

MAY 2023



FIXED TERM ADVANCE RENT PAYMENTS – ARE THEY ALL AS THEY SEEM?

When a tenant suggests a weighty rent advance, e.g. paying the full six months' rent in advance for the entire six month fixed term of the tenancy, many landlords would be tempted to bite their hand off at the opportunity to receive guaranteed rent in the form of a large cash payment up front.

So are there any downsides to such an agreement?

Well, it may seem obvious, but often a rent advance is agreed where the tenant is unable to provide sufficient evidence to pass finance checks or provide a guarantor.

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That's all well and good for the fixed term during which the rent has already been paid, but what happens when that fixed term ends? Don't forget that there is a risk that the tenant will be unable to meet their rental obligations after the expiry of the fixed term, and without the safety net of a guarantee, it may be difficult to pursue them for the arrears if their financial position is weak.

Secondly, and perhaps a less obvious consideration, landlords/agents should bear in mind that where rent is paid in advance for the entire fixed term tenancy, when the tenancy becomes periodic, the periods of the tenancy are then the amount of the fixed term (e.g. a six month rent advance for a six month tenancy, would create a six-monthly periodic tenancy once the fixed term comes to an end).

This can then lead to unintended consequences, for example if the landlord then want to serve a s.21 notice, they would need to give six months' notice rather than the usual two months' required.

Is there a way to get around these unintended consequences?

Landlords could seek to avoid this issue by increasing the fixed term length so that it is longer than the amount payable under the rent advance e.g. offering an AST with a fixed term of seven months for a rent advance of six months. This would mean that the tenant would make one monthly rental payment before the fixed term ends, and the consequence would be that the periodic tenancy would then run monthly in the usual way.

So whilst there are sometimes ways around unintended consequences, it is always advisable to give it some thought before jumping at the chance to receive a lump sum cash payment for rent in advance.



TOP POSSESSION PITFALLS OF SPRING 2022

1. DIY possession claims

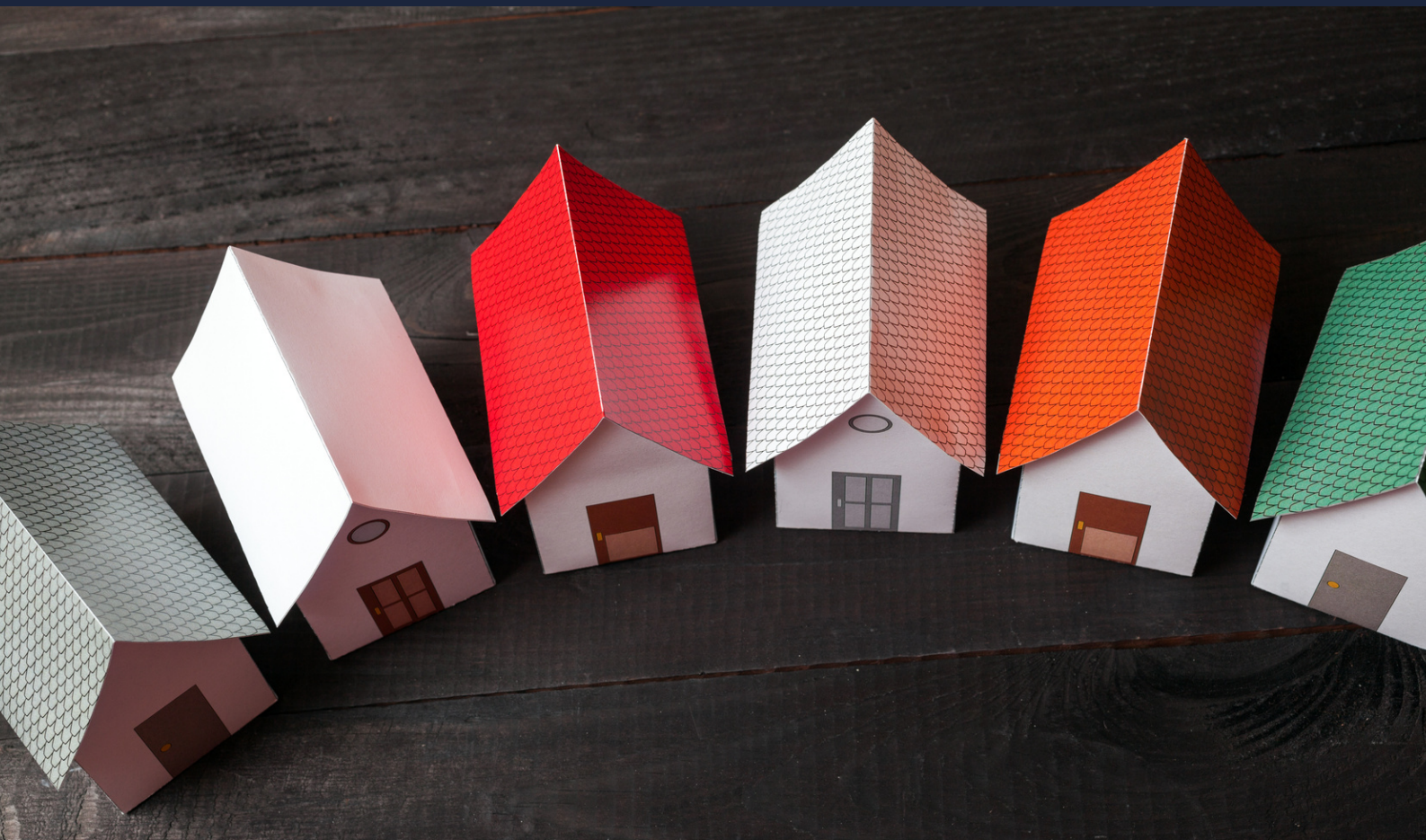
We have been instructed on a number of new matters where the landlord has attempted to bring a possession claim themselves, which has failed and led to an 18-month delay. We aren't just saying this because we are lawyers... legal advice is often an investment and can save time, money and stress long-term.

2. Outdated version of the How to Rent checklist

We were recently involved with a s.21 case where the possession claim fell down due to an old version of the How to Rent checklist being served at a time when a new version had been published by the Government. Take note of our final article and always use the most recent version from the Government website when serving a How to Rent checklist!

3. Renewals

We recently advised a landlord in relation to a tenancy that started back in the early 2000s, where there had been a number of renewals including one in 2018. This meant that the requirements of the Deregulation Act 2015 covering issues such as EPCs, gas safety certificates and the How to Rent Checklist would apply to the tenancy, and unfortunately in this case, the landlord had not complied! A failure to comply with the Deregulation Act requirements on a renewal can sometimes mean that s.21 is not an option – so be sure to check and comply with all requirements when issuing a renewal AST!



WOULD A 'NO FAMILIES' POLICY BE DISCRIMINATORY WHEN LOOKING FOR A TENANT FOR A SMALL FLAT?

There is certainly a potential for discrimination to arise by refusing couples with children or single parent families from viewing or offering them a privately rented home simply because they have children.

Direct discrimination is covered by s.13 of the Equality Act 2010, but in order to bring such a claim, a claimant would need to have a 'protected characteristic' as defined by the Act. Parenthood is not a protected characteristic under the Act.

However, there is a potential for indirect discrimination which is covered by s.19 of the Equality Act 2010. This is because statistically, most single parents tend to be women and so there is a chance that such a policy could be found to be indirectly discriminatory against women.

In any case, a landlord or agent would be able to defend themselves and be deemed to be acting reasonably if they can show that they refused a couple with children or single parent on the basis of overcrowding, not simply because of their status as a family or parent.

Under the Housing Act 1985, a home is defined as overcrowded under 'the room standard' if two people of the opposite sex have to sleep in the same room (married or cohabiting couples and children under 10 do not count). All living rooms and bedrooms are included in the calculations. An alternative way of assessing overcrowding is 'the space standard' which is by reference to the max number of people who may sleep in a dwelling of a certain size.

In order to reduce the risk of any potentially discriminatory policies, it is always best to avoid sweeping statements and policies when advertising properties for rent (e.g. 'no families' or 'no children'). It would not be wise to refuse a viewing or tenancy offer simply because the tenant has children, unless you can reasonably rely on the risk of overcrowding.

Further specialist advice should be sought for specific circumstances.

Further delays to the end of no-fault evictions

Landlords, agents and property professionals have been anxiously awaiting an update on when the Government's proposals to abolish s.21 possession claims (also known as no-fault evictions) will be coming into force.

The Government's plans to abolish no-fault evictions were first announced in 2019. In June 2022, the Government published the White Paper "A Fairer Private Rented Sector" which indicated that it was intended that the Renter's Reform Bill would be introduced during the course of 2023. It was previously anticipated that this would be in Spring, but after deafening silence, it is now expected that the bill will be introduced this Autumn.

It is understood that the Government intends to give at least six months' notice of the dates that the new legislation will take effect, and perhaps a transitional period to allow the industry to adjust and get up to speed.

Updated How to Rent checklist released 24 March 2023

The Government released an updated version of the How to Rent guide 'How to rent: the checklist for renting in England' on 24 March 2023.

The How to Rent checklist provides a guide to landlords and tenants in the private rented sector to ensure that both understand their rights and responsibilities.

As landlords and agents will be aware, it has been mandatory to give the latest version of the How to Rent checklist to the tenant since the Deregulation Act 2015 came into force on 1 October 2015, and the ideal time to serve the guide is usually at the same time as granting the tenancy. The checklist can be given in either hard copy or electronic format by agreement with the tenant.

The updated How to Rent checklist is available on the Government website:

<https://www.gov.uk/government/publications/how-to-rent>



If you would like to discuss or need any help or support on any of the issues above then please contact the Machins' Team on 01582 514 000 or by using the email addresses below.

We offer fixed fees for s21 and s8 possession claims up to and including the first possession hearing. Please email Holly Baker for a copy of our fixed fee schedule or to find out more.



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