

# A reprieve for landlords – Gas safety certificates and section 21 notices

## Case update: *Trecarrell House Ltd v Rouncefield* [2020] EWCA Civ 270

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Residential landlords may well be familiar with, and will quite possibly have fallen foul of, the statutory requirements placed upon them in respect of gas safety certificates. The case of *Caridon Property Ltd v Shooltz* (02/02/18, unreported but the judgment is available online) providing, until yesterday, unbinding but highly persuasive authority that landlords who fail to serve a copy of the most recent gas safety certificate prior to a tenant entering in to occupation of the relevant property could not rely upon the no-fault eviction process provided by section 21 of the Housing Act 1988 and, as per the County Court appeal judgment of HHJ Luba QC, could never rectify the error. The decision, which was regularly followed by district judges and deputy district judges in the County Court throughout the country, placed landlords in a position where, unless they were able to rely upon any of the grounds set out Schedule 2 of the 1988 Act and therefore serve a section 8 notice, they had no way of evicting tenants, even though they were purportedly assured shorthold tenants.

However, the situation has now changed. Yesterday. Thursday, 18<sup>th</sup> June 2020, the Court of Appeal handed down their judgment in the case of *Trecarrell House Ltd v Rouncefield* [2020] EWCA Civ 760. The case was based upon almost identical facts to that of *Caridon Property Ltd v Shooltz* and, at the County Court appeal in *Trecarrell House*, HHJ Carr found in favour of the tenant relying upon the reasons given by HHJ Luba QC in *Caridon Property*. *Trecarrell House*, the landlord, appealed that decision and the Court of Appeal have ruled, by a majority of two-to-one, that a failure to serve a gas safety certificate before a tenant enters in to occupation of the property *does not* create an absolute bar on landlords subsequently relying upon the section 21 eviction procedure.

The technical decision involved the Court of Appeal considering the interaction between section 21A of the Housing Act 1988 (which was inserted in to the Act by sections 38 and 39 of the Deregulation Act 2015), regulation 36 of the Gas Safety (Installation and Use) Regulations 1998 and regulation 2 of the Assured Shorthold Tenancy Notices and Prescribed Requirements (England) Regulations 2015.

The relevant provisions are as follows,

### **Housing Act 1988**

#### **S. 21A Compliance with prescribed legal requirements**

- (1) A notice under subsection (1) or (4) of section 21 may not be given in relation to an assured shorthold tenancy of a dwelling-house in England at a time when the landlord is in breach of a prescribed requirement.
- (2) The requirements that may be prescribed are requirements imposed on landlords by any enactment and which relate to ... (b) the health and safety of occupiers of dwelling-houses...

### **Gas Safety (Installation and Use) Regulations 1998**

#### **Reg. 36 Duties of Landlords...**

- (3) Without prejudice to the generality of paragraph 2 (above), a landlord shall -- ...
  - (c) ensure that a record in respect of any appliance or flue so checked [in compliance with reg. 36(a) and/or (b)] is made and retained for a period of 2 years from the date of that check ...
- (6) Notwithstanding paragraph (5) above, every landlord shall ensure that –
  - (a) a copy of the record made pursuant to the requirements of paragraph (3)(c) above is given to each existing tenant of premises to which the record relates within 28 days of the date of the check; and
  - (b) a copy of the last record made in respect of each appliance or flue is given to any new tenant or premises to which the record relates before that tenant occupies those premises save that, in respect of a tenant whose right to occupy those premises is for a period not exceeding 28 days, a copy of the record may instead be prominently displayed within those premises...

## Assured Shorthold Tenancy Notices and Prescribed Requirements (England) Regulations 2015

### Reg. 2 Compliance with prescribed legal requirements

(1) Subject to paragraph (2), the requirements prescribed for the purposes of section 21A of the Act are the requirements contained in-- ...

(b) paragraph (6) or (as the case may be) paragraph (7) of regulation 36 of the [1998 Regulations] (requirement to provide tenant with a gas safety certificate).

(2) For the purposes of section 21A of the Act, the requirement prescribed by paragraph (1)(b) is limited to the requirement on a landlord to give a copy of the relevant record to the tenant and the 28 day period for compliance with that requirement does not apply...

The difficulties that had arisen had formed from the interpretation of regulation 2 of the 2015 Regulations and the issue of whether the regulation allowed a landlord to remedy any failure to serve a gas safety certificate at the start of the tenancy by subsequently serving one (as long as that error was remedied prior to the service of any section 21 notice). The judgments of Patten and King LJJ confirm that landlords *can* rectify any initial failure so long as a valid gas safety certificate is served prior to the service of any section 21 notice. The judgment therefore confirms that the position in respect of gas safety certificates is similar to that relating to How to Rent booklets, energy performance certificates and the protection of tenancy deposits (and the provision of prescribed information relating to such deposits). Whilst a breach of the requirements will bar a landlord from relying upon the section 21 eviction procedure, any such breach has a route by which the failure can be rectified and, once such rectification has occurred, a landlord can then invoke the section 21 no-fault eviction procedure.

One important footnote to this case is that the judgment has been handed down at a time when almost all landlord and tenant litigation is on hold due the Covid-19 pandemic. By virtue of the Civil Procedure Rules' Practice Direction 51Z, almost all possession proceedings (or the enforcement of possession orders already made) have been stayed until 25<sup>th</sup> June 2020. Furthermore, CPR rule 55.29 comes in to force on that day and inserts a (new) stay upon almost all possession proceedings and the enforcement of possession orders until 23<sup>rd</sup> August 2020. Whilst possession claims can still be issued during this stay (and landlords might need to issue claims due to prescribed time limits), they will be instantly

stayed and landlords will have to wait until at least 23<sup>rd</sup> August 2020 before any progress will be made.

The Court of Appeal's judgment in *Trecarrell House Ltd v Rouncefield* is available on Bailii:

<https://www.bailii.org/cgi-bin/format.cgi?doc=/ew/cases/EWCA/Civ/2020/760.html&query=>

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Matthew represented Trecarrell House Ltd in the first appeal in the case of *Trecarrell House Ltd v Rouncefield*. Matthew also represented Caridon Property Ltd in their appeal before HHJ Luba QC in the case of *Caridon Property v Shooltz*.

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