Guide to retaliatory eviction

What is retaliatory eviction?

Where a tenant makes a legitimate complaint to their landlord about the condition of their property and the landlord responds by serving a notice on the tenant.

This behaviour means that tenants are often fearful of reporting repairs to their landlord and accept living in substandard and even dangerous homes.

How will it work?

Following provisions introduced by the deregulation Act 2015, where:

- a tenant makes a genuine complaint in writing to the landlord,
- and where that landlord fails to respond within 14 days, or the response was inadequate,
- and the tenant goes to the Local Authority who serves an improvement notice or notice of emergency remedial action,

the landlord will not be able to serve a valid Section 21 for six months after receipt of the notice from the Local Authority.

If the landlord served the Section 21 after receiving the report from the tenant but before receiving the notice by the Local Authority the Section 21 would also be invalid.

Who is protected by the new rules?

Any Assured Shorthold tenancy agreement that started after 1st October 2015, or any fixed term renewed after that date.

What kinds or repairs are covered?

Repairs that are of serious concern and pose a risk to the health and safety of the tenant or their family.

Examples include things like problems with heating and hot water systems, electrical safety or gas safety. It would not include repairs such as a leaking tap, broken down washing machine etc.

Can the landlord still serve notice to end the tenancy?

The legislation does not cover Section 8 notices. If a tenant is in breach of their tenancy agreement (i.e. is in rent arrears) the landlord can still gain possession of the property.

Must the initial complaint be in writing?

The initial complaint should be in writing, however if the tenant does not know the landlord address or email address this requirement wouldn't be applied.

The tenant should make reasonable effort to make the landlord aware of the compliant before referring the matter to the local authority.

What is meant by reasonable response?

The landlord has 14 days after receipt of the initial compliant from the tenant to provide a reasonable response, this does not necessarily mean that they must have completed the remedial work.

The landlord should provide to the tenant details of the work they intend to carry out and set out reasonable timescales.

How is this enforced?

If a landlord serves a Section 21 notice and applies for a possession order through the court the tenant will have the opportunity to advise the court that the notice should be considered invalid as it was served after the tenant gave written notice to the landlord of the repairs.

When would protection not apply?

There are circumstances when a tenancy would not be protected from Retaliatory Eviction, these circumstances include:

- Where the tenant did not provide the initial report to the landlord in writing.
- The notice was served before the written report was sent.
- The Local Authority does not serve a relevant notice on the landlord.
- The Local Authority withdraws its notice.
- The tenancy started before 1st October 2015.
- The landlord can prove the property is genuinely for sale.
- The tenant has caused the repairs themselves.
- The property is being repossessed by the mortgage lender.