

## Gas safety certificates: Residential tenancies



It has now been clarified, as set out in our article, [Failure to obtain a gas certificate prohibits no-fault eviction](#), that a landlord is probably barred from serving a section 21 notice if they did not obtain a gas safety certificate at the time they granted an assured shorthold tenancy (AST). If the landlord simply forgot to give a copy of the certificate to the tenant, that error can be remedied but not failure to comply with the safety regulations when granting a tenancy cannot – that was the stance the court took in *Byrne v Harwood-Delgado*. Although this case is not binding, it indicates the stance the courts are likely to take.

### What is the position when each year the landlord and tenant enter into a new 1 year fixed term AST?

Does the landlord have to show that they had obtained a gas safety certificate on or before the commencement of the first tenancy that arose or would it be sufficient to simply confirm the existence a gas safety certificate at the commencement of the most recent tenancy?

The wording of section 21A of the Housing Act 2004 versus wording in the Assured Shorthold Tenancy Notices and Prescribed Requirements (England) Regulations 2015 incorporating paragraph 6 of the Gas Safety (Installation and Use) Regulations 1988 do not entirely marry up.

The former refers to the 'tenancy' whereas the latter refers to 'tenants' and breaks it down further into 'new tenants' and 'existing tenants'.

Given the stance taken by the court most recently in *Byrne v Harwood-Delgado*, in which it was made clear that landlords are expected to comply with safety regulations which ensure properties are safe for people to live in, it



is not a giant leap to assume that any landlord who has lost or didn't have a gas safety certificate at the very outset of a tenant's occupation may find a court unwilling to grant a possession order.

All of this could of course become academic if the government goes ahead with the abolishment of 'no fault evictions'.

## How we can help

At Cripps, we have one of the largest [property litigation](#) teams in the UK, with extensive experience in all areas of [property dispute resolution](#). Please contact our [property disputes](#) team for assistance.

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