

# Legal Update

May 2019



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## New Section 21 Notice Form from 01 June 2019

On 1 June 2019 a new Section 21 Notice Form 6A will replace the current version. This is to coincide with the commencement of the Tenant Fees Act 2019 (which we discussed in more detail in our February 2019 Legal Update).

The original version of the Form 6A, which has been used since 01 October 2015, can no longer be used from 01 June 2019 and the new one should instead be served on the Tenant.

The primary difference between the old and new form are in the section explaining the restrictions on terminating a tenancy under Section 21 of the Housing Act 1988. This now refers to the prohibition on relying on a Section 21 Notice if a Landlord has received, and not returned, a “prohibited payment” under the Tenant Fees Act 2019. The new form also explains what a Tenant should do if the Notice has been served on them.

As a result of this amendment to the Notice, and prior to its service on a Tenant, a Landlord or agent should incorporate an additional check within their current procedures to make sure there is compliance with all applicable statutory requirements. This additional check should ensure that there have been no breaches of the Tenant Fees Act 2019 and, if any are found, provide the correct remedy in accordance with that legislation. Failure to comply with the 2019 Act could result in the notice being deemed invalid and therefore incapable of being relied upon in future possession proceedings.

## The importance of providing a Gas Safety Certificate before commencement of the tenancy!

In our February 2018 Legal Update “*Section 21 Notices and Gas Safety Certificates*” and our September 2018 Legal Update “*Restrictions for landlords terminating ASTs from 01 October 2018*”, we gave information on the substantial changes which were introduced by the Deregulation Act 2015 and the importance of the decision in ***Caridon Properties Ltd v Monty Schooltz (2018) (“Schooltz”)***.

By way of a reminder, ***Schooltz*** confirmed that in relation to tenancies starting or renewing on or after 01 October 2015, if a Landlord fails to serve a gas safety certificate on the Tenant prior to them moving into the property, the Landlord will be precluded from using section 21 of the Housing Act 1988 (“HA”) to obtain possession of the property on no fault grounds. Whilst Landlords can still end the tenancy by serving notice under section 8 of the HA, this usually requires some wrongdoing by the Tenant, and thus this course of action would not be available if the Tenant was not in breach.

Being a County Court case, the decision in ***Schooltz*** is not binding on other courts. However, the outcome has now been repeated in another County Court case, ***Trecarrell House Ltd v Rouncefield***.

This February 2019 case considered ***Schooltz*** and involved an AST granted on 20 February 2017. Hot water and heating were provided by a boiler outside the flat. No gas safety certificate had been provided or displayed before the start of the tenancy, but one was served prior to the Landlord serving a Section 21 Notice.

At first instance, the Judge decided that as the boiler was not within the demised property and the pipes within it carried water and not gas, there was no requirement for the Landlord to provide a certificate and even if there was, the Judge held that there was no absolute time limit on when the certificate could be provided for the purpose of the Landlord serving a Section 21 Notice.

The Judge considered that it must not have been the intention of those who drafted the legislation that it was not possible for a Landlord to remedy their breach if they failed to comply with the requirements at the commencement of the tenancy.

At Appeal, the Tenant argued that the Judge at first instance was wrong and that even if there was no requirement to provide a certificate, the Landlord ought to have displayed one, and being unable to remedy this, reliance on the Section 21 Notice that had been served was not possible.

The Appeal Judge found in favour of the Tenant and concluded that the Landlord's failure to comply with the legislation could not be remedied and that Section 21 was not available to the Landlord as a means of obtaining possession of the property.

### **Watch this space**

As with *Schooltz*, the decision in this case is also not binding and future cases may be decided differently, although these decisions will undoubtedly be referred to. In the meantime, the clear message is that it is vital for Landlords to comply with the requirement to provide a gas safety certificate before the start of the tenancy, as failure to do so cannot be remedied later and may create a situation where they are unable to remove a Tenant.

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