (This only applies if your tenancy began or was renewed after 1st October 2015.)</p> <p>Your Landlord must carry out an annual gas safety check and give you a copy of the record of that check within 28 days of it taking place. If you don't have a current gas safety record you can report your landlord to the Health and Safety Executive: www.hse.gov.uk/gas/domestic/faqtenant.htm</p>
<p>Reason</p> <p>12</p>	<p>Your landlord has not given you the latest copy of the government publication 'How to rent: the checklist for renting in England'. (This only applies if your tenancy began or was renewed after 1st October 2015.)</p>
<p>Reason</p> <p>13</p>	<p>You live in a local authority area where the council runs a landlord licensing scheme and your landlord doesn't meet the licensing requirements. (This only applies if your tenancy began or was renewed after 1st October 2015.)</p> <p>You can ask your council if they run a landlord licensing scheme. If they do, check if your landlord is licensed.</p>
<p>Reason</p> <p>14</p>	<p>Your landlord has made a mistake in the section 21 notice that makes the meaning unclear (for example, given the wrong name or address).</p> <p>Minor slips generally won't be enough to allow you to challenge your landlord's claim for possession.</p>

Reasons you may be able to challenge your landlord's claim for a possession order

If any of these reasons apply to you, you may be able to challenge your landlord's claim for a possession order. If in doubt or to check that you're right, get some legal advice, see **Further help** on **page 18**.

How to challenge your landlord's claim for a possession order

If you find you have one or more reasons to challenge your landlord's claim for a possession order, what you do next depends on what's important to you in your particular situation. If you are planning to leave at the end of your tenancy anyway, there may be no point in contacting your landlord or their agent to tell them what you think is wrong. You will probably want to focus on finding somewhere else to live and making sure you get your deposit back.

If you're desperate to stay where you are for as long as possible, then you

probably want to sit tight when you get the section 21 notice and wait for your landlord to start possession proceedings. But get some legal advice when you first get the notice (see **Further help** on **page 18**) and ask if you are eligible for legal aid (see **Getting legal advice** on **page 17**).

You also need to know a little bit about the court process so you understand when you need to do something if you're going to challenge your landlord's claim for a possession order.

What usually happens is this:

Step 1

The landlord or their agent completes court form N5B: Claim for possession of property. You can see what this form looks like here: http://hmctsformfinder.justice.gov.uk/HMCTS/GetForm.do?court_forms_id=618

Step 2

The landlord or their agent sends the completed claim form, together with a copy of your tenancy agreement and the section 21 notice and the fee, to the court.

Step 3

The court sends you a copy of the claim form, your tenancy agreement and the section 21 notice together with court form N11B: Defence form. You can see what this form looks like here: http://hmctsformfinder.justice.gov.uk/HMCTS/GetForm.do?court_forms_id=355

Step 4

If you do nothing when you get the landlord's claim, the court will just go ahead and make the possession order. There will be no court hearing unless you complete and return the Defence form.

How to challenge your landlord's claim for a possession order

Step 5

If you want to challenge your landlord's claim, you or your lawyer must complete and return the Defence form.

Explain what you disagree with in the claim.

Step 6

If you want the court to allow you longer than 14 days to leave the property, you must complete and return the Defence form. Courts can grant extensions up to a maximum of 42 days/6 weeks. You can ask for more time in which to leave whether or not you are challenging your landlord's claim for a possession order. The court will only give you longer than 14 days if you can show you will suffer exceptional hardship otherwise. But don't be put off by the words 'exceptional hardship'. Courts are generally willing to give you more time if you give them a reason. For example, perhaps you're expecting a baby any day or you are a wheelchair user who needs a ground floor property and it will be harder and take you longer to find alternative accommodation.

Step 7

If you decide to complete and return the Defence form to the court, you must do this within 14 days of being served with it. If you miss this deadline, the court will make a possession order. If you are in this position and want to challenge the possession order, get legal advice urgently.

Step 8

If the court gets the Defence form in time, it will fix a hearing date. The court will send you a notice telling you when and where the hearing will take place.

Step 9

At the hearing the judge will listen to what you or your lawyer say and decide whether or not to grant your landlord a possession order and an order that you pay their costs.

Step 10

If your challenge is successful and your landlord fails to get a possession order, you can stay in the property and must go on paying the rent. But there is nothing to stop your landlord sending you another section 21 notice immediately or as soon as they have corrected any mistakes. If they get the process right this time, they will get their possession order – it's only a matter of time. But that may give you what you want – more time.

So – if you can challenge the section 21 notice and your landlord's claim for a possession order, you or your lawyer must complete a Defence form and send it to the court within the deadline.

Getting legal advice

Don't be put off getting legal advice about what you can do if you get a section 21 notice because you think you can't afford it. Legal aid is a government scheme to help people who live on a low income, have few savings and meet specific other criteria, pay for legal advice, representation and other help. Legal aid is still available to pay for a lawyer to help you if you face being evicted from your home and to advise you about your section 21 notice – depending on your financial circumstances. You can check if you are financially eligible for legal aid here: www.gov.uk/check-legal-aid

Whether or not you are eligible for legal aid, you can find a lawyer who specialises in housing law here: www.hlpa.org.uk/cms/find-a-housing-lawyer



Getting legal advice will help you decide what to do next and whether or not to challenge your landlord's claim for a possession order.

It is best not to deal with an eviction notice on your own, so if possible get some help. If you can't find a housing lawyer to help you, there are lots of other places to get housing advice. For more information about where to go for advice, see **Further help** on **page 18**.

Try not to leave it to the last minute before getting advice. Many advice centres have waiting lists so you may have to wait a while before you get to see an adviser.

Getting
legal advice

Further help

Tenancy Relations Service – contact your local council to find out if they run a tenancy relations service. Many do. If so, ask to speak to a tenancy relations officer and they should be able to advise you about your eviction notice, for free. They can also help if it seems you are being asked to leave your home unlawfully and with illegal eviction or harassment. In some councils the tenancy relations service operates via a **Housing Advice Centre** or the **Housing Options Team**. If your local council says they don't have a tenancy relations service, ask them if they have a housing advice centre or housing options team instead.

Shelter – You can call Shelter's free housing advice helpline on: **0808 800 4444**. The line is open from 8am–8pm on weekdays and 8am–5pm on weekends, 365 days a year. Calls are free from UK landlines and all major UK mobile operators. In some circumstances you can get advice by email – go to their website for details. There's also a 'chat with us' service on their website.

Shelter also has 17 advice centres in England where you can go to get personal, face-to-face advice from a housing specialist. To find your nearest centre you can either call the Shelter Support Helpdesk on **0300 330 1234** or see: http://england.shelter.org.uk/get_advice/how_we_can_help/shelter_advice_centres

There is a search facility on Shelter's website which you can use to find other services that provide advice on housing, debt, benefits, care and health needs: http://england.shelter.org.uk/get_advice/advice_services_directory

AdviceUK is a network of advice centres. You can search for your nearest advice centre here: www.adviceuk.org.uk/looking-for-advice-2

Citizens Advice is the national body for Citizens Advice Bureaux (CAB). Scroll down their homepage to search for a CAB near you: www.citizensadvice.org.uk

Community organisations – some local community organisations offer housing advice, and sometimes in languages other than English. If there's a community organisation near where you live, it's worth asking them if they can help. If you don't know whether there is one, ask your local council if they know of any.

Law Centres employ solicitors and other workers who specialise in helping people with housing, employment, immigration, education, community care, and benefit problems. You can search for your nearest Law Centre here: www.lawcentres.org.uk/i-am-looking-for-advice

LawWorks connects people in need of legal advice and assistance with lawyers willing to meet those needs for free. It supports 170 legal advice clinics across England and Wales. The majority of these law clinics take place in the evening and provide free initial advice to individuals with a particular focus on social welfare issues, employment law, housing matters and consumer disputes. You can find a clinic here: www.lawworks.org.uk/legal-advice-individuals/find-legal-advice-clinic-near-you

Lawyers – You can find a lawyer that specialises in housing law here: www.hlpa.org.uk/cms/find-a-housing-lawyer

You can also use Advicenow's Help Directory to find help: www.advicenow.org.uk/guides/help-directory

What does it mean?



Accelerated possession procedure – a special process that landlords can use to get a possession order if a tenant has an assured shorthold tenancy. The process is not always that quick but most orders are made without a court hearing taking place.

Claim – a formal request that starts court proceedings.

Defect – a mistake in the section 21 notice.

Possession order – an order made by a court ordering a tenant to leave their landlord's property on a particular date.

What does
it mean?

The information in this guide applies to England.

The law is complicated. We recommend you try and get advice from the sources we have suggested.

The cases we refer to are not always real but show a typical situation. We have included them to help you think about how to deal with your own situation.

advicenow.org.uk

If you would like this guide in another format please email guides@lawforlife.org.uk

This guide was produced thanks to funding from the TDS Charitable Foundation.

Advicenow would like to thank all those who provided advice and feedback on this guide.

Published by Law for Life – September 2016



Can you help us?

We hope you found this guide helpful. Can you **make a small donation** to help us keep our guides up-to-date and available? To donate just text the message: **ADV22 £3** (or any amount between £1–10) to **70070**.

We are always trying to make our guides more helpful. If you have any comments on this guide, please go to www.advicenow.org.uk/guides/how-deal-section-21-eviction-notice and take part in our survey.



Advicenow is an independent, not for profit website providing helpful information on rights and legal issues (www.advicenow.org.uk).

Advicenow is part of Law for Life. Law for Life is a charity dedicated to ensuring that people have the knowledge, confidence and skills needed to deal with law-related issues.

Law for Life: the Foundation for Public Legal Education is a company limited by guarantee, registered in England & Wales no. 07695486. Charity no. 1143589. Registered office: 33 Corsham St, London, N1 6DR.

