

IN THE SHEFFIELD COUNTY COURT

Case No: 8PA13344

The Law Courts
50 West Bar
Sheffield

8th August 2008

Before

HIS HONOUR JUDGE BULLIMORE

MRS JENNY HARVEY
(Claimant)

-v-

MR ANDREW BAMFORTH
(Defendant)

APPROVED JUDGMENT

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APPROVED JUDGMENT

JUDGE BULLIMORE:

1. This is an appeal for which the district judge himself gave permission against decisions made by Deputy District Judge Revitt on the 14th of May. An order was drawn up to give effect to his decision and it reads as follows “On the 14th of May 2008 Deputy District Judge Revitt of Barnsley County Court” and the address is given “upon hearing the solicitor for the claimant and upon hearing Mr Andrew Bamford in person”, well it appears from the transcript, that Mr Bamford was also represented at the hearing, but the order then goes on “it is ordered that pursuant to Section 214(3)(b) of the Housing Act 2004 the claimant pay to the defendant the sum of £525” and I pause to say that was the amount of a deposit which had been received from the defendant tenant when he entered into a tenancy arrangement with the claimant.
2. Paragraph 2 says “Pursuant to Section 214(4) the claimant pay the defendant the sum of £1,575”, that is a figure which is three times the deposit and in brief the deputy district judge has decided that various punitive provisions within the Housing Act fell to be applied and so he was in effect ordering the claimant landlord to pay to the defendant that sum, and then paragraph 3 says “Setting off 1 and 2 above from the agreed arrears” this is arrears of rent which stood at £2,970, the order then says “the claimant” who was the landlord “pay to the defendant the sum of £870 on or before 4.00 pm on the 18th of June 2008”. Well there is a manifest error there because doing the arithmetic, on the basis of the district judge’s findings, it was the defendant who should pay the claimant the £870. Paragraph 4 “There will be no order as to costs”, paragraph 5 “Leave to appeal is granted”.

3. Well an appeal has been mounted by Mr Jones on behalf of the landlord in this case. His contention is that the deposit should not have been ordered to be repaid to the defendant tenant and that there should have been no order for three times the value of the deposit to be paid by the landlord to the defendant.
4. The matter has proceeded without the attendance of the tenant or anyone acting on his behalf and I am indebted to Mr Jones for what plainly is a huge amount of work and preparation that has gone into this appeal, but it does seem to me at the end of the day that it is a relatively simple matter. Mr Jones himself has other interests on behalf of landlords on a far wider basis than simply appearing here to promote Mrs Harvey's appeal and he has been able to give me quite a lot of information about the way that the Tenancy Deposit Scheme provisions, which appear in Section 212 and following sections of the Housing Act 2004, actually have been put into effect and are operating.
5. I am bound to say, although this has not formed a major part of Mr Jones' submissions, that I am very far from satisfied that the way the three deposit taking bodies actually operate or have set up their operations, comply with the provisions in the Housing Act. That may well be because these provisions were introduced into the Act very late on, as I understand it, and it may well be that those bodies that have come forward to act as tenancy deposit scheme holders have made out a case for actually departing from the terms of the Act itself. Doubtless the Government is aware of what is going on and is satisfied that the practical arrangements that have been made are actually working, but that of course still leaves open the possibility that they do not strictly comply with the scheme that Parliament has laid down.
6. Now if I can turn very briefly to various facts and matters which are not in dispute between the parties. Firstly the defendant entered into an assured shorthold tenancy with the claimant on the 19th of June of 2007, that was in relation to premises at 37 Wortley Avenue, Wombwell near Barnsley. Secondly, the defendant paid a deposit to

the claimant via her agents, Lancasters Property Management, in the sum of £525.

Thirdly that the deposit was lodged in a tenancy deposit, being the insured scheme operated by the dispute service, TDS, I think it is known as, on behalf of the claimant, and it was within fourteen days of the beginning of the tenancy. Fourthly, that the claimant issued proceedings for possession of number 37 Wortley Avenue. I understand that was essentially on the basis that substantial arrears of rent had built up and it is agreed fifthly the defendant had not made payments towards rent since the 19th of October of 2007.

7. The proceedings for possession were issued on the 18th of January 2007 but it was then submitted to the landlord that those proceedings couldn't go ahead on the basis that there had been a failure to comply with parts of the Housing Act or the statutory instrument which had been promulgated pursuant to that and therefore the possession claim was withdrawn on the 28th of February of 2008.
8. It is accepted on the landlord's behalf that the prescribed information referred to in Section 213(5) and (6) of the Housing Act had not been given within the required period of fourteen days, but this information had been given by a letter sent to the defendant tenant on the 22nd of February 2008. Now it appears that the course of the proceedings themselves did not go very smoothly after that.
9. The matter came before the court on the 28th of February 2008 and was adjourned and that was to give an opportunity to the defendant to take advantage of the provisions under the Act which allowed for the order for the return of the deposit to him and for a penalty to be paid to him. That application was then made on the 3rd of March 2008 and the matter was listed for hearing on the 3rd of April 2008 but had to be adjourned because for some reason insufficient time had been given, it had been listed for a five or ten minute appointment rather than for a substantive hearing, and then finally on the

14th of May the substantive hearing took place and the district judge determined the matter as I have indicated in the tenant's favour.

10. Now the provisions which give rise to an order for the return of the deposit and for the penalty to be imposed against the landlord are in Section 214. The tenancy deposit scheme provisions really begin at Section 212 but I think the requirements relating to tenancy deposits begin to bite, if I can put it that way, in Section 213, "Any tenancy deposit paid to a person in connection with a shorthold tenancy must, as from the time it is received, be dealt with in accordance with an authorised scheme" and for all practical services this scheme run by the dispute service is an authorised scheme.
11. Sub-section 2: "No person may require the payment of a tenancy deposit in connection with a shorthold tenancy which is not to be subject to the requirement in sub-section 1".
12. Sub-section 3: "Where a landlord receives a tenancy deposit in connection with a shorthold tenancy, the initial requirements of an authorised scheme must be complied with by the landlord in relation to the deposit within the period of fourteen days beginning with the date on which it is received".
13. Sub-section 4: "For the purposes of this Section, the initial requirements of an authorised scheme are such requirements imposed by the scheme as fall to be complied by a landlord on receiving such a tenancy deposit" and Mr Jones has submitted that in effect in relation to this scheme, that means that you must register the fact that you received a deposit and that can be done online. There is no requirement for money actually to be paid over to the dispute service under the scheme they have set up, which I am told is mainly used by agents such as Mrs Harvey's agents, Messrs Lancasters, rather than private individuals.
14. Sub-section 5 says "A landlord who has received such a tenancy deposit must give the tenant any relevant person such information relating to the authorised scheme applying to the deposit, compliance by the landlord with the initial requirements of the scheme in

relation to the deposit and the operation provisions of this chapter in relation to the deposit as may be prescribed” so that is prescribed information, and it is really on that provision which the tenant’s application for return of his deposit and for the penalty to be imposed in his favour were founded, but Mr Jones makes the important point, and I think he is right about that, that the giving of prescribed information is a different process under the Act from complying with the initial requirements, which essentially relate to dealing with the deposit itself.

15. Sub-section 6 says this “The information required by sub-section 5 must be given to the tenant and any relevant person; a) in the prescribed form or in a form substantially to the same effect; and b) within the period of fourteen days beginning with the date on which the deposit is received by the landlord”.
16. There are then further provisions to stop people trying to contract out of the effect of the Section itself and to define what ‘deposit’ means, and then sub-section 10 says “In this section ‘prescribed’ means prescribed by an order made by the appropriate national authority” and then there are two further definitions which I don’t need to read out.
17. I have seen the statutory instrument here which does set out what information is to be provided to the tenant but contrary to what is implicit within sub-section 6, there is no prescribed form laid down by the statutory instrument in what plainly is an order made by the appropriate national authority, there is simply a list of information which is to be given, so there are two parts to sub-section 6, one is to define, as it were, the information which is to be given to the tenant and the sub-section itself envisages that there will be a prescribed form which is to be used, or in a form substantially to the same effect, and then the second provision (b) “Within the period of fourteen beginning with the date on which the deposit is received by the landlord” so plainly the Act envisaged that information was to be give within a fairly short period of the taking of

the deposit and so that that information would be available for the tenant for whatever purpose it could be used from very early on.

18. We then come to Section 214 and sub-section 1 says "When a tenancy deposit has been paid in connection with a shorthold tenancy, the tenant or any relevant person may make an application to a County Court on the grounds; (a) that the initial requirements of an authorised scheme (see Section 213 (4) have not or Section 213 (6)(a) has not been complied with in relation to the deposit" and Mr Jones points out and I am sure he is right in this, that the draftsman has there very clearly drawn a distinction between Section 213(6)(a) and 213(6)(b) the latter of which contains the provision about the fourteen days.
19. We then go on to sub-section 2 of Section 214 which says this, sub-sections 3 and 4: "If on such an application the court is satisfied that those requirements have not", and that is a reference back to Section 213 sub-section 4 or Section 213 sub-section 6(a) "has not been complied with in relation to the deposit", and again Mr Jones rightly points out that there is a distinction drawn between Section 213(6)(a) and obviously the time requirement in Section 213(6)(b).
20. Now if the court comes to that view, that there has been a breach of Section 213(6)(a) that the prescribed information hasn't been given, then under sub-section 3 "The court must as it thinks fit either order the person who appears to the court to be holding the deposit to repay it to the applicant" and that was what the district judge did here "or (b) order that person to pay the deposit into the designated account held by the scheme administrator under an authorised custodial scheme within the period of fourteen days beginning with the date of the making of the order". Well as I say, the deputy district judge ordered the landlord to pay the deposit back to the tenant.
21. Under sub-section 4 "The court must also order the landlord to pay to the applicant a sum of money equal to three times the amount of the deposit within the period of

fourteen beginning with the date of the making of the order” and that was the other power that the district judge exercised in ordering that that penalty should be made.

22. The effect of the order plainly was that although it was accepted, rent was in arrears by £2,970, effectively the tenant was being relieved of £2,100 of that because the district judge took the view that there had been a breach of the requirements of Section 213(6)(a). Well that was the only basis, as I see, on which he could have come to the view that he did.
23. The failure on the landlord’s part was not that ‘the prescribed information was not given’ but that it was not given within the fourteen days. The district judge, as I read the judgment, took the view that sub-section 6(a) and sub-section 6(b) were so closely connected that they only made sense if they were read together but I think that was an error. I think that the draftsman in dealing with proceedings relating to tenancy deposits in Section 214 was very clear in differentiating between the requirement of giving the information and giving the information within a specified period. After all, they are very serious powers to be exercised against a landlord; doubtless in some cases they are well justified, but they are very punitive indeed and one can well see that in the minds of the legislators, it was one thing to deal in that way with a landlord who had not provided the prescribed information at all and to deal in that way with a landlord who had provided the prescribed information but had not done it within that short period laid down by the Act.
24. I am quite satisfied, in the information which I have been given, that the only failure by the landlord was to not give the information within the fourteen days. It was given by letter on the 22nd of February, obviously out of time, but it was given and it was in fact given before the formal application which is envisaged by Section 214 was made on the tenant’s behalf.

25. Mr Jones asked me to give some guidance or to offer some comment on what would have happened if the application had been made and then the information had been provided; well that isn't a case I have to deal with. As I say, there is nobody here to argue the point on the tenant's behalf and any observations by me would simply be of no value at all I think on that hypothetical situation. Doubtless the set of facts which Mr Jones asked me to offer some comment on will arise in due time and whoever is fortunate enough to be dealing with the matter will be able to come to a view about it and say what needs to be said at that time.
26. That being so, I am satisfied that the district judge was in error in finding that the situation arose where the punitive powers under Section 214(3) and (4) of the Act fell to be exercised, that being so the appeal will be allowed and I think we need to redraw this order accordingly, so:
- (1) Appeal allowed;
 - (2) the order of the 14th of May 2008 be set aside;
 - (3) the court being satisfied that the conditions under which the court could order the return of the deposit or order the landlord to pay three times the deposit to the tenant under Sections 214" (1) to (4) were not met;
 - (4) the tenant shall pay the agreed arrears of rent to the landlord in the sum of £2,970 in full without deduction or set off.

1 JUDGE BULLIMORE: You are not appealing against the fact there is no order
2 for costs below?

3 MR JONES: No your Honour.

4 JUDGE BULLIMORE: Alright. Well what about the hearing here though, you
5 want your costs here for that?

6 MR JONES: For what it's worth your Honour, there is a schedule dispatched to
7 the court yesterday.

1 JUDGE BULLIMORE: Has it been given to the defendant then?

2 MR JONES: No I don't think so, I think it was posted last night. I don't think
3 he's actually seen it.

4 JUDGE BULLIMORE: Well I think it's very late really.

5 MR JONES: The hearing time is actually slightly less than stated.

6 JUDGE BULLIMORE: Well I think if you are going to serve this on him, is it
7 not at least a day before the hearing? You are not going to get the money, are you?

8 MR JONES: I think it's delusory anyway.

9 JUDGE BULLIMORE: Alright, no order for costs on the appeal. Well Mr Jones,
10 thank you very much for an interesting argument.

11 MR JONES: I'm obliged.

12 JUDGE BULLIMORE: I've only ever ventured down here once before and it
13 was with a litigant in person who had come across these provisions and I have to say I
14 didn't find it at all easy to understand what the whole thing was about at that stage, you
15 have made it very clear.

16 MR JONES: I don't know if there is power to do this your Honour, but is it
17 possible, subject to paying the requisite fee, for a transcript of your judgment to be
18 made available?

19 JUDGE BULLIMORE: Oh yes, I mean, there will be application at the general
20 office, oh yes, you can do that, it's not a matter of getting my permission.

21 MR JONES: Well I wasn't sure sir.

22 JUDGE BULLIMORE: They are generally sent to the judge in question just to
23 correct it. I seem to think the grammar at the beginning of the judgment perhaps could
24 do with a bit of tidying up but once we got into the flow it would better.

25 MR JONES: No, I thought it was fine, your Honour.

26 JUDGE BULLIMORE: Well it was the right result from your point of view,
27 wasn't it?