Machins SOLICITORS

RESIDENTIAL LETTINGS NEWS

JUNE 2022

SECTION 21 RENTAL REFORMS

The Government's White Paper, 'A Fairer Private Rented Sector', published on 16 June 2022 confirmed the firm intention to abolish s.21 evictions (commonly referred to as 'no fault' evictions). Such reform will require the introduction of new legislation, and it is said that the Renters Reform Bill will be introduced to tackle these proposed changes during this parliamentary session.

The White Paper outlines proposals to abolish s.21 evictions and introduce a simpler, more secure tenancy structure. The effect of this will be that a tenancy can only be terminated if (a) it is terminated by the tenant, or (b) if the landlord is able to rely on one of the listed grounds for possession and use the s.8 procedure, which is an alternative to s.21.

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These grounds, which were already in existence and commonly used where the tenant is in rent arrears, have been extended somewhat to try and strike a fair balance between landlords and tenants.

The grounds for possession under s.8 will be reformed to ensure that landlords have effective means to regain possession of their properties in certain circumstances, and new grounds will be introduced for example if the landlord needs possession in order to sell or move close family members into the property.

The s.8 grounds are also being bolstered to seek to ensure fairness between landlords and tenants. For example, a new mandatory ground for repeated serious arrears is being introduced. A possession order will be mandatory where a tenant has been in at least two months' rent arrears three times within the previous three years, regardless of the arrears balance at hearing. This provides more certainty to landlords who have tenants that are persistently in arrears but pay off a small amount shortly before the possession hearing, taking them below the mandatory threshold, and resulting in the Judge refusing to order possession.

It is said that the new system will be implemented in two stages so that landlords, tenants and property advisors and professionals have sufficient time to transition. The Government will provide at least six months' notice of the first implementation date whereby all new tenancies will governed by the new rules. All existing tenancies will transition to the new system on the second implementation date, and it is at this point that s.21 evictions will be abolished for all tenants.

The National Residential Landlords Association ('NRLA') has identified some areas of concern and argues that a reformed and improved court system which has improvements to the grounds for possession should be introduced before s.21 is abolished. Landlord organisations are concerned that there is a risk of landlords withdrawing from the sector which may reduce access to rented housing.

It remains to be seem how the mechanics of the new system will work, and how the balance between the rights of landlords and tenants will be struck once the reforms are up and running.

TOP POSSESSION PITFALLS OF SPRING 2022

1.Defendants paying off rent arrears at the eleventh hour

We have seen two cases in recent months where, unexpectedly, the tenant was able to raise enough money to clear their rent arrears or bring them to below the two month mark that is required for the court to make a mandatory possession order. This serves as a reminder of the risks when relying on s.8 instead of s.21, particularly if possession is the key priority rather than obtaining a CCJ for the rent arrears.

2.Short notice periods

We have seen several clients (or sometimes agents!) forget that it is vital to calculate the date for expiry of a s.21 or s.8 notice based on receipt of the notice (not posting!) - which can sometimes be 2 or 3 working days. We would always recommend adding a few days as a safety net to make sure that there is no question that the required notice period has been given. Rest assured that when Machins are instructed to bring a possession claim we will always check that sufficient notice has been given if the notice has already been served (i.e. not by us!) when bringing a possession claim.

3.Non-compliance with licensing requirements

We have been advising landlords who have not complied with relevant licensing requirements, and in particular HMO licensing and selective licensing which is specific to select areas across the country. By way of a reminder, a failure to obtain a license in circumstances where one is required will prevent a landlord from being able to serve a valid s.21 notice, leaving them potentially in a situation where there is no way to evict the tenant unless there is a breach of tenancy. There can also be sanctions and fines for such a failure, so it is vital that landlords stay on top of these rules.

TERMINATING TENANCIES - HOW TO GET IT RIGHT!

Where a landlord is looking to regain possession of a property let to a tenant under an Assured Shorthold Tenancy (AST), landlords must serve a notice and bring a claim under either s.8 or s.21 of the Housing Act 1988 (the Act). Over the last few years, the procedures and rules around serving s.8 or s.21 notices have become increasingly stringent, with landlords now being required to comply with a whole range of requirements before a valid notice can be served.

Following this increase in regulation, many tenants now seek to challenge their landlords' notices relying on novel and often technical arguments. An illustration of this can be seen in the recent Court of Appeal case of Northwood (Solihull) Limited v Fearn & Others 2022 EWCA Civ 40.

In this case, the letting agent for the landlord served a s.8 notice seeking possession on the ground of rent arrears. The tenants defended the case, challenging the notice on the basis that it had not been signed in accordance with the requirements of Section 44 of the Companies Act 2006 (which sets out how documents must be executed on behalf of a company).

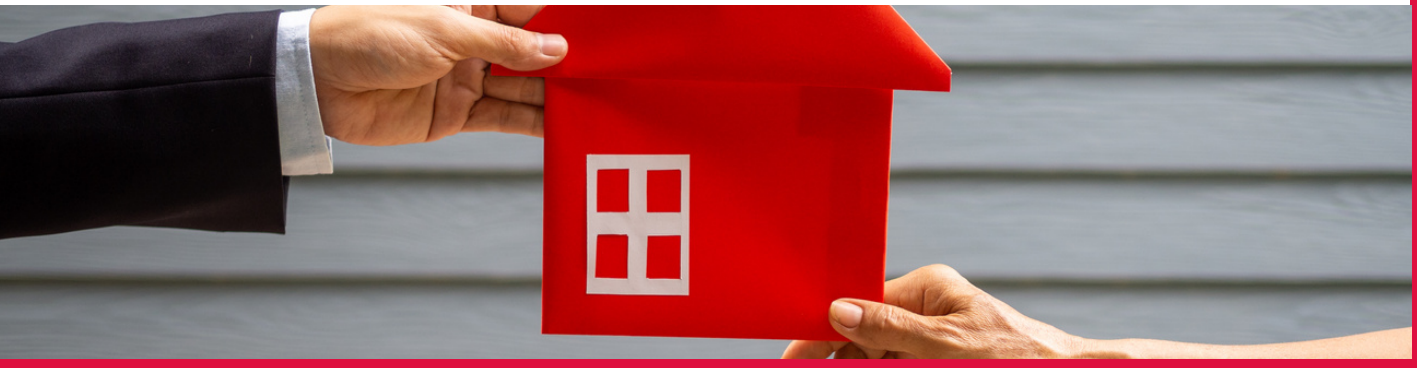
The Tenants argued that:

-The notice had not been signed by two authorised signatories, or by a director of the company in the presence of a witness; and
-The same applied to the certificate documents concerning their deposit.

The High Court found that the requirements in the Companies Act did not affect the validity of the s.8 notice and noted that the prescribed notice form (Form 3) allowed for such notices to be signed by a landlord's agent. The tenants subsequently appealed, and the case then went to the Court of Appeal.

On appeal, the Court of Appeal upheld the decision of the High Court. The Court held that an authorised employee of the landlord and/or letting agency was able to sign both the notice and the certificate documents on behalf of the corporate landlord. The Court of Appeal said that what mattered in each situation, was that the signatory was by a person who had the authority to sign on behalf of the landlord.

Although the landlord in the above case was successful in establishing the validity of its notice, the case serves as a reminder of the technical and innovative arguments that can be raised by tenants in a bid to thwart or substantially delay the eviction process. Landlords should seek proper legal advice to avoid being caught out by a technicality.



APPLICATION TO APPEAL REJECTED IN LANDMARK AST CASE

Lawyers, agents and landlords alike have been grappling with issues surrounding gas safety certificates and section 21 notices since the transitional period following the Deregulation Act 2015 ended in October 2018.

The tenant's application to appeal in the case of Trecarrell House Ltd v Rouncefield was recently rejected, hopefully resulting in more clarity for lawyers, landlords and agents alike.

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 section 21 notice seeking possession of the property can be served unless these regulations have been complied with.

Section 21 notices are used where a landlord is looking to regain possession of their property but there hasn't necessarily been any fault on the part of the tenant i.e. there are no rent arrears or other breaches of the tenancy. This commonly arises where landlords are looking to sell or renovate the property, and so need possession of the property but cannot use the section 8 procedure which is used when there has been some sort of breach.

Why is there a problem?

The problem is that the initial gas safety certificate must be provided before the tenant goes into occupation of 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". This means that it is an obligation that 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 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 section 21 notice, even if all other rules were complied with. In practice, this meant that some unfortunate landlords have been left unable to regain possession unless there is a breach of the tenancy (in which case they could use section 8 as an alternative procedure).

Trecarrell House Ltd v Rouncefield

The case of Trecarrell House Ltd v Rouncefield was heard by the Court of Appeal in early 2020, and judgment was handed down seeking to clarify the position in relation to gas safety certificates in June 2020.

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 section 21 notice.

The Judges concluded that the true interpretation of the law, and what Parliament intended when enacting the law, was that for section 21 purposes, there is no deadline for supplying the tenant with the gas safety certificate.

Whilst this initially provided clarity and reassurance to landlords and letting agents, the tenant then appealed the decision and so we have been keenly waiting to see what the outcome of that appeal would be over the last two years.

In April 2022, the Supreme Court rejected the tenant's application to appeal, meaning the decision of the Court of Appeal stands.

Conclusion

The Court of Appeal's decision being upheld provides welcome relief to landlords who have been unable to serve a valid section 21 notice based on a simple mistake at the commencement of the tenancy. Instead, they can rectify the position by serving the gas safety certificate prior to service of the section 21 notice.

However, whilst the law has been clarified for these particular circumstances, what is the position where there was no valid gas safety certificate in place at the commencement of the tenancy? Can this breach ever be rectified? And will it even matter, if the Government's plans are still to abolish the section 21 possession procedure in its entirety?

If you would like to discuss or need any help or support on any of the issues above then please contact the Machins' Team on 01582 514 000 or by using the email addresses below.

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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