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RESIDENTIAL LETTINGS NEWS

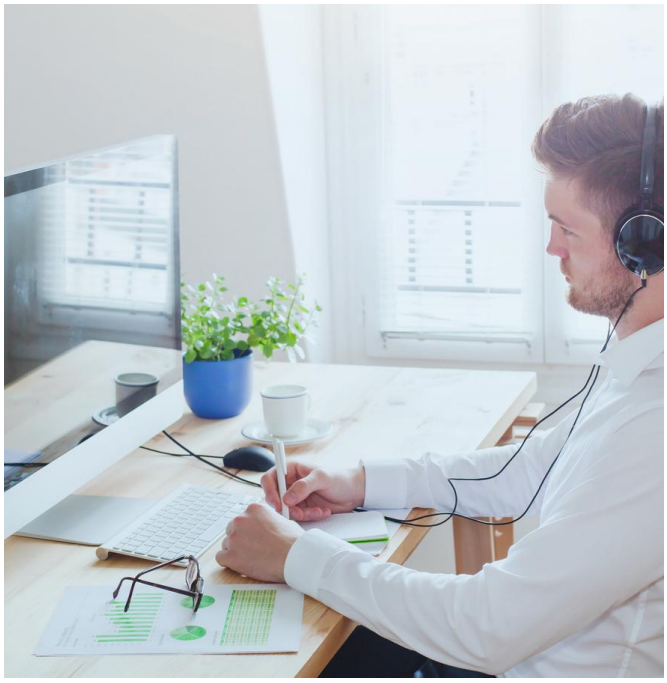
WELCOME!

With everything else going on, it is easy to miss changes that creep up on property professionals and landlords. Those of us who have worked in the residential lettings sector for the past few years will tell you that we are used to seeing changes every 5 minutes! We hope you find this update useful - our plan is to continue to issue these as changes arise.

SEVERE COURT BACKLOG ENVISAGED FOLLOWING FIVE MONTH MORATORIUM ON POSSESSION CLAIMS BEING LIFTED

Prior to the outbreak of COVID-19, remote/video court hearings in England and Wales were few and far between. Most if not all possession claims were heard face-to-face in courtrooms up and down the country.

In late March, the introduction of "lockdown" and quick turn of events meant that many court hearings due to take place in late March / early April were adjourned at the last minute. Further, as a result of the Coronavirus Act 2020 and new Practice Direction 51Z of the Civil Procedure Rules, new and ongoing possession claims were all stayed (i.e. put on hold) for an initial period of three months which was then extended by a further two months until 23rd August 2020 meaning that the stay will have lasted five months in total.



> It remains to be seen whether remote hearings will be a permanent change for our Courts

Whilst this was no doubt the right decision for public health and policy reasons, in practice, many responsible landlords find themselves unable to lawfully evict tenants for a five month period (or more) even in circumstances where there have been serious breaches of the tenancy agreement that preceded the COVID-19 pandemic.

As a result, the courts now face a huge backlog including (i) cases that were adjourned in the immediate aftermath of "lockdown" being introduced, (ii) possession hearings that have been adjourned in the five month period or claims that are waiting to be issued, (iii) cases that are not appropriate for remote hearings and (iv) cases that have been inevitably delayed by the challenges faced by the court listing office.

It remains to be seen whether remote hearings will be a permanent change for the English Courts, or whether (and how) we will revert to default face-to-face hearings when things settle.

NEWSFLASH

TEMPORARY CHANGES IN THE COURT RULES TO BE INTRODUCED FOR WHEN POSSESSION CLAIMS RESUME

On 17th July 2020, the Government announced the introduction of temporary changes to the Court rules (in the form of The Civil Procedure (Amendment No. 4) (Coronavirus) Rules 2020) which will come into force on 23rd August 2020. There is a new practice direction (Practice Direction 55C) added to the Civil Procedure Rules (which are the rules that govern Court procedure in England and Wales).

In brief:

1) Reactivation notice
Landlords who have already commenced possession proceedings prior to 3 August 2020 (but the proceedings have been stayed (i.e. put on hold) due to COVID-19) will need to write to the tenant and the Court confirming that they wish to resume the proceedings. This will be known as a "reactivation notice". No claim will be re-listed unless a reactivation notice is served.

2) Information about the tenant's circumstances
The reactivation notice must state what knowledge the landlord has about the tenant's circumstances and how they or their dependants have been impacted by COVID-19. It is not currently clear how the Courts will use or interpret this information.

3) Spread out hearings
Hearings will be more spread out and it may take longer than usual to get a hearing date. Usually, the standard period between issue of the claim form and the first possession hearing is around eight weeks, but this may be longer given that Court capacity may be stretched.

4) Full rent arrears history prior to hearing
Landlords must provide the full rent arrears history in advance of the hearing rather than at the hearing itself.

5) In claims (whether brought before or after 3 August 2020) which are accelerated possession claims, the landlord must file with the claim form for service with it a notice setting out what knowledge that party has as to the effect of the Coronavirus pandemic on the Defendant and their dependants. Again it is unclear what relevance that information will have to a s21 accelerated possession claim.

UPDATE

GAS SAFETY CERTIFICATES AND S21 POSSESSION PROCEEDINGS

The law surrounding gas safety certificates has been problematic for landlords, agents and property lawyers for some time now. Property lawyers and landlords have been eagerly awaiting the Court of Appeal's decision in Trecarrell House Limited v Rouncefield (B5/2019/0499), hoping for some clarity. Judgment was (finally) handed down mid-June 2020.

A reminder of the rules

Regulation 36 of the Gas Safety Installation and Use) Regulations 1998 states that if a rented property has a gas supply, the landlord must supply a new tenant with a copy of the current gas safety certificate before the tenant occupies the property. No valid s21 notice seeking possession of the property can be served unless these regulations have been complied with.

So what's the problem?

The problem is the requirement for the gas safety certificate to be provided before the tenant occupies the property. In several cases that have passed through the county courts over recent years (Assured Property Services v Ooo June 2017 Edmonton County Court, Caridon Property Limited v Monty Shooltz February 2018 Central London County Court), Judges decided that the obligation to provide a gas safety certificate to tenants at the commencement of the tenancy is a "once and for all obligation" which cannot be put right later if the landlord has omitted or overlooked it when a new tenancy was granted. Essentially, because the requirement is to provide the gas safety certificate to the tenant before they occupy the property, a breach of the requirement could not later be put right by providing the certificate after the the tenant had commenced occupation.

The effect of this was that where a landlord had not served a valid gas safety certificate on the tenant at the start of the tenancy but tried to rectify this by supplying them with a copy later, the landlord could not then serve a valid s21 notice seeking possession of the property even if all other rules were complied with. In practice, this meant that some unfortunate landlords have been left with what is effectively an assured tenancy, unable to regain possession unless there is a breach of the tenancy (in which case they could rely on s8 possession proceedings).

Trecarrell House Limited v Rouncefield

The case of Trecarrell House Limited v Rouncefield was heard by the Court of Appeal in early 2020, and judgment has recently been handed down.

In a split decision (2:1), the Court of Appeal has ruled that a failure to supply a gas safety certificate before the tenant occupies the property is capable of being remedied by supplying the tenant with a gas safety certificate before serving a s21 notice. The Judges concluded that the true interpretation of the law, and what Parliament intended when enacting the law, was that for s21 purposes, there is no deadline for supplying the tenant with the gas safety certificate.

Conclusion

The Court's decision in Trecarrell House Limited v Rouncefield is a welcome relief to many landlords who have been unable to serve a valid s21 notice based on a simple mistake at the commencement of the tenancy.

However, on some fronts, the decision raises more questions. What if the original gas safety certificate no longer exists and so cannot be served? What if there was no valid gas safety certificate in place at the commencement of the tenancy? Can this breach still be rectified?

Further, given that the Court of Appeal were split 2 to 1, will there be an appeal to the Supreme Court?

We expect that this will not be the end we hear on this matter!

NEW ELECTRICAL SAFETY REGULATIONS IN FORCE FROM 1ST JUNE 2020

Just a reminder that The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 (catchy, hey?) came into force on 1st June 2020.

The Regulations apply to new tenancies from 1st July 2020 and existing tenancies from 1st April 2021.

In terms of what is considered a "new" tenancy, if a fixed term tenancy expires and there is provision in the tenancy agreement for the tenancy to "roll over" and continue as a periodic tenancy, this will be part of the same tenancy and so will not be caught by the Regulations.

However, if a fixed term tenancy expires and there is no provision in the tenancy agreement for the tenancy to "roll over" (but it does so by virtue of statute), this will be a new tenancy and so will be caught by the Regulations.

There are various exceptions which include social housing, lodgers, long leases, student halls, hostels, refuges, care homes, hospitals, hospices and other healthcare accommodation.

Landlords should take these Regulations seriously and we recommend spending some time reviewing the Government Guidance. Local authorities can impose a penalty of up to £30,000 on landlords who are in breach.

One important point to note, however, is that at the moment the Regulations do not provide for any sanctions in relation to serving valid s21 notices (and so perhaps it is envisaged that the potential for a £30,000 financial penalty is enough in this instance).

HOUSING BENEFIT TENANTS AND DISCRIMINATION

A County Court judge has recently decided that a letting agent's long term policy of “no DSS” (if you are old enough to remember the DSS……) or no Housing Benefit applicants was discriminatory. The claim was brought, with the backing of Shelter, by a single mother with a disability, who was employed but in receipt of housing benefit. She was searching for a new tenancy and contacted the defendant letting agents, only to receive an email stating that for years the agents “have had a policy of not accepting housing benefit tenants”.

The Court decided that the letting agent had breached provisions of the Equality Act by using a blanket ban policy which indirectly discriminated, and had a greater impact on women and persons with a disability. It seems that by the time of the hearing the agents had already ended the policy in June 2019. They were nevertheless ordered to pay damages of £3,500 and legal costs. Although county court decisions are not binding, landlords and letting agents may want to review their policies following this decision and avoid blanket policies which could have the inadvertent consequence of breaching the Equality Act. It will be necessary to consider applications to view and rent properties on a case by case basis.

If you would like to discuss or need any help or support on any of the issues above then please contact the Machins’ Property Litigation Team on 01582 514 000.

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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Machins Solicitors LLP have offices in Berkhamsted, Luton and Hemel Hempstead. We are one of the leading law firms in Hertfordshire and Bedfordshire and recognise the need to establish a proper relationship with our clients which allows us to understand individual requirements and to give effective practical advice in a pragmatic, cost effective way. We provide specialist advice and assistance both for businesses and individuals.