

Trecarrell House Ltd v Rouncefield [2020] EWCA Civ 760

A landlord's failure to provide its tenant with a gas safety certificate before the tenant took occupation did not permanently bar the landlord from serving a notice terminating the tenancy under section 21 of the Housing Act 1988.

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Facts

An assured shorthold tenancy (AST) was granted to the tenant (R) for six months from February 2017. When the AST was granted, the landlord (TH) did not provide R with a copy of the relevant gas safety certificate for the property before she went into occupation as required by regulation 36(6)(b) of the Gas Safety (Installation and Use) Regulations 1998 (the 1998 Regulations). However, in November 2017, TH did provide R with a copy of a certificate dated January 2017.

In May 2018, TH served a notice on R to terminate the AST under section 21 of the Housing Act 1988 (the 1988 Act) and issued possession proceedings. As section 21A of the 1988 Act provides that a landlord cannot serve a section 21 notice at a time when the landlord is in breach of a 'prescribed requirement' (and as compliance with regulation 36(6) of the 1998 Regulations is a 'prescribed requirement'), R claimed that TH was not entitled to serve a section 21 notice.

R also argued that TH's section 21 notice was invalid on another ground. Regulation 36(3) of the 1998 Regulations requires a landlord to carry out an annual gas safety inspection and regulation 36(6)(a) requires a landlord to give a tenant a copy of a gas safety certificate within 28 days of any such inspection. It was said that there had been a further gas safety check carried out in February 2018 and that no gas safety certificate had been provided in respect of that test. TH contended that a copy of this certificate had been given to R before the section 21 notice was served.

Issue

Did a failure to comply with regulation 36(6) of the 1998 Regulations preclude TH from ever serving a section 21 notice to terminate R's AST (as the County Court had ruled)?

Decision

A section 21 notice can be served so long as a landlord has, at any time before service of the section 21 notice, given the tenant a copy of the gas safety certificate which was in force before entering into occupation and a copy of any further certificate which related to a subsequent inspection. It was therefore immaterial that the January 2017 certificate had not been given to R until November 2017. There was, however, a factual dispute as to whether the 2018 certificate had been provided to R and that was remitted for consideration by the County Court.

Points to note/consider

1. This decision will be greeted with relief by landlords as it has resolved an issue that has been hotly debated in recent years. It certainly

did seem harsh for a landlord to be permanently precluded from serving a section 21 notice where there might only have been a slight delay in providing a copy of the relevant gas safety certificate to its tenant. In this case, TH had carried out a gas safety check before the AST was entered into (it had just not provided a copy to R). What is not clear from this case is what the position is if no check has been carried out before a tenant goes into occupation. Whether a landlord is permanently barred from serving a section 21 notice in those circumstances is perhaps a question for another day.

2. Many annual gas safety checks will have been missed because of the current crisis. However, the obligation to carry out an annual test in regulation 36(3) of the 1998 Regulations is not a 'prescribed requirement' (only the obligation to provide the tenant with a copy of the certificate in regulation 36(6)(a)). So that in itself will not preclude a landlord from serving a section 21 notice.

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