

Case No: H02CL149

IN THE COUNTY COURT AT CENTRAL LONDON

The Royal Courts of Justice
Thomas More Building
Strand
London WC2A 2LL

Tuesday, 6 June 2023

BEFORE:

HIS HONOUR JUDGE JOHNS KC

BETWEEN:

(1) SANDOR SZORAD
(2) ESZTER ANDREA KOZMA

Claimants/Appellants

- and -

PRITPAL SINGH KOHLI

Defendant/Respondent

MS S ALVAREZ appeared on behalf of the Claimants/Appellants
The Defendant/Respondent did not attend and was not represented

APPROVED JUDGMENT

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1. HH JUDGE JOHNS KC: Where there is a failure by a landlord to deal with a tenant's deposit in accordance with an authorised scheme, the court must order the landlord to pay a sum not less than the amount of the deposit and not more than three times that amount - see section 214(4) of the Housing Act 2004. The question on this appeal is whether there must be multiple such awards where there is no compliance by the landlord on the grant of an original fixed term tenancy and on the commencement of the statutory periodic tenancy which follows it.
2. The question arises in this way. The defendant landlord, Pritpal Singh Kohli, granted to the claimants, Sandor Szorad and Eszter Andrea Kozma, a tenancy of 87C Amhurst Road, London E8 2AH for a fixed term of 12 months expiring on 19 July 2020. A deposit of £1,326.92 was paid. The claimants continued in occupation paying rent beyond the contractual term, vacating on 19 December 2020. On the evidence, the deposit was never dealt with in accordance with an authorised scheme. And it was not returned.
3. As well as seeking the return of the deposit, by these proceedings the claimants sought statutory penalties for failure to protect the deposit. They argued before DDJ Brooks at the hearing of their Part 8 claim that they were entitled to multiple awards; one in respect of the failure to protect the deposit at the time of the original tenancy, and another for a fresh failure at the start of the statutory periodic tenancy which followed the expiry of the contractual term. They pointed to the decision of the Court of Appeal in *Superstrike Limited v Rodrigues* [2013] EWCA Civ 669.
4. The judge rejected that argument and made only a single award. Having set out the provisions of section 213 of the 2004 Act, he gave his reasons at paragraphs 7 and 8:

"(7) Those requirements under section 213 all presuppose that, once the deposit is received, it must be dealt with in a particular way, and of course there is an obligation to return it. But what they do not say, and what they could have

said in clear terms (and I think this is germane to the interpretation of the obligations under the Housing Act) is that upon the creation of a statutory periodic tenancy, the deposit having not been secured in relation to the assured shorthold tenancy, a new obligation or a new right to compensation based upon that failure can be founded distinctly and separately on the subsequent alleged breach.

(8) In my judgment, although Superstrike is clearly authority for the proposition that it makes (see paragraph 5 above) it cannot be used for the purpose of construing the 2004 Act to give rise to what would in effect be the separate and distinct entitlement to another penalty in relation to the non-compliance with the deposit security requirement by reason of the creation of an SPT. In my judgment, although the claimants are entitled, due to the failure to protect, to claim the penalty in relation to that, they are not entitled to claim in relation to the subsequent failure to protect on the creation of the statutory periodic tenancy. Had the law wanted to do that, it could have done that in very straightforward and clear terms. So far as that is concerned, I find the entitlement is in relation to one breach, that breach being in relation to the failure to notify and secure within 30 days of receipt of the deposit."

5. As to the proposition he read *Superstrike* as making, he described that in paragraph 5:

"The relevant passages in the judgment really begin at paragraph 35. Lloyd LJ in that case held in effect that where a tenancy deposit was held under an assured shorthold tenancy which then converted into a statutory periodic tenancy, the deposit would continue to be held in relation to the

statutory tenancy as it was held in relation to the assured shorthold tenancy. Any other interpretation of the relevant statutory provision would have necessitated the deposit having to be returned and then redeposited. It was perhaps therefore unsurprising that the correct interpretation of the statutory provision avoided this otherwise cumbersome administrative process."

6. The judge went on to fix the award at the top end of the scale, namely three times the sum paid by way of deposit, being £3,980.76. But, as I have said, it was a single award.
7. The claimants now appeal with the permission of HHJ Saggerson. I have been assisted by submissions today from Ms Alvarez for the claimants/appellants. There has been no participation in the appeal by the respondent landlord. That means, regrettably, that I have not had the benefit of argument in answer to Mr Alvarez's points.
8. In my judgment, the claimants/appellants are right that the court must make multiple awards in this case. I consider that is the consequence of the analysis in *Superstrike*. Further, it is a consequence that is not undone by section 215B of the 2004 Act.
9. As to the analysis in *Superstrike*, in that case (as in this one) a deposit was paid at the start of the fixed term tenancy and continued to be held following expiry of the contractual term; the tenant continuing in occupation under a statutory periodic tenancy arising under section 5 of the Housing Act 1988. That statutory periodic tenancy was, the Court of Appeal emphasised, "*a new and distinct statutory tenancy rather than, for example, the continuation of the tenant's previous status*", [27]. Further, the deposit was to be "*regarded as*" or "*treated as*" having been received again for that new tenancy. The analysis was encapsulated in this way at [38]:

"The defendant should be treated as having paid the amount of the deposit to the claimant in respect of the new tenancy, by

way of set-off against the claimant's obligation to account to the defendant for the deposit in respect of the previous tenancy, given that the claimant did not seek payment out of the prior deposit for the consequences of any prior breach of the tenancy agreement."

10. The analysis does not seem to me a self-evident one. Another possibility might be that the agreement to be inferred is that the deposit would continue to be held but as security for the obligations in both tenancies. Under such an arrangement, on later recovery of possession, the landlord may retain the deposit to cover breaches whenever they occurred during the tenant's occupation. So, whether during the original fixed term or the later statutory periodic tenancy. Such an inferred agreement would involve no acceptance by the landlord that the tenant was entitled to the return of the deposit at the end of the fixed term, so that it must be treated as having been repaid. Rather, that which it was security for was simply expanded, with any new obligation to pay a deposit sum being waived. But the analysis of the Court of Appeal is clear. On that analysis, in such a case as the present there have been two separate failures in relation to two separate tenancies.

11. Since the decision in *Superstrike*, there has been enacted by Parliament a new section 215B of the 2004 Act. It is in these terms:

"Shorthold tenancies: deposit received on or after 6 April 2007

(1) This section applies where—

(a) on or after 6 April 2007, a tenancy deposit has been received by a landlord in connection with a shorthold tenancy ("the original tenancy"),

(b) the initial requirements of an authorised scheme have been complied with by the landlord in relation to the deposit (ignoring any requirement to take particular steps within any specified period),

(c) the requirements of section 213(5) and (6)(a) have been complied with by the landlord in relation to the deposit when it is held in connection with the original tenancy (ignoring any deemed compliance under section 215A(4)),

(d) a new shorthold tenancy comes into being on the coming to an end of the original tenancy or a tenancy that replaces the original tenancy (directly or indirectly),

(e) the new tenancy replaces the original tenancy (directly or indirectly), and

(f) when the new tenancy comes into being, the deposit continues to be held in connection with the new tenancy, in accordance with the same authorised scheme as when the requirements of section 213(5) and (6)(a) were last complied with by the landlord in relation to the deposit.

(2) In their application to the new tenancy, the requirements of section 213(3), (5) and (6) are treated as if they had been complied with by the landlord in relation to the deposit.

(3) The condition in subsection (1)(a) may be met in respect of a tenancy even if the tenancy deposit was first received in

connection with an earlier tenancy (including where it was first received before 6 April 2007).

(4) For the purposes of this section, a tenancy replaces an earlier tenancy if—

(a) the landlord and tenant immediately before the coming to an end of the earlier tenancy are the same as the landlord and tenant at the start of the new tenancy, and

(b) the premises let under both tenancies are the same or substantially the same."

12. Section 215B operates by treating the requirements relating to the protection of deposits as having been complied with in relation to the new tenancy where they had been complied with in connection with the original tenancy. In so operating, the section does not undo the analysis in *Superstrike*. On the contrary, it seems to me premised on that analysis. Its provisions are on the basis that the requirements would bite on the commencement of the new tenancy but are to be treated as having been met where the section applies. In the present case, the section does not apply as the respondent landlord did not comply with the requirements on the grant of the original fixed term.
13. The analysis in *Superstrike* not being altered by section 215B and that section not applying to this case, what I regard as the consequence of the analysis in *Superstrike* is not undone by the section. That consequence, as I have said, is that there must be multiple awards in this case. I will therefore allow the appeal and make the decision as to the level of the further award for the failure to deal with the deposit in accordance with an authorised scheme on the commencement of the statutory periodic tenancy.

14. Ms Alvarez asked for an award at a level of three times the value of the deposit. In my judgment, the right level is two times the value of the deposit. My reasons are these. The following factors, some of which inform the award made by the judge for the failure relating to the original tenancy, mean that an award in the amount of the deposit only would not be sufficient to do justice: (1) the respondent appears to be a professional landlord; (2) the deposit was not returned; (3) the respondent failed to participate in these proceedings, now including the appeal; (4) the respondent has failed to comply with the judgment, even by repaying the deposit.

15. However, two further factors point away from the further award being at the top end of the scale: (5) there has already been an award at the maximum level for the original failure between the same parties in respect of the same property having regard to some of the same factors; (6) it is hard to say that a landlord must have appreciated that there was a further failure on the commencement of the statutory tenancy in circumstances where the judge below did not accept the tenant's argument. This reduces culpability in relation to this further failure.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

Unit 1 Blenheim Court, Beaufort Business Park, Bristol BS32 4NE

Email: civil@epiqglobal.co.uk

This transcript has been approved by the Judge