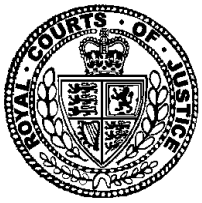

Neutral Citation Number: [2023] EWCA Civ 67

Case No: CA-2022-001110

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM CARDIFF COUNTY COURT
His Honour Judge Beard
Case G2PP3472

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 01/02/2023

Before:

LADY JUSTICE THIRWALL
LORD JUSTICE MALES
and
LORD JUSTICE SNOWDEN

- -

Between:

CHRISTOPHER MOONEY	**Appellant/ Claimant**
- and -	
KAREN VICTORIA WHITELAND	**Respondent /Defendant**

- -
- -

Forz Khan (instructed by **Direct Access**) for the **Appellant**
Catherine Collins (instructed by **Llys Cennen Solicitors**) for the **Respondent**

Hearing date: 24 January 2023

- -

Approved Judgment

This judgment was handed down remotely at 10.30am on Wednesday 1 February 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Lord Justice Males:

1. This appeal is concerned with the validity of a notice to increase the rent payable under a periodic tenancy which was sent by the appellant landlord, Mr Christopher Mooney, pursuant to section 13 of the Housing Act 1988.

2. The tenancy was a week to week tenancy which commenced on Monday 20th May 1991. So the rent fell due every Monday. However the practice of the respondent tenant, Miss Victoria Whiteland, was to pay the rent on the preceding Friday of each week, in order to ensure that it was received by the landlord in time.

3. Section 13 requires that a notice to increase the rent must propose "a new rent to take effect at the beginning of a new period of the tenancy specified in the notice". As each new period of the tenancy began on a Monday, a notice compliant with section 13 would need to propose that the new rent should take effect on a Monday. However, the notice which Mr Mooney sent stated that the new rent should take effect from Friday 7th December 2018, rather than from Monday 10th December 2018.

4. This has given rise to a difference of view in the courts below as to the validity of the notice. Deputy District Judge Evans, sitting in the County Court at Swansea, held that the notice was valid: it had to be seen against the background of the tenant's practice of paying the rent on a Friday and was effective to increase the rent from Friday 7th December when the tenant would be paying the rent anyway; the tenant's objection to the notice was entirely technical as the notice was clear. On appeal, His Honour Judge Beard sitting in Cardiff held that the notice was invalid. Although one interpretation of the notice was that the increased rent was intended to take effect from Monday 10th December, which was the beginning of a new period of the tenancy, that was not the only interpretation and the position would not have been clear to a reasonable recipient of the notice.

5. Mr Mooney now appeals to this court, contending that the notice was valid and effective to increase the rent from £25 to £100 per week. He contends also that it is too late for Miss Whiteland to challenge the validity of the notice as she did not refer the matter to a rent assessment committee.

Background

6. The issue arises in the context of proceedings by the landlord for possession of the property. If the notice was effective to increase the rent, there are substantial arrears. Accordingly the validity of the notice was ordered to be determined as a preliminary issue.

7. The dealings between the parties have been complex, but the facts which are relevant for the purpose of this appeal can be shortly stated. I think it preferable to say nothing about other matters which are or may be in dispute between them and which are not relevant to what we have to decide.

8. On Monday 20th May 1991 the property, a cottage called Graigina at Llanbydder in Carmarthenshire, was let to Miss Whiteland at a weekly rent of £25. The rent book provided to her confirmed the start date of the tenancy and stated that the rent was payable on the Monday of each week. However, Miss Whiteland usually paid the rent

on the preceding Friday, although it appears that there was a period during which, by agreement with the then landlords, no rent was paid and Miss Whiteland lived in the property rent-free while providing care for them. However, rental payments resumed in 2001.

9. In October 2018 Mr Mooney, who had acquired the property in August 2017, served a notice proposing an increase in the rent to £100 per week. It appears that an earlier notice was also served in September 2017, and that there had been disputes between the parties, but we are not concerned with those disputes, while proceedings for possession based on the earlier notice were dismissed for reasons which do not affect this appeal.

10. Miss Whiteland did not accept the validity of this notice. She maintained that she had been told by a previous landlord that the rent would be £25 per week for as long as she lived at the property. She did not refer the matter to the local rent assessment committee, but continued to pay rent at the rate of £25 per week.

11. Mr Mooney therefore issued proceedings for possession, including on the ground that an order should be made by reason of substantial arrears of rent. It was in those circumstances that the trial of a preliminary issue was ordered to determine the validity of the October 2018 notice.

The legislative provisions

Section 13 of the Housing Act 1988

12. Section 13 of the Housing Act 1988 provides as follows:

> "**13 Increases of rent under assured periodic tenancies**
>
> (1) This section applies to–
>
> (a) a statutory periodic tenancy other than one which, by virtue of paragraph 11 or paragraph 12 in Part I of Schedule 1 to this Act, cannot for the time being be an assured tenancy; and
>
> (b) any other periodic tenancy which is an assured tenancy, other than one in relation to which there is a provision, for the time being binding on the tenant, under which the rent for a particular period of the tenancy will or may be greater than the rent for an earlier period.
>
> (2) For the purpose of securing an increase in the rent under a tenancy to which this section applies, the landlord may serve on the tenant a notice in the prescribed form proposing a new rent to take effect at the beginning of a new period of the tenancy specified in the notice, being a period beginning not earlier than–
>
> (a) the minimum period after the date of the service of the notice; and

> (b) except in the case of a statutory periodic tenancy, the first anniversary of the date on which the first period of the tenancy began; and
>
> (c) if the rent under the tenancy has previously been increased by virtue of a notice under this subsection or a determination under section 14 below, the first anniversary of the date on which the increased rent took effect.
>
> (3) The minimum period referred to in subsection (2) above is–
>
> (a) in the case of a yearly tenancy, six months;
>
> (b) in the case of a tenancy where the period is less than a month, one month; and
>
> (c) in any other case, a period equal to the period of the tenancy.
>
> (4) Where a notice is served under subsection (2) above, a new rent specified in the notice shall take effect as mentioned in the notice unless, before the beginning of the new period specified in the notice,–
>
> (a) the tenant by an application in the prescribed form refers the notice to a rent assessment committee; or
>
> (b) the landlord and the tenant agree on a variation of the rent which is different from that proposed in the notice or agree that the rent should not be varied.
>
> (5) Nothing in this section (or in section 14 below) affects the right of the landlord and the tenant under an assured tenancy to vary by agreement any term of the tenancy (including a term relating to rent)."

13. It is not disputed that the tenancy in this case is one to which section 13 applies.

14. Subsection (2) provides that the notice must be in the prescribed form. In the case of a property in Wales, the form for a notice under section 13 is prescribed by the Assured Tenancies and Agricultural Occupancies (Forms) Regulations 1997 (SI 1997/194) as amended by the Assured Tenancies and Agricultural Occupancies (Forms) (Amendment) (Wales) Regulations 2003 (SI 2003/307(W)) and the Assured Tenancies and Agricultural Occupancies (Forms) (Amendment) (Wales) Regulations 2014 (SI 2014/374(W)). However, the Regulations also permit the use of a form "substantially to the same effect" as the form prescribed.

15. In the present case the landlord did use the prescribed form, form 4D. Accordingly no question arises whether the form used was "substantially to the same effect" as form 4D.

16. It is apparent from the terms of section 13 that a notice must comply with three requirements. First, it must specify a minimum period after service of the notice before it takes effect. In the present case of a weekly tenancy which had been running for many years, the minimum period was one week (subsections (2)(a) and (3)(c)). The notice here was served on 29th October 2018 and therefore gave considerably more than the minimum period of notice required.

17. Second, the section contains provisions to ensure that increases cannot take place more frequently than once a year (subsection (2)(c)). In the present case there had been no increase in the rent since the tenancy's inception in 1991.

18. Finally, and significantly in the present case, the notice must "take effect at the beginning of a new period of the tenancy specified in the notice". Thus, for a weekly tenancy beginning on a Monday, the notice must specify a Monday as the date from which the new rent will take effect.

19. The date from which the new rent will take effect is therefore of critical importance to the validity of a section 13 notice. The date specified will enable the tenant to understand whether these statutory requirements have been complied with and, if so, will leave no room for doubt about the date from which the new rent will be payable. But it also serves another important purpose, which is to specify the deadline for the tenant to challenge the proposed new rent by a referral to the rent assessment committee. This deadline is "the beginning of the new period specified in the notice" (subsection (4)). If a valid notice has been served and the tenant fails to refer the matter before this deadline, the new rent proposed in the landlord's notice takes effect without further ado.

Rent assessment committees

20. Section 65 of the Rent Act 1977 provided for rent assessment committees to be constituted in accordance with Schedule 10 of the Act, although it appears that such committees already existed under previous legislation. We were told that rent assessment committees now exist only in Wales. Section 66 of the 1977 Act as subsequently amended provides for an appeal on any point of law from the decision of a rent assessment committee to (what is now) the Upper Tribunal.

21. When a tenant refers a landlord's notice under section 13 of the 1988 Act to a rent assessment committee, the provisions of section 14 of the Act apply. These are as follows:

> **"14 Determination of rent by rent assessment committee**
>
> (1) Where, under subsection (4)(a) of section 13 above, a tenant refers to a rent assessment committee a notice under subsection (2) of that section, the committee shall determine the rent at which, subject to subsections (2) and (4) below, the committee consider that the dwelling-house concerned might reasonably be expected to be let in the open market by a willing landlord under an assured tenancy–

(a) which is a periodic tenancy having the same periods as those of the tenancy to which the notice relates;

(b) which begins at the beginning of the new period specified in the notice;

(c) the terms of which (other than relating to the amount of the rent) are the same as those of the tenancy to which the notice relates; and

(d) in respect of which the same notices, if any, have been given under any of Grounds 1 to 5 of Schedule 2 to this Act, as have been given (or have effect as if given) in relation to the tenancy to which the notice relates.

(2) In making a determination under this section, there shall be disregarded–

(a) any effect on the rent attributable to the granting of a tenancy to a sitting tenant;

(b) any increase in the value of the dwelling-house attributable to a relevant improvement carried out by a person who at the time it was carried out was the tenant, if the improvement–

(i) was carried out otherwise than in pursuance of an obligation to his immediate landlord, or

(ii) was carried out pursuant to an obligation to his immediate landlord being an obligation which did not relate to the specific improvement concerned but arose by reference to consent given to the carrying out of that improvement; and

(c) any reduction in the value of the dwelling-house attributable to a failure by the tenant to comply with any terms of the tenancy.

(3) For the purposes of subsection (2)(b) above, in relation to a notice which is referred by a tenant as mentioned in subsection (1) above, an improvement is a relevant improvement if either it was carried out during the tenancy to which the notice relates or the following conditions are satisfied, namely–

(a) that it was carried out not more than twenty-one years before the date of service of the notice; and

(b) that, at all times during the period beginning when the improvement was carried out and ending on the date of service of the notice, the dwelling-house has been let under an assured tenancy; and

(c) that, on the coming to an end of an assured tenancy at any time during that period, the tenant (or, in the case of joint tenants, at least one of them) did not quit.

(4) In this section "rent" does not include any service charge, within the meaning of section 18 of the Landlord and Tenant Act 1985, but, subject to that, includes any sums payable by the tenant to the landlord on account of the use of furniture or for any of the matters referred to in subsection (1)(a) of that section, whether or not those sums are separate from the sums payable for the occupation of the dwelling-house concerned or are payable under separate agreements.

(5) Where any rates in respect of the dwelling-house concerned are borne by the landlord or a superior landlord, the rent assessment committee shall make their determination under this section as if the rates were not so borne.

(6) In any case where–

(a) a rent assessment committee have before them at the same time the reference of a notice under section 6(2) above relating to a tenancy (in this subsection referred to as "the section 6 reference") and the reference of a notice under section 13(2) above relating to the same tenancy (in this subsection referred to as "the section 13 reference"), and

(b) the date specified in the notice under section 6(2) above is not later than the first day of the new period specified in the notice under section 13(2) above, and

(c) the committee propose to hear the two references together,

the committee shall make a determination in relation to the section 6 reference before making their determination in relation to the section 13 reference and, accordingly, in such a case the reference in subsection (1)(c) above to the terms of the tenancy to which the notice relates shall be construed as a reference to those terms as varied by virtue of the determination made in relation to the section 6 reference.

(7) Where a notice under section 13(2) above has been referred to a rent assessment committee, then, unless the landlord and the tenant otherwise agree, the rent determined by the committee (subject, in a case where subsection (5) above applies, to the addition of the appropriate amount in respect of rates) shall be the rent under the tenancy with effect from the beginning of the new period specified in the notice or, if it appears to the rent assessment committee that that would cause undue hardship to the tenant, with effect from such later date (not being later than the date the rent is determined) as the committee may direct.

> (8) Nothing in this section requires a rent assessment committee to continue with their determination of a rent for a dwelling-house if the landlord and tenant give notice in writing that they no longer require such a determination or if the tenancy has come to an end."

Jurisdiction of the county court

22. Section 40 of the 1988 Act provides for the jurisdiction of the county court in the following terms:

> "**40 Jurisdiction of county courts**
>
> (1) A county court shall have jurisdiction to hear and determine any question arising under any provision of–
>
> (a) Chapters I to III and V above, or
>
> (b) sections 27 and 28 above,
>
> other than a question falling within the jurisdiction of a rent assessment committee by virtue of any such provision.
>
> (2) Subsection (1) above has effect notwithstanding that the damages claimed in any proceedings may exceed the amount which, for the time being, is the county court limit for the purposes of the County Courts Act 1984.
>
> (3) Where any proceedings under any provision mentioned in subsection (1) above are being taken in a county court, the court shall have jurisdiction to hear and determine any other proceedings joined with those proceedings, notwithstanding that, apart from this subsection, those other proceedings would be outside the court´s jurisdiction.
>
> (4) If any person takes any proceedings under any provision mentioned in subsection (1) above in the High Court, he shall not be entitled to recover any more costs of those proceedings than those to which he would have been entitled if the proceedings had been taken in a county court: and in such a case the taxing master shall have the same power of directing on what county court scale costs are to be allowed, and of allowing any item of costs, as the judge would have had if the proceedings had been taken in a county court.
>
> (5) Subsection (4) above shall not apply where the purpose of taking the proceedings in the High Court was to enable them to be joined with any proceedings already pending before that court (not being proceedings taken under any provision mentioned in subsection (1) above)."

23. Thus the county court has jurisdiction to determine any question arising under Chapter I of the 1988 Act, which includes section 13, unless that question falls within the jurisdiction of a rent assessment committee by virtue of any of the provisions of the Act mentioned in subsection (1). In other words, for any given question, either the county court or the rent assessment committee has jurisdiction, but not both.

The section 13 notice

24. The October 2018 notice was on Form No. 4D which is the relevant prescribed form. The form is headed:

> "**LANDLORD'S NOTICE PROPOSING A NEW RENT UNDER AN ASSURED PERIODIC TENANCY OF PREMISES SITUATED IN WALES**."

25. The form stated as follows. The words in bold and italics below are as in the prescribed form, while the dates and amounts were inserted by the landlord in manuscript at the appropriate places in the form:

> "The notes over the page give guidance to both landlords and tenants about this notice. …
>
> 1. **This notice affects the amount of rent you pay**. Please read it carefully.
>
> 2. The landlord is proposing a new rent of *£100* per week, in place of the existing one of *£25* per week..
>
> …
>
> 4. The starting date for the new rent will be *7th Dec 2018* (*see notes 13-17 over the page*).
>
> …
>
> 6. If you accept the proposed new rent, you should make arrangements to pay it. If you do not accept it, there are steps you should take before the starting date in paragraph 4 above. **Please see the notes over the page for what to do next**."

26. The reverse page of the form contains guidance notes for both parties. The "**Guidance notes for tenants**", with the heading "***What you must do now***", include the following:

> "1. This notice proposes that you should pay a new rent from the date specified in paragraph 4 of the notice. **If you are in any doubt or need advice about any aspect of this notice, you should immediately either discuss it with your landlord or take it to a citizens' advice bureau, a housing advice centre, a law centre or a solicitor**.
>
> …

> 3. If you do not accept the proposed new rent, and do not wish to discuss it with your landlord, you can refer this notice to your local rent assessment committee. **You must do this before the starting date of the proposed new rent in paragraph 4 of the notice**. You should notify your landlord that you are doing so, otherwise he or she may assume that you have agreed to pay the proposed new rent.
>
> …
>
> 5. The rent assessment committee will consider your application and decide what the maximum rent for your home should be. In setting a rent, the committee must decide what rent the landlord could reasonably expect for the property if it were let on the open market under a new tenancy on the same terms. The committee may therefore set a rate that is higher, lower or the same as the proposed new rent.
>
> …
>
> **When the proposed new rent can start**
>
> 13. The date in paragraph 4 of the notice must comply with the three requirements of section 13(2) of the Housing Act 1988, as amended by the Regulatory Reform (assured Periodic Tenancies) Rent Increases) Order 2003.
>
> … [paragraphs 14 to 16 explain the requirements for a minimum period of notice and that in most cases increases in rent must not take effect earlier than 52 weeks after the date on which the rent was last increased.]
>
> 17. The **third requirement**, which applies in **all** cases, is that the proposed new rent must start at the beginning of a period of the tenancy. For instance, if the tenancy is monthly, and started on the 20th of the month, rent will be payable on that day of the month, and a new rent must begin then, not on any other day of the month. If the tenancy is weekly, and started, for instance, on a Monday, the new rent must begin on Monday."

27. Accordingly the prescribed form, including the guidance notes which comprise part of the form, ensures that the correct information is provided to the tenant, including the notes advising the tenant what to do if they do not accept the proposed new rent and wish to challenge it.

Relevant case law

28. There have been a number of cases in which the courts have had to consider whether a notice given by a party to a lease has been effective. Broadly speaking, the approach which has been adopted is to treat the notice as valid and effective even where it does not on its face comply with the requirements of the contractual or statutory provision

in question, if it would nevertheless be understood as doing so by a reasonable recipient of the notice with knowledge of the background circumstances. In such a case, of which *Mannai Investment Co Ltd v Eagle Star Life Assurance Co Ltd* [1997] UKHL 19, [1997] AC 749 is the principal example, the notice will be interpreted so as to give effect to the way in which it would be understood by the reasonable recipient. In that case the tenant was entitled to determine two leases by serving not less than six months' notice in writing to expire "on the third anniversary of the term commencement date". The notices which the tenant served were to determine the leases on 12th January 1995, whereas the third anniversary of the term commencement date was 13th January 1995. By a majority, the House of Lords held that the construction of the notices had to be approached objectively, the question being how a reasonable recipient would have understood them, in their context; the purpose of the notices was to inform the landlord of the tenant's decision in accordance with the break clauses; and a reasonable recipient with knowledge of the terms of the leases and the anniversary date would have been left in no doubt that the tenant wished to determine the leases on the third anniversary (13th January 1995) but had wrongly described this as 12th January 1995; accordingly the notices were effective to determine the leases.

29. However, a qualification on this approach in the case of statutory notices (although I see no reason why it should not also apply to contractual notices) is that a notice must fulfil the purpose for which it is to be given. For example, in *Speedwell Estates Ltd v Dalziel* [2001] EWCA Civ 1277, [2002] HLR 43, notices were held to be invalid because they failed to provide certain information which was required. Mr Justice Rimer, with whom Lord Justice Pill and Lord Justice May agreed, said:

> "22. … I would nevertheless regard it as incautious to attempt to express any general conclusion as to the application of the *Mannai* case to the interpretation of notices served under a statutory regime. This is because, as Peter Gibson LJ pointed out in the *York* case [*York v Casey* (1999) 31 HLR 209] at page 27, 'one should bear in mind that in a statutory context there may be requirements which have to be observed and without which a notice will be invalid. But the same may be true in a contractual context'. Taking due note of the first part of that, I consider that the better approach is to look at the particular statutory provisions pursuant to which the notice is given and identify what its requirements are. Having done so, it should then be possible to arrive at a conclusion as to whether or not the notice served under it adequately complies with those requirements. If anything in the notice contains what appears to be an error on its face, then it may be that there will be scope for the application of the *Mannai* approach, although this may depend on the particular statutory provisions in question. The key question will always be: is the notice a valid one for the purpose of satisfying the relevant statutory provisions?"

30. It is unnecessary in this judgment to go through all the cases, as that task was performed by Lord Justice Arnold, with whom Lord Justice Underhill and Lord Justice Floyd agreed, in *Pease v Carter* [2020] EWCA Civ 175, [2020] 1 WLR 1459. He stated his conclusions as follows:

> "39. The conclusions which I draw from this survey of the authorities are as follows:
>
> (i) A statutory notice is to be interpreted in accordance with *Mannai v Eagle*, that is to say, as it would be understood by a reasonable recipient reading it in context.
>
> (ii) If a reasonable recipient would appreciate that the notice contained an error, for example as to date, and would appreciate what meaning the notice was intended to convey, then that is how the notice is to be interpreted.
>
> (iii) It remains necessary to consider whether, so interpreted, the notice complies with the relevant statutory requirements. This involves considering the purpose of those requirements.
>
> (iv) 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. This is so even if the error relates to information inserted into or omitted from the form, and not to wording used instead of the prescribed language."

31. Expressing his agreement, Lord Justice Underhill added that:

> "57. … The correct test is encapsulated in points (i) and (ii) at para 39 of Arnold LJ's judgment. I would only add, as regards (ii), that there must be no reasonable doubt as to what the notice was intended to say: that is the formula endorsed by Lord Steyn in *Mannai*, at page 768G."

The judgments in the courts below

32. Deputy District Judge Evans held, purportedly applying *Mannai*, that it was obvious that a reasonable recipient of the landlord's notice would understand it as meaning that

> "from 7th December 2018, a day when the defendant would be paying the rent anyways, being a Friday, she would have to pay the increased rent and it seems to me that in reality there can be no doubt or difficulty about that. That after all is the primary purpose of this notice, to achieve an increase in rent from the days specified, be that day correct or incorrect, and being a day on which the defendant would in any event usually pay rent on her own evidence".

33. With respect, it is clear that this was a misapplication of *Mannai*. If *Mannai* were applied, the argument would be that a reasonable recipient of the notice would have realised that the date of 7th December 2018 was a mistake and that the landlord had intended the new rent to apply from Monday 10th December, which was the beginning of a new rental period, so that the notice should be interpreted as if the date inserted in

paragraph 4 had been 10th December. But this was not what the Deputy District Judge held, as is clear from the terms of his order that the notice "had the effect of raising the rent from £25.00 per week from 7th December 2018".

34. The Deputy District Judge held also that the tenant should have referred the notice to the rent assessment committee, which could either have determined the new rent or rejected the referral if it considered the notice to be invalid. As in his view the notice was valid, the new rent of £100 per week took effect and it was too late now for a referral to the committee.

35. On appeal, His Honour Judge Beard took a different view. He accepted the submission on behalf of the tenant that there were three possible interpretations of the notice. These were:

(1) the landlord was seeking to change the period of the tenancy so that, from 7th December 2018, the weekly period began on a Friday;

(2) the rent was to be increased from Friday 7th December, part way through a period of the tenancy; and

(3) the date of 7th December was a mistake and the landlord had meant to insert 10th December as the starting date for the new rent.

In order for the notice to be valid, it would have to be obvious to the reasonable recipient that the last of these interpretations was intended. Because this was not obvious, the notice was invalid.

36. Judge Beard held further that the question whether the notice was valid was a question over which the court and not the rent assessment committee had jurisdiction.

Grounds of appeal

37. There are three grounds of appeal, which I can summarise as follows:

(1) Although the original start date of the tenancy, 20th May 1991, was a Monday, the tenancy had been varied at some point in the intervening years and it was not now possible to identify when the weekly periods began.

(2) The judge failed properly to apply the decision in *Mannai*.

(3) The judge was wrong to conclude that the rent assessment committee did not have jurisdiction to determine the validity of the notice.

Ground 1 – Monday not the start date

38. Ground 1 can be rapidly disposed of. It was the landlord's own pleaded case in the possession proceedings, and was common ground before the Deputy District Judge, that the tenancy began on 20th May 1991. I would not permit the landlord to depart from his own pleading.

Ground 2 – the understanding of the reasonable recipient of the notice

39. Mr Forz Khan for the landlord submitted as his primary case that a reasonable recipient of the notice would have understood that it contained an obvious mistake in that it specified a Friday (the day when the tenant paid her rent) rather than the following Monday (the day the weekly tenancy started), and that the notice was intended to take effect from Monday, 10th December 2018. In effect, his submission, applying *Mannai*, was that the form should be interpreted as if the date inserted in paragraph 4 had been 10th December 2018 rather than 7th December 2018. However, his written submissions also developed an alternative (and contradictory) case that the effect of the notice was to increase the rent from Friday, 7th December 2018, and this was the case which succeeded before the Deputy District Judge. Thus Mr Khan's submissions included the following:

> "The Section 13 notice, dated 20th October 2018 issued by A on 20th October 2018 had the effect of validly increasing the rent from £25-£100 per week as from 7th December 2018."
>
> "As at the date of the service of the Section 13 notice the beginning of the new period of tenancy for the purpose of Section 13 of the Housing Act 1988 was Friday of each week."
>
> "7th December 2018 was a Friday. 7th December 2018 thus fell on the beginning date of the new period of tenancy falling not less than one month after the date of the service of the notice."
>
> "In the circumstances the date of 7th December 2018 fell on the beginning date of a new period of tenancy falling not less than one month after the date of the service of the notice."

40. A party seeking to contend that a reasonable recipient would appreciate that a notice contained an error, and would have no reasonable doubt what meaning the notice was intended to convey, is unlikely to assist his case by advancing alternative and contradictory interpretations of the notice in question. Be that as it may, I agree with Judge Beard and Mrs Catherine Collins for the tenant that it is not clear that the notice in this case should be interpreted as if the landlord had inserted 10th December 2018 as the start date for the new rent in paragraph 4 of the prescribed form. While it may be one possibility that the landlord simply made a mistake, it is in my view at least as likely that he intended the new rent to take effect from Friday, 7th December 2018. As explained in *Pease v Carter*, in order for the *Mannai* principle to be invoked, there must be no reasonable doubt what the notice was intended to say.

41. Moreover, the question is how the notice should have been understood by a reasonable tenant in the position of Miss Whiteland. For that purpose, the guidance notes on the reverse of form 4D, to which the tenant's attention is expressly directed, are significant. Those notes make clear the requirements of a valid notice under section 13, including (in paragraph 17) the requirement, said to be applicable "in **all** cases", that the proposed new rent must start at the beginning of a period of the tenancy. The note goes on to say in terms that if the tenancy is weekly, and started on a Monday, the new rent must begin on a Monday.

42. It seems to me that the starting point (and in most cases the finishing point) is that a reasonable tenant, reading those notes, would be entitled to conclude that if the date

inserted in paragraph 4 is not the beginning of a period of the tenancy, the landlord has failed to comply with the requirements of section 13 and the notice is invalid: that is what the prescribed form tells her. Generally speaking, the tenant is not required in such circumstances to consider whether the notice may be saved because the landlord has made a mistake and intended to insert (or should be treated as having inserted) a different date into paragraph 4 of the form. This is not to say that there may not be cases where a mistake is so obvious that a reasonable tenant would recognise that a mistake had been made and would know precisely what the landlord had meant to say. An example would be where the landlord gets the year wrong, as in *Pease v Carter* (where a notice of possession proceedings served on 7th November 2018 stated that court proceedings would not begin until after 26th November 2017, an obvious typographical error). In such a case, there is scope for the notice to be interpreted in accordance with the *Mannai* principle. But this is not such a case.

43. Indeed Mr Khan accepted that, in one respect at least, it was not possible to interpret paragraph 4 of the form as if the date inserted was 10th December 2018. Thus he accepted that the only possible reading of paragraph 6, dealing with the deadline for a referral to the rent assessment committee, was that the deadline was 7th December 2018 ("If you do not accept it, there are steps you should take before the starting date in paragraph 4 above"). But this creates, on Mr Khan's case, an unhappy disconnect between the deadline for a referral to the rent assessment committee and the start date for the new rent which is contrary to the terms of section 13(4).

44. I would hold, therefore, that the landlord's notice was invalid.

Ground 3 – the rent assessment committee

45. It is therefore necessary to consider whether the notice nevertheless took effect to increase the rent from £25 to £100 per week as a result of Miss Whiteland's failure to refer it to the local rent assessment committee pursuant to section 13(4) of the 1988 Act. If the committee had jurisdiction to determine whether the notice was valid so as to bind the parties, the effect of section 40 of the 1988 Act would be that the county court did not have such jurisdiction and, in consequence, there could be no appeal to this court from such a determination by the county court. In that case, the deadline for a referral to the committee having passed, the rent increase would take effect pursuant to section 13(4).

46. In my judgment, however, it is clear that the rent assessment committee does not have jurisdiction to determine the validity of a section 13 notice. That is a matter for the court. Section 40(1) of the 1988 Act confers jurisdiction on the county court to determine any question arising under section 13 other than a question which falls within the jurisdiction of a rent assessment committee by virtue of a provision of Chapter I of the Act. Thus the basic rule is that the county court has jurisdiction, unless there is a provision of the Act which provides otherwise.

47. Section 14 does not provide otherwise. As section 14 makes clear, the jurisdiction of the committee is to determine what is an appropriate rent, having regard to market conditions and disregarding the various matters specified in subsection (2). The section contemplates that the members of the committee will have expertise in determining the appropriate rent, which a county court judge cannot be expected to have. In contrast, a judge does have expertise in determining whether a notice complies with the various

statutory requirements for a valid notice set out in section 13. In short, there is no provision in the 1988 Act which confers on the rent assessment committee jurisdiction to determine whether a section 13 notice is valid.

48. That is not to say that a rent assessment committee may not sometimes need to take a view whether a notice is valid. If it considers that a notice is invalid, it may decline to proceed until the question has been determined by the court. Conversely, if it considers that a notice is valid and that objections are without substance, it may proceed to determine the appropriate rent, but its determination will not prevent a tenant from disputing the validity of the notice. In the present case, Miss Whiteland did not refer the notice to the local rent assessment committee. She therefore took the risk that the notice might be held to be valid, in which case the new rent of £100 per week would have taken effect pursuant to section 13(4). But her failure to refer the notice to the committee did not deprive the court of jurisdiction to determine the validity of the notice.

49. Mr Khan submitted that the conclusion which I have reached based on the terms of the legislation is contrary to the view expressed by Lord Justice Mummery in *R (Morris) v London Rent Assessment Committee* [2002] EWCA Civ 276. That case was concerned with the validity of a notice terminating the tenancy of a flat. The notice was required to be given "to the tenant", but was instead addressed to a previous tenant. Unusually, it was the landlord who contended that the notice was invalid, while the tenant contended that it was valid. That was because, if the notice was valid to terminate the tenancy, the tenant had become a statutory tenant within the meaning of the Rent Act 1977, with the consequence that the rent assessment committee had no power to determine the appropriate rent for the flat under the provisions of section 186 of the Local Government and Housing Act 1989. On the other hand, if the notice was invalid, the tenant held as an assured tenant under the 1989 Act and the committee did have power to determine the rent.

50. The Court of Appeal, agreeing with Mr Justice Hooper, held that the notice was invalid. Accordingly the committee did have power to determine the rent and the application for judicial review of its determination failed.

51. Mr Khan relied on the following passage of Lord Justice Mummery's judgment:

> "12. The status of Mr Morris in the flat concerns private law rights as between Mr Morris and Cadogan. They would normally be determined in private law proceedings in the County Court. This was recognised by the Committee when it adjourned an earlier hearing to give Mr Morris an opportunity (which he failed to take) of bringing declaratory proceedings in the County Court. There is no doubt, however, that the Committee had power to determine the validity of the notice: it was a matter going to its jurisdiction to set the rent."

52. However, Lord Justice Mummery immediately went on to leave open the question whether the committee's determination had created an issue estoppel:

> "13.A point was canvassed in argument as to whether the decision of the Committee created an issue estoppel preventing

> Mr Morris from now taking County Court proceedings against Cadogan to re-open the question of the validity of the notice. Mr Munro, behalf of the head landlord, made it clear that he would contend that any such proceedings would be an abuse of process. It is not necessary to express a view on that point and I prefer not to do so."

53. I do not read this judgment as holding that the rent assessment committee had power to determine whether the notice was valid so as to exclude the jurisdiction of the court or to be binding as between the parties. If this had been intended, the court would not have decided for itself, as it did, whether the notice was valid, and could not have left open the question whether the committee's determination gave rise to an issue estoppel. It would simply have said that the committee had determined the validity or invalidity of the notice, that it had power to do so, and that its determination was binding on the parties. Moreover, it is not apparent whether the applicable legislation in that case had any equivalent of section 40 of the Housing Act 1988 which applies in the present case. So I do not regard this case as standing in the way of what, to my mind, is the clear intention of the applicable legislation in this case.

54. For these reasons I agree with the judge that the rent assessment committee did not have jurisdiction to determine the validity of the section 13 notice. Accordingly the court does have such jurisdiction and, as I have indicated, the notice was invalid.

Disposal

55. I would therefore dismiss the appeal.

Lord Justice Snowden:

56. I agree.

Lady Justice Thirlwall:

57. I also agree.