

2154/11/13
12136/2/13

In the County Court at Birmingham

Claim No C70BM195

Between

Mr Stephen Carl Nelson

Claimant

-and-

Miss Kirsty Dianne Drew (1)

Mr Paul Michael Davis (2)

Defendants

Judgment of Deputy District Judge O'Connell

Hearing – 8th September 2016

Judgment – 7th October 2016

1. I heard this case on 8th September 2016 but due to lack of time and listing difficulties judgment could not be given until 7th October 2016.
2. The Claimant was represented by Mr Watkins, Solicitor with R R Williams, and the Defendants by Ms Cawsey of Counsel, instructed by the Community Law Partnership.
3. The Claimant commenced possession proceedings against the Defendants under the accelerated procedure to recover possession of 27 Park Close, Birmingham on or about 26th February 2016.
4. The written tenancy agreement dated 31st October 2014 commencing on 10th November 2014 is at pages 52 - 56 of the bundle. Page 57 of the bundle is an annex to the tenancy agreement giving details of the deposit protection scheme. At pages 59 - 60 is the tenancy deposit contract and at pages 62 - 67 is the form giving the prescribed information relating to the tenancy deposit.
5. After the initial term of the tenancy came to an end the Defendants continued in possession as periodic tenants.
6. On 1st December 2015 Notice seeking possession pursuant to S21(1) and (4) of the Housing Act 1989 as amended was given by the Claimant to the Defendants. The Defendants under the Notice were required to give up possession by 9th February 2016.
7. Possession was not given hence the proceedings.
8. On or about 16th March 2016 the Defendants served and filed a Defence to the Claim and a Counterclaim.
9. The Defence pleaded that due to defects in the prescribed information required under the deposit scheme the S21 Notice was defective and therefore the Claimant was not entitled to possession. Further the Defence pleaded that in the event that the Claimant

was entitled to possession then under the Court's discretion possession should be suspended for the maximum period of 42 days. Mr Watkins for the Claimant conceded that any possession order should be suspended the 42 days.

10. The Defence also pleaded that the 2nd Defendant suffered from a disability (multiple sclerosis) and that that disability had contributed to the rent arrears which had resulted in the S21 Notice being served. The Defence pleaded therefore that this amounted to unfavourable treatment and was unlawful discrimination which the Claimant had failed to justify.
11. The Counterclaim was for the return of the deposit plus compensation pursuant to S214(4) of the Housing Act 2014.
12. The Claimant served and filed a Reply and Defence to the Counterclaim stating the prescribed information had been given and that therefore the S21 Notice was valid and possession should be given. The Claimant stated in the Reply and Defence to Counterclaim that he was not aware of the 2nd Defendant's illness but in any event denied any direct or indirect discrimination. As the Claimant held the proper tenancy deposit information had been given the Counterclaim was denied.
13. By agreement between Mr Watkins and Ms Cawsey the Defendants' case was put forward first and the Claimant then responded. There was no verbal evidence as such from the parties, the witness statements in the bundle stood as the evidence. The case proceeded on legal argument alone.
14. I shall deal with the discrimination point first. Ms Cawsey said that the possession claim was prompted by rent arrears arising. She said that it matters not that there was no claim for the arrears (this being a S21 Notice accelerated possession case), the applicable test to be applied is whether the Defendant is disabled under the Equality Act. He has M/S. He lost his job. The rent arrears arose. She argues that the burden therefore shifts to the Landlord Claimant. He must show there is a no less onerous means of dealing with the matter. Is possession proportionate? She referred me to the case of *Aster Communities v Akerman-Livingstone UKSC 2015*. Has the Landlord's action amounted to direct discrimination? Clearly not. Would the Landlord have served the S21 Notice and issued proceedings against a non-disabled person? The answer is yes.
15. But what of indirect discrimination. The Landlord has to show there was no less drastic means of solving the problem and the effect on the Tenant was outweighed by the advantages. This being a S21 a suspended order (other than the 42 days) cannot be made. If this were a rent action there could be alternatives. In this case I cannot see any alternatives to possession (assuming the deposit notice points fail). There is no less drastic means of solving the problem other than possession.
16. The discrimination point of the Defence fails.
17. Turning to the main thrust of the Defence – the alleged ineffective Notice due to failure to give proper information concerning the deposit.

18. Pursuant to S213(5) of the Housing Act 2014 (The Act) – the Housing (Tenancy Deposits) (Prescribed Information) Order 2007 [S.I 2007 No.97] sets out at paragraph 2(1) the information that must be given to the Tenant. S213(6) of The Act states the information must be given in the prescribed form or in a form substantially to the same effect. By S215(2) if S213(1) is not complied with No S21 can be served.

19. So have the requirements of S213(6) been complied with? I shall deal with S2(1) of the SI 2007/97 paragraph by paragraph and based on the pleadings, the statements, the documents and the legal arguments:-

S2(1)(a) – names and addresses complied with;

S2(1)(b) – the Claimant did not provide a leaflet explaining the operation of the provisions of S212 - 215 of the Act. The document “a tenant’s guide to the custodial scheme” published by the Deposit Protection Service sets out at paragraphs 01 - 06 what information is required. The certificate at page 59 of the bundle provides some of the information indirectly but not all. S2(1)(b) has not been complied with;

S2(1)(c) – procedures dealing with the deposit at the end of the tenancy. The Claimant concedes this has not been complied with;

S2(1)(d) – procedures when a party is not contactable at the end of the tenancy. The Claimant concedes this has not been complied with;

So far as (c) and (d) are concerned the Claimant does point out that at pages 55 and 59 of the bundle (documents that were given to the Defendants) some of the information is available.

I find that notwithstanding the Claimant’s argument the section has not been complied with.

S2(1)(e) - the procedures on dispute. I find as for S2(1)(c) and (d) notwithstanding some information can be found in the tenancy documents.

S2(1)(F) – facilities to resolve disputes. Again I find as for S2(1)(c) and (d);

S2(1)(g) – information required. Often much of the information has been provided but then only piecemeal. Again there is a failure to fully comply.

20. The Claimant has clearly failed to comply with the requirements of S213(6). Is partial and piecemeal compliance enough? The case of *Ayannuga v Swindells CofA 2012* and in particular paragraphs 26 - 28 make it clear that partial and piecemeal is not sufficient. Essentially there has to be strict compliance. Since there is not compliance the S21 Notice fails.

21. Since the S21 Notice fails the claim for possession fails and is dismissed.

22. On the Claim I find for the Defendants.

23. The Defendants succeed on their Counterclaim as the Claimant failed to comply with S213(6) of the Act. The Defendants are entitled to compensation in accordance with S214(4). I have heard from Mr Watkins on this point. He argues that the 3 times deposit maximum is for cases where the deposit has not been protected. In this case there has merely been an error and the Defendants have no true loss. The deposit was protected. I agree with him in part but there was still a serious defect on the part of the Claimant. I order that the Claimant pay to the Tenants the sum of £787.50 in addition to refunding the said deposit sum of £787.50. Total £1575.00.
23. I award interest pursuant to County Courts Act 1984 Section 69 at 0.17p per day from 10th November 2014 to 7th October 2016 – 697 days x 0.17p = £118.49. Interest £118.49.
24. I order the Claimant to pay the Defendants' costs to be subject to detailed assessment if not agreed.

Deputy District Judge Brian O'Connell.