

# GAS SAFETY CERTIFICATES - COURT OF APPEAL DECISION

## A LANDLORD'S LONG-AWAITED DECISION ON EVICTION HAS FINALLY ARRIVED

In the case of *Trecarrell House Limited v Rouncefield [2020] EWCA Civ 760*, the Court of Appeal (by a two to one majority) held that a failure to issue an assured shorthold tenant with a gas safety certificate prior to occupation does not prohibit a landlord issuing a section 21 eviction notice, which was the stance that was previously held by HHJ Luba QC in *Caridon Property Limited v Shooltz (2018)*. That decision has now been overturned.

Lord Justice Patten, giving the leading judgement in *Trecarrell*, was of the view that late delivery of a gas safety certificate doesn't deprive a tenant with the information he or she needs and that it was unlikely that parliament would have intended only a minimal delay to delivery of a gas safety certificate to permanently prevent a landlord seeking possession via a section 21 notice.

It was also noted that separate legislation exists to provide penalties where landlords have failed to comply with their gas safety responsibilities including potential criminal liability under the Health and Safety at Work etc Act 1974. It was therefore considered unlikely that Parliament intended such a draconian sanction for providing a gas safety certificate after the tenancy had commenced.

Much to the relief of so many landlords, the decision in *Trecarrell* has been welcomed as it recognises the need to balance the safety of occupiers of property with the ability of a landlord to take possession of its property at the end of the tenancy, without having to prove any fault on the part of the tenant.

### So, what is the process?

It remains best practice to serve the tenant with the gas safety certificate at the outset and before serving the section 21 notice. However, if (as a landlord) you fail to serve the gas safety certificate on your tenant before he or she takes up occupation or within the prescribed time limits for annual gas safety checks, then you will not be prevented from serving the section 21 notice at that stage.

In addition, the court found that a landlord's continuing duty to provide an up to date gas safety certificate within 28 days of an annual check being carried out was not breached if the inspection did not take place within the required 12 months.

### What we don't know?

The decision in *Trecarrell* doesn't seem to address whether a breach can be remedied if a landlord has completely failed to carry out an initial gas safety check prior to the tenant taking up occupation or what the position is with historic gas safety breaches; clarity will be needed on this point.

We have also heard, for quite some time now, that there may be some more reform in the pipe-line, including a complete abolishment of the section 21 process and so called 'no fault evictions'. As such, this begs the question whether the *Trecarrell* decision will soon become redundant in any event.

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### What we do know?

The late service of the gas safety certificate will not invalidate your section 21 notice in the same way that late service of the prescribed information will also not invalidate your section 21 notice.

Best practice remains the same - namely, landlords should keep careful records to evidence that they have carried out the appropriate gas safety checks and have supplied the relevant certificates to their tenants (both at the beginning of tenancies and on subsequent annual inspections) to avoid any disputes when serving a section 21 notice.

We also now know that despite there being a stay on possession proceedings imposed by PD 51Z, this has not prevented possession-related questions arising and being decided before the courts.

This note is not intended to constitute to legal advice. Please get in touch with the author, Priya Sejpal, if you require more specific advice on the matter.

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