

Residential Landlord and Tenant: Tenancy Deposits

The Case of *Re. Michalis Charalambous v Maureen Ng* [2014] EWCA Civ 1604

The Facts

On 20 August 2002, Mrs Ng ('the Landlord') granted an assured shorthold tenancy to Mr Charalambous ('the Tenant') in respect of 14 Sapphire Court in Spitalfields for a term expiring on 18 August 2003. The Tenant paid a tenancy deposit to the Landlord in the sum of £1,560.00 ('the Deposit').

The tenancy was renewed on 19 August 2003 and, again, on 18 August 2004. On each occasion, the Deposit was carried over and credited against the renewed tenancy.

On 17 August 2005, the fixed term of the last tenancy expired and it automatically converted into a statutory periodic tenancy having the same terms as the fixed term tenancies.

The Housing Act 2004 came into force on 6 April 2007 ('the Act').

Section 213 of the Act (Requirements relating to tenancy deposits) introduced a requirement for a landlord who received a deposit in respect of a shorthold tenancy to:

1. Comply with the requirements of an authorised deposit protection scheme; and
2. Give the tenant (and any person who paid the deposit on behalf of the tenant) information relating to the authorised scheme and the landlord's compliance with its requirements in a prescribed form or a form substantially to the same effect.

The landlord had to comply with these obligations within 14 days beginning with the date on which the deposit was received. (On 6 April 2012, the time limit was extended to 30 days by virtue of an amendment made by section 184 of the Localism Act 2011).

Section 214 of the Act (Proceedings relating to tenancy deposits) introduced a right for the tenant to apply to the County Court if his / her landlord failed to satisfy the obligations referred to in paragraphs 1 and 2 above and, if the tenant was successful, section 214 stated the Court must order the landlord to either repay the deposit to the tenant or to pay it into an authorised scheme. Furthermore, section 214 stated the Court must order the landlord to pay a sum of money to the tenant *equal to* three times the amount of the deposit. (On 6 April 2012, the sum of money to be paid by the landlord was changed to *up to* three times the amount of the deposit by virtue of an amendment made by the Localism Act 2011).

Section 215 (Sanctions for non-compliance) stated that a landlord could not give a tenant notice requiring possession of the property pursuant to section 21 of the Housing Act 1988 at any time the landlord was not complying with the obligation referred to in paragraph 1 above and until such time as the landlord complies with the obligation referred to in paragraph 2 above.

On 17 October 2012, the Landlord served a notice on the Tenant requiring possession of the Property after 17 December 2012 pursuant to section 21 of the Housing Act 1988.

At no time whatsoever did the Landlord place the Deposit in an authorised deposit protection scheme.

(On 14 June 2013, the Court of Appeal handed down its Judgment in the case of *Superstrike Ltd v Marino Rodrigues* [2013] EWCA Civ 669. In summary, this case held that the Act applied to shorthold tenancies commencing before the Act came into force but where their fixed terms expired after the Act came into force).

The County Court found that the Landlord's section 21 notice was valid and so it granted an Order for Possession against the Tenant.

The Tenant appealed against the County Court's decision on the ground that the Landlord had not placed the Deposit in an authorised deposit protection scheme at the time she served her section 21 notice.

The Court of Appeal's Judgment

Lord Justice Lewison gave the Court of Appeal's decision on 16 December 2014 to which Lady Justices Black and King agreed.

The Landlord submitted the Act did not apply when the tenancy was initially granted, and the Deposit was paid, on 20 August 2002. Further, the Act did not apply when the tenancy was renewed on 19 August 2003 or, again, on 18 August 2004. Even further, the Act did not apply when the tenancy converted into a statutory periodic tenancy on 17 August 2005. In the circumstances, the Landlord relied on the presumption against retrospective legislation which arises when legislation would remove or impair a person's pre-existing vested right.

However, the Court stated the Act applied to the circumstances that existed on the date the Landlord served her section 21 notice. At that time, the Landlord had not placed the Deposit in an authorised deposit protection scheme and, therefore, her section 21 notice was invalid.

In the circumstances, the Court of Appeal allowed the Tenant's appeal and set aside the Order for Possession.

The Court of Appeal went on to express an opinion as to how the Act would apply to tenancy deposits that were secured late (i.e. after 5 May 2012 this being the expiry of 30 days beginning on 6 April 2012) but before a landlord serves a section 21 notice.

The Court of Appeal was inclined to think that a landlord could secure a deposit after 5 May 2012 if it was paid by the tenant, and a statutory periodic tenancy came into existence, before the Act came into force on 6 April 2007 but not otherwise.

If, however, the deposit was paid by the tenant, or a statutory periodic tenancy came into existence, after 6 April 2007, then securing the deposit late would have no effect and, instead, the landlord would have to return the deposit to the tenant before serving a section 21 notice.

That said, the Court of Appeal did not express a final view on the issue one way or the other.

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16 February 2015