



# Landlord Law Legal Cases: *Pease v Carter*

Alice Richardson, Barrister

In support of:

women's aid  
until women & children are safe



# ***What this webinar will cover:***

- The background to the case and section 8 notices
- The issues covered by the case and why it went to the Court of Appeal
- About the hearing and the arguments used, and
- The wider implications of this case for notices – in particular other possession notices



# Background...

- LL granted Ts Assured Shorthold Tenancy in 2007
- Cottage on large estate
- T worked for L on the estate as handyman



## Background (2)

- Rent was £800pcm & reduced to £500pcm
- T quit in around March '18
- Stopped paying rent April '18
- Brought claim in ET for unfair dismissal. Lost.



## Background (3)

- LL agent served s.8 possession notice on 7 November 18
- Rent arrears at that stage were £3,538.44.
- Notice was signed and dated 7 Nov 18
- But there was a typo...



# The Error

The notice stated that court proceedings  
would not begin until after  
26 November 2017

... rather than 26<sup>th</sup> November 2018.



# The Error

The standard note on the form underneath the date said... “Where the landlord is seeking possession on grounds ... 8, 10 to 13 ... court proceedings cannot begin earlier than 2 weeks from the date this notice is served.”



# What does the law say?

- Two routes LL may take to regain possession of a property let under an AST under the Housing Act 1988: s. 8 or s.21.



## s.21

- Gives LL automatic right of possession once the fixed term has expired (provided that certain pre-conditions met).
- Commonly known as the “no fault” route to possession



## s.21

- S.21(1)- 2 months notice
- S.21(4)- 2 months & date specified must be last date of a period of the tenancy
  - Now a prescribed form.



## s.8

- grounds listed in Schedule 2 to the Act
- general LL proving breach by T (e.g. rent arrears).
- mandatory & discretionary grounds



## s.8

- Notice in prescribed form or one “substantially to same effect”
- Must include certain details inc. that proceedings will not begin earlier than a specified date
- Set timeframes for various grounds



# Rent arrears grounds

- Ground 8- mandatory if certain thresholds met i.e. 2 months if payable monthly
- Grounds 10,11- discretionary



# What was the problem?

- Date wrong on notice. So argument that did not comply with s.8 requirement to give date.
- Courts approach usually strict.



# The possession hearing

- District Judge Adams in Darlington CC
  - Said notice invalid
- But agreed that it was obvious what the date should have been so allowed the LL to amend notice and rely on it



# The possession hearing (2)

- T raised disrepair issues
- Judge gave T permission to file D&CC
  - Directions towards a trial



# T seeks to appeal

- T filed D &CC. LL filed reply & defence...
  - In meantime T also sought permission to appeal on the notice point...



# T refused permission

- T argued judge had no power to allow LL to amend notice.
- Circuit Judge on papers refused permission. Said that it was ‘doomed to failure’.



# T gets permission to appeal

- T sought oral renewal.
- At hearing CJ gave permission to appeal.
- Don't know what happened to change his mind!



## LL response...

- LL put in response agreeing that first judge could not give permission to amend.
- BUT argued that notice valid relying on 'reasonable recipient test'.



# The reasonable recipient test...

*Mannai Investments Co Ltd v Eagle Star Life Assurance Co Ltd* [1997] A.C. 749

- Business lease. Contractual notice served under break clause.
- LL gave wrong date. 12 Jan 95 instead of 13 Jan 95



# *Mannai Investments v Eagle Star Life*

- Case went to the House of Lords...
- HL held that contractual notice valid, despite error, where sufficiently clear and unambiguous to leave a reasonable recipient in no reasonable doubt



# Reasonable Recipient & Statutory Notices

- Various cases went to CA who held that test can apply to statutory notices.
- None of them were possession cases...
- Generally where statutory purpose met despite error then valid.



# Errors & ‘substantially to the same effect’ rule

- Some overlap with Mannai
- Q whether notices “substantially to the same effect” despite the errors.



# Errors & ‘substantially to the same effect’ rule

- *B Osborn & Co Ltd v Dior*
- Test applies whether the defect is an error in the form OR the information required to be inserted in the form



# The first appeal

- Circuit Judge M Gargan
- Agreed with DJ & LL that error obvious and that T would have known what it was supposed to say (2018 not 2017!)



## The first appeal (2)

- Judge agreed that under Mannai notice was valid.
  - BUT...
- Held that Mannai did not apply to possession notices because...



# *Fernandez v McDonald*

- Strange case
- LL served a notice under s.21(4) specifying wrong date after which possession was required.
- CA held that s.21(4) requirements clear and precise so no scope for applying Mannai



# *Fernandez v McDonald*

*“The subsection is clear and precise. Nor is it difficult for landlords to comply. They know when the period ends. Furthermore, this is not a case where the consequences of failure to comply are particularly serious for landlords: a defective notice can be cured the next day. Even if the defect is not noticed until the point is taken in court, a valid notice can then be given. The landlord is not unwillingly and unwittingly saddled with a tenant who has security of tenure”*



## The first appeal (3)

- Judge allowed the tenants appeal.
  - Notice invalid.
- But, exercised discretion to dispense with notice on discretionary grounds.
- Case listed for a trial to decide claim on discretionary grounds & disrepair counterclaim



# What next?

- Could have served new notice and issued fresh proceedings...
- BUT wider implications for LLs & had benefit of insurance.
- LL sought permission to appeal to Court of Appeal.



# CA Permission

- Second appeal so has to raise point of wider importance
- Lord Justice Patten agreed that important point of principle and granted permission
  - Quick listing due to upcoming trial



## Next problem...

- T solicitors applied to come off the record. T left with no lawyers...
- LL lawyers did not want T to be unrepresented. Suggested T seek pro bono counsel.
- T did so and very late in day a barrister agreed to represent for free.



## Next problem...

- This meant that no skeleton argument from T until a couple of days before the appeal...
  - LL did not know what T was going to argue!
  - T argued new point- said that it wasn't obvious what the date SHOULD have said



# The Court of Appeal

- Three Lord Justices... Underhill, Floyd & Arnold
- New point by T plus LL arguments that
  - (1) Mannai DID apply
  - (2) Notice was ‘substantially to same effect’



# The Court of Appeal

- Looked at all of the previous cases and set out what the law was...
- Held that the Mannai test DOES apply to statutory notices including s.8 notices



# The Court of Appeal

## TAKEAWAY POINTS

- If a reasonable recipient would realise that the notice contained an error and would appreciate what meaning the notice was intended to convey, then that is how the notice is to be interpreted.



# The Court of Appeal

- It remains necessary to consider whether, so interpreted, the notice complies with the relevant statutory requirements. This involves considering the purpose of those requirements.



# The Court of Appeal

- Even if a notice, properly interpreted, does not precisely comply with the statutory requirements, it may be possible to conclude that it is “substantially to the same effect” as a prescribed form if it nevertheless fulfils the statutory purpose.



# The Court of Appeal

As to the *Fernandez* case...

- The interaction with and *Spencer v Taylor* had caused confusion
- CA held that *Fernandez* did not mean that, in s.21 case, Mannai could not apply.



# The Court of Appeal

On the tenant's new point:

- a reasonable recipient would have understood that the intended date was 26 November 2018.
- If any doubt- the cover letters made that clear



# The Court of Appeal

In this specific case:

The date was an obvious typo & a reasonable recipient would have understood the intended date was 26 November 2018...



# The Court of Appeal

the Notices did serve the statutory purpose  
of giving the Tenants at least two weeks'  
warning



# The Court of Appeal

the Notices were also “substantially to the same effect” as the prescribed form. That test applies to information inserted into the form and not just to the wording used.



## Wider implications...

- Error in possession notice will not invalidate it if test satisfied.
- Guidance helpful more widely for other types of unilateral notices.
  - Not a “get out of jail card” for all mistakes



# Wider implications...

- It will be for judges in individual cases to decide...
- New prescribed possession notices w/ 3month notice period??



Alice Richardson,  
Barrister  
Trinity Chambers