

Trecarrel House Ltd v Rouncefield

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What is it about?

Gas safety regulations 1998

- carry out an annual gas safety inspection (r.36(3));
- give a tenant a copy of a gas safety certificate within 28 days of any such inspection (reg.36(6)(a)); and,
- give a current certificate to any tenant prior to occupation (reg.36(6)(b)).

Enforcement by HSE and criminal proceedings

What is it about?

“Soft” enforcement of standards in the PRS

- Restrictions on when s21, HA 1988 can be used
 - Tenancy deposits
 - HMO/Pt 3 licensing
 - Tenant Fees Act
 - Part 1 Housing (Wales) Act 2014

Section 21A, HA 1988

No s.21 notice can be given “at a time when” a LL is in breach of a prescribed requirement

- Prescribed requirements include reg.36, Gas Safety Regs

What does reg.36 say?

- LL must give a tenant a copy of a gas safety certificate within 28 days of the annual inspection (reg.36(6)(a))
- LL must give a current certificate to any tenant prior to occupation (reg.36(6)(b)).

BUT – prescribed requirement “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 facts of the case

Gas safety test done in Jan 2017

Tenant moves in during Feb 2017 and is *not* given the Jan 2017 certificate

November 2017 – certificate given

May 2018 – s.21 notice given

Circuit Judge holds s.21 notice invalid because the “pre-occupation” certificate wasn’t given before the tenant moved into occupation

- Holds late compliance is insufficient

Court of Appeal - arguments

Landlord

- 1) The key words are in s.21A itself – “at a time when” – shows capable of remedy
- 2) Alternatively, both time limits have to be disapplied
 - Changes an AST into an AT
 - Why is the pre-check so important if the “in tenancy” check isn’t?

Court of Appeal - arguments

Tenant

- 1) Gas safety is something Parliament is rightly concerned about
- 2) The HSE prosecutes only a handful of cases
- 3) Draconian punishment but makes LLs provide safe housing

Court of Appeal

- 1) Late compliance is sufficient
 - Two main reasons: first is that the disapplication of time periods applies to both duties under gas safety regs
 - Second is consequences: LL and T bargained for an AST with s.21 available and if you lost s.21 for all purposes for all time then it'd be a very different bargain (*i.e.* an AT).

- 2) If you fail to do the checks within the 12 months as required by gas safety regs (but do it late and then serve the certificate “late”) then also ok
 - Why did this arise? Further gas safety check in Feb 2018 and certificate possibly not given

What is left

What happens if you didn't do the "pre-tenancy" check (and so can't give the certificate) at all?

What happens if you didn't do an "in tenancy" check (and so can't provide the certificate)?