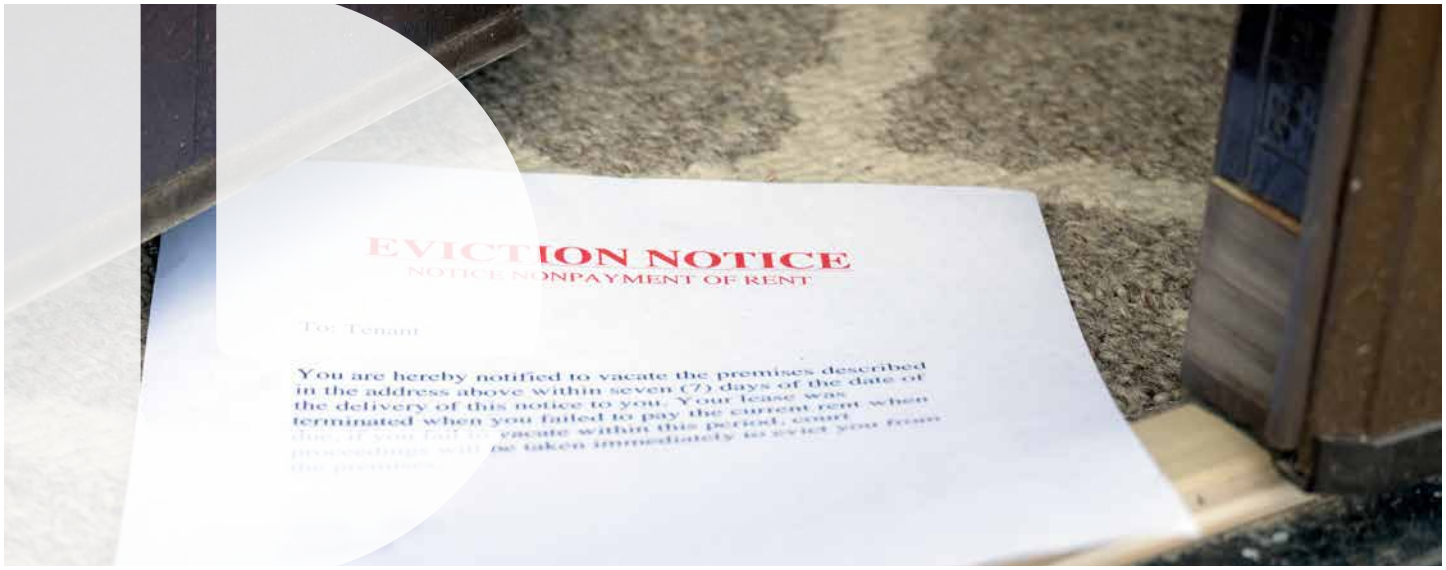
DAVID LEE
SOLICITORS



Beware of the notice

Landlords have to know about all sorts of notices if they are going to be able to manage their properties effectively. I haven't had time to even try to find them all, but just a brief search turns up a surprising number.

s47 L&TA 87
Notice of the Name and Address of the landlord, which must be given on all demands for rent or other monies due under the lease, together with an address for service in England and Wales if the address is otherwise abroad. The notice can of course be given by their agent, who can give their details as well but not instead of the landlord's. This is where the landlord in Beitov Properties v Elliston Martin [2012] UKUT 133 (LC) came unstuck. Until the details are given any monies other than rent that are claimed are not legally due.

s48 L&TA 87
Address for Service in England and Wales of any notices to the landlord, which must be given to the tenant before any monies including rent are due. Doesn't have to be landlord's true address (as in s47) and can be the agent's address – and normally is. This, like s47, applies to all residential tenancies that are not business tenancies.

s213 HA 04
Prescribed information to be given to AST tenant within 30 days of receipt of deposit, giving details of how it is protected under a scheme etc. If not given tenant can get deposit back plus penalty of up to 3 x deposit. Also can't serve s21 notice (see below) while in breach. Recent case of Superstrike said that had to be given again when fixed term tenancy became periodic (usually after 6 months). Position currently unclear, best to avoid possible claims.

s153 C&LRA 02
Notice in Prescribed form (including size of print – no smaller than 10 point) of tenant's rights in relation to service charges, and which must be delivered with any demand for service charges, otherwise they are not due. There is a similar notice (although with slightly different prescribed wording) which must be delivered with any demand for administrative charges, such as a demand for the costs. This applies to all long residential leases. Do use the latest version which changed on 1.7.13 or it's invalid.

s146 LPA 25
Notice Warning of Threat of Forfeiture. The most famous of the notices, certainly the statutory ones. Applies to all tenancies where the landlord is seeking to enforce a right of re-entry or forfeiture because of the breach of a term of the lease, other than to pay rent. Must inform the tenant of the alleged breach, require it to be remedied within a reasonable time if it is capable of remedy, and require compensation for the breach. Can't be served in long residential leases unless the matter complained of is admitted, or determined by a court or the FTT(PC) (formerly the LVT) beforehand.

s8 HA 88

Notice Seeking Possession. The necessary first step to recover possession of an Assured Tenancy, including an Assured Shorthold Tenancy. Has to specify the breach and also set out in full the ground under Sch 2 that is being relied upon, and if more than one, all of them. It also has to give the date after which the proceedings may be issued, and it runs for 12 month's so you can rely on an old notice provided that the complaints still apply.

s21 HA 88

Notice Requiring Possession. Not to be confused with the above. 2 month's notice ending on the end of a rental period means that the court must grant possession on an AST provided everything is in order. Date for notice crucial – note a tenancy that runs from the 5th of the month ends on the 4th of the next month, and that is the date that must be given. There is a different form if the notice is served during any fixed term. And the notice is invalid if the tenant's deposit hasn't been properly protected and the appropriate notices etc haven't been served in time – ie within 30 days of the deposit being received - see above.

And finally the Notice to Quit – which is a creature of common law and the oldest by a long way. It brings a periodic tenancy to an end, provided that it isn't an assured or secure one, or a business tenancy protected by Part II of the Landlord and Tenant Act 1954 (which has its own forms of notices).

The most common reason for serving one is to terminate a periodic assured tenancy where the tenant is no longer living in the property as their principal dwelling house, and so it is no longer assured.

This note doesn't begin to cover the gas safety certificate, the energy certificate, and licences needed for say an HMO, and all the other bits and pieces that a landlord needs to have to hand.

There is one common thread to all these notices: they have to be served on the tenant. And then the landlord has to be able to prove that they have done so. Most tenants will deny receiving them, so just sticking them in the post is not a good idea on the whole. The best way is personal service, with a signed acknowledgement, failing which take a witness or a process server. However, a well-drawn lease will include the deemed service provisions from s23 L&TA 1927 that allows a notice sent by Recorded Delivery to the tenant's last know place of abode in England and Wales to be good service on posting, as decided by the ChD in Beanby Estates Ltd v Egg Stores (Stamford Hill) Ltd, 9 May 2003. But don't be too clever, as the ECJ has just held in Brusse v Jahani BV that the consumer protection legislation such as the Unfair Terms in Consumer Contracts Regls applies to residential lettings by a business landlord to a private individual, and anything unfair is liable to be held invalid.

Not the most exciting topic, I'm sure you'll agree.
But an important one.

To contact Gary Lodge:

T. 01926 852188 or

E. gary@davidleesolicitors.co.uk

At David Lee Solicitors we pride ourselves on our practical and no nonsense approach. We can act swiftly and decisively to help you achieve a fair outcome.

Station House, 12 Station Road, Kenilworth, Warwickshire CV8 1JJ
T. 01926 852 188 E. info@davidleesolicitors.co.uk
www.davidleesolicitors.co.uk