IN THE COUNTY COURT AT MANCHESTER CLAIM NO: J26MA228

B E T W E E N :-

MR CHRISTOPHER BLAGG

Claimant

-and-

MRS NATALIE GHARBI
MR ACHREF GHARBI

Defendants

DRAFT JUDGMENT FOLLOWING HEARING ON 11 MAY 2023

(To be handed down at a date and time notified to the parties)

1. This reserved judgment follows a final hearing that took place on 11 May last and my first duty is to extend to the parties my apologies for the fact that, for a variety of reasons, it has taken longer than I had anticipated to compile and circulate. I hope that its comprehensive treatment of the subject matter might serve as some consolation.

Introduction

2. Under an assured shorthold tenancy ('**AST**') agreement entered into in December 2016, Mr and Mrs Gharbi are tenants of a property known as 42 Walshaw Road, Bury ('**No 42**'). No 42 is owned by Mr Blagg and he was the original landlord. The AST agreement was in writing and a copy features in the hearing bundle. That copy has a number of deficiencies such that, for instance, it is not dated; it bears the signature neither of Mr Blagg nor of Mr or Mrs Gharbi; and rather vaguely it refers to the granting of *'a fixed term of six months from and including November 2016'*. Despite that, Mr Blagg's case that the agreement was *'dated 22 12 2016'* and that No 42 was let to them from that date is not contested by Mr or Mrs Gharbi.

3. No subsequent agreement in writing was entered into and by virtue of sect 5, Housing Act 1988 (as amended) the AST became a monthly periodic tenancy with effect from 22 June 2017. It does not appear that there were otherwise any substantive changes to the terms of the AST over time (Mr and Mrs Gharbi say the rent payment date changed but for present purposes that is immaterial); otherwise a deposit of £500 taken by Mr Blagg at the beginning was returned in March 2022.

4. In the early part of 2022 Mr Blagg indicated to Mr and Mrs Gharbi that because of personal circumstances he wanted to sell No 42 and would be serving notice. The notice he relies on was in prescribed Form 6A, dated 18 May 2022 and served pursuant to sect 21(1) and (4) of the 1988 Act by his solicitors under cover of a letter of the same date addressed to Mr and Mrs Gharbi. The notice required them to leave No 42 after 20 July 2022. Mr and Mrs Gharbi do not take issue with the notice itself, by which I mean the form it took or the information it supplied or the period it gave: on its face it constituted a valid notice.

5. Mr and Mrs Gharbi did not leave and consequently in August 2022 Mr Blagg, again by his solicitors, issued the present proceedings using the 'accelerated possession procedure'.

6. Separate Defences were filed by Mr and Mrs Gharbi, although in substance they were almost identical and each raised doubts concerning Mr Blagg's compliance with certain formalities. The claim was triaged on the papers only by District Judge Haisley and it was his order of 8 September 2022 that paved the way for the final hearing that ultimately took place before me.

Issue to be determined

7. The principal question the Court is asked to determine is whether Mr Blagg is entitled to use the accelerated possession procedure, to seek an order for possession of No 42.

8. The disputes surrounding that issue are partly factual and partly legal. The claim is Mr Blagg's to prove; and where disputes of fact are concerned, in order to succeed he is required to prove his case on the balance of probabilities – that is, it is more likely than not that his version is the correct one.

The hearing before me

9. Mr Blagg was represented by Ms Rebecca Jones of Counsel. He himself was also present and gave sworn evidence. In addition to his own there was one other witness statement in support of the claim, that of Mr Christopher Howard; however Mr Howard was absent from the hearing.

10. Mr and Mrs Gharbi were represented by Mr Rory O'Ryan, also of Counsel. Mrs Gharbi was herself present and gave sworn evidence, as did Mrs Susan Talbot. Mr Gharbi did not attend and had made no witness statement but I take his wife's evidence to have been given in her own behalf and on his.

11. I had the benefit of skeleton arguments from both Counsel and wish to record my thanks to them for their assistance generally – and that extends to the written submissions they each provided following the conclusion of the hearing.

12. Not only was the clock against us on 11 May but I said I needed time to consider the evidence and various arguments; accordingly, and as well as directing the written submissions, I said I would reserve judgment.

The legal framework

13. In very broad terms a landlord is responsible for the safety of a residential tenant at the demised premises. More specifically the law, through the medium of the Gas Safety (Installation and Use) Regulations 1998 **('the 1998 Regulations**') imposes express duties on a landlord where:

(a) the lease (here including the term created by an AST agreement) is for fewer than 7 years or is a tenancy for a periodic term (or is a statutory tenancy arising out of either); *and*

(b) there is at the demised premises a 'relevant gas fitting', as defined.

14. In such cases the duties referred to include:

- ensuring that any relevant gas fitting and any flue serving it is maintained in a safe condition;
- ensuring that each such appliance and flue is checked for safety within 12 months of being installed and at intervals of not more than 12 months thereafter;
- ensuring that a record – for the purposes of this judgment, a gas safety record **('GSR')** – respecting any appliance or flue so checked is made and retained for 2 years from the date of the check, which record must include prescribed information;
- ensuring that any work or check is carried out by an approved person – in essence, an engineer registered with Gas Safe;
- ensuring that a copy of the GSR is given to each existing tenant within 28 days of the check; and
- ensuring that a copy of the last GSR is given to any new tenant before that tenant occupies the premises.

That these are extremely important provisions is underscored by the fact that breach of at least some of them can amount to a criminal offence.

15. Although moves have been afoot for some time to try to effect changes[1], it has been the position for a very long time that a landlord may serve on the tenant of premises let on an AST a 'no fault', two months' notice under sect 21 of the 1988 Act. Provided the applicable formalities have been complied with by the landlord the Court, in any subsequent proceedings for possession of the demised premises, has no choice other than to make an order for possession.

16. From the beginning of October 2015 the Deregulation Act of that year brought about, to an extent, a combining of the 1998 Regulations and the Housing Act 1988 by adding to the latter a new sect 21A. That new section provided that a sect 21 notice could not be *'... given in relation to an [AST] of a dwellinghouse in England at a time when the landlord is in breach of a prescribed requirement'* (my emphases).

1 A bill partly with that in mind, the Renters (Reform) Bill, is currently progressing through Parliament. One of its provisions is to make a landlord's wish to sell the demised premises a mandatory ground for possession.

17. The classes of requirements that were capable of being prescribed were set out in sect 21A(2) and confirmed by regulation to be those relating to the provision to the tenant of an Energy Performance Certificate and a GSR. However it was also made clear that insofar as the provision of a GSR was concerned the requirement was *'... 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'*.

18. I should emphasise that the foregoing is an attempt at a simplified summary of what is, it must be said, by now a somewhat convoluted legal framework. The answer to the question 'What does it all mean?' is that in respect of ASTs entered into from 1 October 2015, for a sect 21 notice to be validly given it became an additional requirement that the landlord must have complied with sect 21A of the 1988 Act.

19. It is fair to say however that the foregoing was all heavily publicised at the time. The changes wrought by sect 21A were significant and landlords were left in no doubt as to the potential, very serious difficulties that could be encountered when trying to recover possession of a property in the event that they were in breach of a prescribed requirement when a sect 21 notice was served.

The arguments in the present case - overview

20. It is common ground that, throughout, the 1998 Regulations applied – and continue to apply – to No 42. There are at least two gas appliances at the property (a boiler and a cooker), together with associated pipework and a flue. From that perspective Mr Blagg was bound by the obligations summarised at paragraph 14 above. By now, the arguments advanced by Mr and Mrs Gharbi are that:

i. They were not given a copy of the last (i.e. then current) GSR before they occupied No 42 under the AST agreement ('**the First Argument**');

ii. They were not given copies of all the annual GSRs that followed ('**the Second Argument**'); and

iii. The last GSR given prior to service of the sect 21 notice did not contain mandatory details set out in the 1998 Regulations ('**the Third Argument**').

I should add that the above represents an elaboration of the position set out in the Defences, of which I have more to say below. However I keep in mind that for a long time during the currency of these proceedings Mr and Mrs Gharbi were litigants in person; also that although the Third Argument had not previously been raised (no doubt, partly for the reason I have just mentioned), no point was taken in relation to it at the final hearing on behalf of Mr Blagg.

21. For his part Mr Blagg argues that:

a) As a matter of fact, a copy of the then current GSR was provided to Mr and Mrs Gharbi before they occupied, albeit that he is unable to produce a further copy of it now;

b) Prior to serving the sect 21 notice he was obliged to give only a copy of the initial GSR together with the most recent one; and

c) The details said to have been omitted do not form part of the prescribed

requirements set out by regulation for the purposes of compliance with sect 21A of the 1988 Act.

22. It is convenient at this stage to consider what, in relation to the First Argument and the Second Argument, the parties said whether directly or indirectly in their respective statements of case.

23. The starting point is the claim form. This is in prescribed Form N5B, which is (deliberately) a fairly compendious document whose use is mandatory in accelerated possession claims concerning properties in England. The form is structured in such a way as to require confirmation that all applicable obligations and formalities have been complied with, so as to establish that the Claimant is entitled to use the accelerated possession procedure and to an order for possession.

24. Section 17 of the claim form deals with gas fittings and GSRs. In answer to the question at 17: *'Is there any relevant gas fitting (including any gas appliance or installation pipework) installed in or serving the property?)'* Mr Blagg, *via* his solicitors, replied in the affirmative.

25. Section 17a asks *'Was a copy of a valid gas safety record provided to the Defendant before they went into occupation of the property?'* Again, the reply was in the affirmative.

26. Section 17b goes on to ask as follows:

Have gas safety records been provided to the Defendant covering all further gas safety inspections carried out during the period of the tenancy?

☐ Yes, the dates of issue of the gas safety records and the dates on which they were given to the Defendant were:

Dates of issue	Dates of service on the Defendant

You must attach copies of the gas safety records provided to the Defendant before the Defendant went into occupation and during the tenancy and mark them 'G', 'G1', 'G2' etc.

☐ No

27. The following points should be noted, insofar as section 17b is concerned:

- The question relates to GSRs arising from '… *all further gas safety inspections carried out during the period of the tenancy';*
- The table has space for at least three entries; and
- The requirement to attach copies clearly envisages the possibility of several GSRs having been compiled over the period of the AST.

28. Mr Blagg answered the question itself in the affirmative – but did not then go on to insert any entries in the table. The upshot of this was that he provided the confirmation but without supplying any details save that annex G to the claim form comprised a copy of a GSR dated 10 November 2021.

29. The claim form was verified by a statement of truth, signed by a legal representative.

30. Question 12 of the Defence in Form N11B asks whether the Defendant agrees that what is said in section 17 of the claim form is correct. If the answer is 'No', the Defendant is asked to specify what they disagree with and why.

31. Mrs Gharbi did not agree and at question 12 of her Defence went on to say this:

'We didn't always receive a copy after all checks.

'The last check the gas cooker was deemed unsafe. The landlord was meant to change this and I asked for electric if possible. This still has not been changed 9 month after being inspected'.

32. Mr Gharbi did not agree, either and at question 12 of *his* Defence expanded thus:

'Received some not all.

'Gas cooker was checked deemed unsafe. Landlord said he would replace and never did per recommendation of the inspection'.

33. Both Defences were verified by statements of truth, respectively signed.

34. The observation could fairly be made that both responses suffered from a certain lack of precision but, first, I repeat the point about Mr and Mrs Gharbi having lacked legal representation at the time and, secondly, it is worth keeping in mind that (as with the claim form) these documents are not formal 'pleadings', as such.

35. To sum up, then, the position is as follows:

(a) The determination of the First Argument is a matter of fact, since I understand Mr Blagg to accept that it would be fatal to his claim if he were unable to prove that, before the sect 21 notice was served, a copy of the GSR valid at the time Mr and Mrs Gharbi took up occupation of No 42 was given to them.

(b) The determination of the Second Argument is a mixed matter of law and of fact. Mr Blagg disputes the Gharbis' interpretation of the applicable statutory provisions to the

extent that he disagrees that it was necessary for him, before serving the notice, to have given them copies of all the intervening annual GSRs – although he maintains that he did just that, in any event. Accordingly if his interpretation is the correct one, it would not be fatal to his claim if he failed to prove that those GSRs between the first and the last had not been provided.

(c) The determination of the Third Argument is a matter of law. The 10 November 2021 GSR is in evidence and I understand Mr and Mrs Gharbi to accept that a copy of it was provided to them before the notice was served. Having regard to the requirements of the 1998 Regulations it was either compliant or it was not. If not, then on the Gharbis' case the notice was served at a time when Mr Blagg was in breach of a prescribed requirement. He contends that the regulatory provisions concerning the content of GSRs are not a prescribed requirement, so that non-compliance would not affect his ability to serve and rely on the notice.

The arguments in the present case - detail

36. It seems to me sensible to deal with the arguments in reverse order, such that the disputed points of law are the first to be determined. As part of that exercise it is necessary to set out *in extenso* the statutory and regulatory provisions that have a bearing on the present case, which are as follows.

37. Sect 21A of the Housing Act 1988 provides as follows:

(1) A notice under subsection (1) or (4) of section 21 may not be given in relation to an assured shorthold tenancy of a dwelling-house in England at a time when the landlord is in breach of a prescribed requirement.

(2) The requirements that may be prescribed are requirements imposed on landlords by any enactment and which relate to— (a) the condition of dwelling-houses or their common parts, (b) the health and safety of occupiers of dwelling-houses, or (c) the energy performance of dwelling-houses.

(3) In subsection (2) " enactment " includes an enactment contained in subordinate legislation within the meaning of the Interpretation Act 1978.

(4) For the purposes of subsection (2)(a) " common parts " has the same meaning as in Ground 13 in Part 2 of Schedule 2.

(5) ...

38. Regulation 2 of the 2015 Regulations states:

2.—(1) Subject to paragraph (2), the requirements prescribed for the purposes of section 21A of the Act are the requirements contained in—

(a) regulation 6(5) of the Energy Performance of Buildings (England and Wales) Regulations 2012(2) (requirement to provide an energy performance certificate to a tenant or buyer free of charge); and

(b) paragraph (6) or (as the case may be) paragraph (7) of regulation 36 of the Gas

Safety (Installation and Use) Regulations 1998 (requirement to provide tenant with a gas safety certificate).

(2) For the purposes of section 21A of the Act, the requirement prescribed by paragraph (1)(b) 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.

39. Regulation 36(3) of the 1998 Regulations provides as follows:

(3) Without prejudice to the generality of paragraph (2) above, a landlord shall—

(a) ensure that each appliance and flue to which that duty extends is checked for safety within 12 months of being installed and at intervals of not more than 12 months since it was last checked for safety (whether such check was made pursuant to these Regulations or not);

(b) in the case of a lease commencing after the coming into force of these Regulations, ensure that each appliance and flue to which the duty extends has been checked for safety within a period of 12 months before the lease commences or has been or is so checked within 12 months after the appliance or flue has been installed, whichever is later; and

(c) ensure that a record in respect of any appliance or flue so checked is made and retained for a period of 2 years from the date of that check, which record shall include the following information—

(i) the date on which the appliance or flue was checked;

(ii) the address of the premises at which the appliance or flue is installed;

(iii) the name and address of the landlord of the premises (or, where appropriate, his agent) at which the appliance or flue is installed;

(iv) a description of and the location of each appliance or flue checked;

(v) any defect identified;

(vi) any remedial action taken;

(vii) confirmation that the check undertaken complies with the requirements of paragraph (9) below;

(viii) the name and signature of the individual carrying out the check; and

(ix) the registration number with which that individual, or his employer, is registered with a body approved by the Executive for the purposes of regulation 3(3) of these Regulations.

40. Regulation 36(6) goes on to say:

(6) Notwithstanding paragraph (5) above, every landlord shall ensure that—

(a) a copy of the record made pursuant to the requirements of paragraph (3)(c) above is given to each existing tenant of premises to which the record relates within 28 days of the date of the check; and

(b) a copy of the last record made in respect of each appliance or flue is given to any new tenant of premises to which the record relates before that tenant occupies those premises save that, in respect of a tenant whose right to occupy those premises is for a period not exceeding 28 days, a copy of the record may instead be prominently displayed within those premises.

THE THIRD ARGUMENT

41. The GSR dated 10 November 2021 omitted the name and address of Mr Blagg (or any agent). Reg 36(3)(c)(iii) of the 1998 Regulations requires that this information be included. Thus, it is contended, that GSR did not comply with the regulation and may not be relied upon by Mr Blagg. The response is that the requirement referred to is not a *prescribed requirement* for the purposes of reg 2(1)(b) of the 2015 Regulations; accordingly the omission is immaterial and the validity of the GSR is unaffected.

42. At first blush the Third Argument might seem an unattractively arid and technical one which might not be considered the Gharbis' best. However if they are right then that argument would on its own deny Mr Blagg success on the claim, so it is appropriate to accord it the consideration it deserves.

43. The question what is and what is not a prescribed requirement was considered by the Court of Appeal in *Trecarrell House Ltd -v- Rouncefield* [2020] EWCA Civ 760, an authority to which I was referred during the hearing. The predominant issue on the appeal was whether a landlord could comply with reg 36(6)(b) of the 1998 Regulations by the late provision of a copy of the GSR which was current before the tenant moved in, provided such provision came before service of the sect 21 notice. The leading judgment of the majority of the Court was given by Patten LJ and Ms Jones points to [6] where his Lordship, touching on the frequency of gas safety checks as required by reg 36(3), said:

'But reg.36(3) is not itself a prescribed requirement, although non-compliance is punishable as criminal offence'.

In my view, however, this amounted to no more than a bald statement of fact; and any attempt to rely on it as conclusive would be hazardous because that would be to ignore the analysis contained later in the judgment, especially at [33]-[36]. My reading of those passages is that Patten LJ concluded that whilst it is correct to say that reg 36(3) is not itself a prescribed requirement, nevertheless for reg 36(6)(a) to carry meaningful effect the relevant GSR must necessarily comply with the provisions of 36(3). It is patently obvious that a landlord cannot provide a GSR at all unless a safety inspection has already been carried out; and the regulation makes specific provision for the content of such GSR.

44. It seems to me that the significance of the latter point is underscored by the following extract from [36], dealing with the date of one of the GSRs under consideration:

'The obligation imposed on the landlord by paragraph (6)(a) is to give the existing tenants a copy of a GSR which contains all the information specified in paragraph (3)(c). The April 2018 GSR was not such a document because it did not give the correct date of the safety check. It cannot therefore be relied upon by the claimant as evidence of compliance

with paragraph (6)(a) as a prescribed requirement'.

45. If the accuracy of the date on which an appliance or flue was checked was in the view of the Court of Appeal[2] essential for the purposes of conformity by a GSR with reg 36(3)(c)(i) then it must follow that the same applies to the inclusion of the name and address of the landlord (or any agent) under 36(3)(c)(iii). On that footing I would have to accept the Third Argument as being well founded, with the result that the sect 21 notice in the present case was served at at time when Mr Blagg was in breach of a prescribed requirement and the notice may not therefore be relied upon by him.

46. I cannot however discount the possibility that the foregoing conclusion is incorrect, for which reason I proceed to deal with the other arguments.

THE SECOND ARGUMENT – LAW

46. The question here is whether it is necessary for a landlord to have furnished the tenant with copies of each and every GSR compiled over the duration of the tenancy, before a sect 21 notice may be relied on. In reality this question only arises in relation to tenancies exceeding two years since even on Mr Blagg's case there must be provided to the tenant copies of (i) the GSR that was valid before that tenant moved in and (ii) the most recent GSR.

47. I have already mentioned that in the present case the sole copy GSR annexed to the claim form was that dated 10 November 2021. That copy was of course produced by Mr Blagg. For her part Mrs Gharbi has been able to produce GSRs dated October 2018 (the 5th of that month, I think – the bundle copy is indistinct) and October 2019 (date illegible). I expand on this below but the short point is that as well as that of 2016, copies of the GSRs for 2017 and 2020 are still missing, having been produced by none of the parties.

48. In my judgment it is necessary for a landlord to provide the tenant with copies of each of the successive GSRs (again assuming a tenancy whose term exceeds two years) before being able validly to serve a sect 21 notice and thus make use of the accelerated possession procedure. Support for that conclusion comes from the following:

- The fact that, as set out above, the prescribed Form N5B includes an entirely separate question concerning the provision of GSRs stemming from *'all further gas safety inspections'* and I repeat the points made at paragraph 27 above.

- As Mr O'Ryan submits – and I entirely accept – CPR 55.13(1)(b)(ii) requires that the claim form by the documents it requires.

- In *Trecarrell House* there is more than one reference to the provision of GSRs in respect of every safety check carried out – see Patten LJ at [36] and King LJ at [42]. Whilst doubtless *obiter* because of the context (namely, the brevity of the term of the AST in that case), nevertheless the combined view of his Lordship and her Ladyship carry considerable weight.

Ms Jones submits that the fact a landlord is required to retain a copy GSR only for a period of two years from the date of the check militates against the conclusion set out above – and part of the hearing was devoted to an interesting discussion of this topic. However it seems to me that this requirement must presuppose that a copy of the relevant GSR has already

2 It is worthy of note that in his dissenting judgment Moylan LJ did not disagree with Patten LJ in this respect.

been provided. The two years period might have been selected to cover the possibility of the tenant requesting a further copy but in any event the prudent landlord will ensure that copies are retained until after the tenancy has come to an end or at least until the point beyond which the tenant is prevented from challenging the validity of any sect 21 notice.

49. Accordingly, and again in my judgment, a landlord who fails to provide the tenant with copies of all the annual GSRs that should have been compiled over the term of the AST will effectively be prevented from serving a sect 21 notice.

THE SECOND ARGUMENT – FACTS

50. The determination of any factual dispute will almost always depend heavily on the Court's assessment of the evidence of witnesses. It is worth my recording at this stage that having heard from Mr Blagg, Mrs Gharbi and Mrs Talbot, my view is that they were all of them doing their best to assist the Court and I do not believe that any of them gave evidence with a view to misleading the Court or otherwise giving anything other than a straightforward account.

51. Mr Blagg's evidence is that between 2016 and 2020 Mr Howard was contracted to undertake the annual gas safety checks in respect of No 42; and that as well as providing Mr Blagg with a copy, Mr Howard would leave a copy in the kitchen of the property. I have already recounted what Mr and Mrs Gharbi said in their respective Defences.

52. In his witness statement Mr Howard states that he carried out annual safety checks at No 42 between November 2016 and September 2020 (from 2020 Mr Blagg utilised instead the services of Richard Simmons Heating Ltd, trading as R & S Heating). It is fair to say that, subject always to the question what weight should be lent to Mr Howard's statement, he concentrates on the factual dispute which underlies the Third Argument and has little more to say in respect of the factual background to the Second Argument.

53. I note that Mr Howard blames two house moves for the fact he no longer has in his possession *"copies of the previous certificates"*. However despite also claiming to *"have checked [his] records/diary and have located the date on which each check was carried out at [No 42]",* he seemingly did not think it necessary to exhibit to his witness statement true copies of the records or diary entries referred to.

54. Again in oral evidence at the hearing Mr Blagg largely concentrated on the provision of the then current GSR before the Gharbis moved in; but in answer to a question from Mr O'Ryan about (copy) GSRs having been provided throughout the period of the AST he had to concede that he was not present at No 42 and accordingly could not say. This means of course that the only evidence from Mr Blagg's side of the provision of the relevant GSRs is that of Mr Howard.

55. For her part Mrs Gharbi said in her first witness statement that in relation to GSRs covering the period 2016 to 2020 she (or she and her husband) had *"only received 2018 and 2019 copies from Howards Heating Gas Engineer"*. She went on to say that *"2021 and 2022 inspections were done by Richard Simmons Heating LTD and were carried out on an electronic device to be emailed to the Landlord"*. Finally on this topic she said *"I do not dispute the Gas safety checks being done as they have"*.

56. In her second statement she said *"During the time in the property we received gas checks and a new boiler and as you can see [attached] only 2 copies of the gas checks*

previously ...". A little further on she said *"The gas checks have not been completed properly priory* [sic] *to the last two years ...",* whilst under cross-examination she accepted that some checks had been done (as substantiated by the available copy GSRs) but disagreed that all checks had been carried out (as and when they should have been).

57. As between her first statement and her second – and her oral evidence – there was plainly an inconsistency in relation to the carrying out of annual safety checks; but the issue for present purposes is whether copies of all relevant GSRs were supplied.

58. Mr Howard's witness statement needs to be approached with caution, for the obvious reason that he was not present at the hearing and accordingly his evidence could not be tested under cross-examination. His absence was perhaps surprising because, although I might be mistaken, my recollection is that he was that he did attend for at least one of the earlier hearings. Be that as it may, in my view little or no weight can be given to his evidence and, combined with Mr Blagg's admitted inability to provide any firm confirmation and the absence of copies of the GSRs for 2017 and 2020, there is before the Court barely any reliable evidence that copies of all interim GSRs were provided.

59. In my judgment this factual dispute has to be resolved in favour of Mr and Mrs Gharbi. Any concern over the inconsistency in Mrs Gharbi's evidence referred to above is outweighed by the near dearth of evidence from or on behalf of Mr Blagg. I accept that, as mentioned above, by law there is a limit on the length of time a landlord is required to keep copies of GSRs; also, so far as I am aware, heating engineers are not required to keep them at all (as to which I have more to say below): but the question is whether Mr Blagg has been able to prove to the required standard that copies of all interim GSRs were given to Mr and Mrs Gharbi and on the evidence the answer to that question is in the negative.

60. I would accordingly have to accept the Second Argument, both as a matter of law and of fact, as being well founded. But once again, as far as my interpretation of the law is concerned, I must accept the possibility that I have erred and must therefore proceed to determine the First Argument.

THE FIRST ARGUMENT

61. I have already alluded to Mr Blagg's acceptance, as I understand it, of the proposition that he must be able to demonstrate on the evidence that Mr and Mrs Gharbi were provided with a copy of the then current GSR before they moved in, in order to serve a valid sect 21 notice. Ms Jones submits that in this respect the decision in *Trecarrell House* is irrelevant because whereas that case concerned a GSR provided late (albeit prior to service of the notice), in this case Mr Blagg maintains that the original GSR – that is, the one that was current as at the commencement of the AST agreement – *was* provided to Mr and Mrs Gharbi before they moved in. To that extent the distinction drawn by Ms Jones cannot be questioned; but of course it remains for Mr Blagg to prove on the evidence that on balance he did as he maintains.

62. In his witness statement Mr Blagg said *"Prior to the Defendants moving into the Property in 2016 there was a valid Gas Safety Certificate in the Property which I provided to the Defendants with the tenancy documents".* He went on to say that, in common with Mr Howard, he too had twice moved house and could no longer locate his copies of any of the GSRs between 2016 and 2020, which was why he had left the dates blank in the claim form.

63. In oral evidence he confirmed that he had been present at No 42 when the AST agreement was signed – although he confirmed the presence, otherwise, only of Mrs Blagg and what he termed *"a family member"*. I took that last to be a reference to Mrs Talbot. He was unable to say when the initial GSR had been compiled but conceded that he had no receipt from Mrs and/or Mr Gharbi in relation to that GSR, observing that this *"is not a legal requirement"* and that he had granted a number of tenancies (he has or had three rental properties) with no confirmation from any of his other tenants of receipt of the initial GSR. In fact he had granted a tenancy recently, without such confirmation. I would simply remark at this stage that his point about legal requirement is undoubtedly correct; but whether it is wise to refrain from securing a receipt is another matter entirely.

64. He struggled somewhat when questioned by Mr O'Ryan in regard to the circumstances in which the initial GSR was said to have been provided. He disagreed when it was put to him he could not recall having given it to Mrs Gharbi but subsequently conceded that he did not hand it over to her (*"It was given as part of the tenancy agreement"*). Then he could not say it was physically handed over but that it was *"on the side",* here referring to part of the kitchen worktop. Ultimately he accepted that he had not been present when Mr Howard was said to have carried out the check leading to the initial GSR and was not positively asserting that it had been handed over.

65. It is also worthy of note that part of Mr Blagg's evidence was that he had previously retained electronic copies of GSRs and if I understood him correctly they would have included a copy of the initial GSR in the present case. He went on to explain that these were held in a work email account to which he no longer had access because he had subsequently left that particular employment; but there was no indication that in connection with these proceedings he had made any attempts to retrieve the copies nor, if that were the case, with what result.

66. In his witness statement Mr Howard described as "false" the Gharbis' allegation that when they moved into No 42 there was no GSR. He said he had carried out a gas safety check on 2 December 2016 and as with all subsequent records *"would leave a copy of the certificate on the kitchen side/under the boiler and also email a copy to the Claimant as the landlord"*. However I have already indicated what weight should be lent to Mr Howard's statement and why.

67. Throughout Mrs Gharbi has been adamant that no copy of the initial GSR was provided before she and her husband took up occupation. By her second witness statement she said *"Upon moving in we only received a tenancy agreement and no other documents including a gas check done prior to moving in"* and in her oral evidence she was categoric in her denial that an initial GSR had been provided. She dismissed the suggestion that her memory of events in 2016 might have dimmed; likewise that an initial GSR might have got lost.

68. Mrs Talbot is Mrs Gharbi's aunt: I do of course keep in mind that family connection and the likelihood that she would have been keen to assist Mrs Gharbi so far as possible. Her witness statement however is very detailed. Corroborating Mrs Gharbi's evidence in these respects it recounts how she accompanied her niece on an initial viewing of No 42 in mid-December 2016 and there met Mr Blagg; how the property had been considered ideal and how a further meeting took place there on 22 December 2022, when the AST agreement had been signed (at least by Mrs Gharbi) and the deposit and first month's rent paid. Again echoing Mrs Gharbi she confirmed that the moving-in date was 28 December 2016.

69. Like Mrs Gharbi, Mrs Talbot was unshakeable in her confirmation that neither on 22 December 2016 nor before was any *"gas safety check paper work handed to [Mrs Gharbi], only tenancy agreement"*.

70. Notwithstanding my remark about the family connection, Mrs Talbot's witness statement made an impression owing to the level of its detail (her recollection of having to call Mr Blagg back to No 42, for instance, because they were unable to get the key out of the door) and – again like Mrs Gharbi – she was essentially unfazed under cross-examination.

71. In regard to the factual dispute that lies at the heart of the First Argument, I am again with Mr and Mrs Gharbi. The bottom line is that Mr Blagg is either able to prove the provision of a copy of the initial GSR or he is not. The certainty with which Mrs Gharbi and Mrs Talbot gave evidence is to be contrasted with unsatisfactory and unhelpful aspects of his own. These include his relative uncertainty regarding the events of December 2016; the weakness of relying for support on a statement made by a witness who did not attend the hearing; the curious lack of explanation in relation to the former work email account and its contents[3]; and – I am bound to say – the surprisingly casual attitude being displayed towards the basic common sense of obtaining, even recently and despite these proceedings, confirmation that a tenant or tenants has or have been provided with an initial GSR. The evidence of Mrs Gharbi and her aunt is to be preferred and accordingly Mr Blagg has not been able to satisfy the Court, to the required standard, that any 2016 GSR was provided to them before they moved in.

72. For those reasons I accept the Third Argument without hesitation. And in consequence it follows that the sect 21 notice was served at a time when Mr Blagg was in breach of an unarguable prescribed requirement, namely that set out in reg 36(6)(b) of the 1998 Regulations, such that he is not entitled to use the accelerated procedure and is not by these proceedings entitled to an order for possession. His claim for such is accordingly dismissed.

73. By her Supplemental Submissions Ms Jones accepts that if the claim is dismissed then costs would follow the event. I am not aware of any claim for costs in respect of the period before Mr and Mrs Gharbi obtained a public funding certificate; thus the appropriate order in this context would appear to be that Mr Blagg pay the Gharbis' costs from and including the date when the certificate was granted, such costs to form the subject of a detailed assessment if not agreed.

Next steps

74. I should be grateful if within 14 days from the circulation of this draft notification could be given of any typographical or syntactical errors.

75. Arrangements will then be made for a further hearing to be convened, for the formal handing down of this judgment. The attendance of any of the parties at the hearing is expressly excused. The attendance of Counsel is likewise excused if the terms of a draft order can be agreed beforehand and there are no consequential matters arising. In the event that Counsel or either of them do wish to attend, the hearing will be conducted by telephone and their preferred contact number(s) should be supplied to the Court office no later than 3 clear days beforehand.

3 The same remark may of course also be made in relation to the interim GSRs.

DDJ D R WILLIAMS

2 August 2023