ROYAL COURT

3rd May, 1988

Before: The Bailiff, assisted by
Jurats Blampied and Le Ruez

BETWEEN	Robin Alan Dodkins and Myra Rosemary Shanks, his wife	PLAINTIFFS
AND	Eric James Cruickshanks and Anna Sandra Cunningham, his wife	DEFENDANTS

Alleged breach of the terms of a lease by the lessee defendants. Action to recover outstanding rental and the cost of repairing the property subsequent to the defendants' departure

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Advocate C.M.B. Thacker for the plaintiffs
Advocate P.C. Sinel for the defendants

JUDGMENT

THE BAILIFF: This claim arises out of an agreement of lease which was entered into on the 6th March, 1985, between the plaintiffs and the defendants. The lease was in respect of the property, 18 Clos des Pas, Green Street, and it was accepted by all the witnesses that although it was for two years, there was to be some elasticity as to the end of the lease. That elasticity was not put into effect for various reasons. It was also agreed that when the lease

finished or the tenants moved out, the plaintiffs intended to refurbish the premises for his own occupation.

It is accepted by the defendants that the last payment of cash by way of actual rental, as set out in the rent book, was made on the 25th October, 1986, but the defendants contend that a figure of £495.00, which is in fact the amount of rent for each month in respect of the premises, was paid to the plaintiffs during the continuation of the tenancy as a security for non-payment of rent. The plaintiffs, on the other hand, contend that that payment was in respect of possible damage to the property. We have come to the conclusion that the sum of £495.00 was in respect of damage to the property; it is referred to not only in the lease, but is also mentioned in the receipts that were issued to the defendants (numbers 91 and 92 on page 12 in the bundle). Although the defendant wife may not have read the lease, the defendants were bound by it. We have no doubt whatsoever that the sum of £495.00 was taken as a precaution against possible damage by the tenants. And so we have found, as a matter of fact, that that was the position.

Now, having received the last amount of rent, described as such, on the 25th October, the plaintiffs gave notice to the defendants requiring them to vacate the property by the 31st December, 1986. It was alleged in the Order of Justice that despite that notice, the defendants didn't leave the property until the 5th January, 1987. There were a number of other allegations against the defendants so far as concerns the condition of the property.

The first point that we have had to decide is when the property was vacated. The defendants say that they left the property on the 6th January, 1986, and they produced witnesses to show that on that day they moved out pretty well all their heavy furniture, but they did agree that they visited the premises on four or five occasions subsequently and evidence was given by Mrs Coffey that their van was outside the premises on the 1st January. A tenant has a duty to inform the landlord that he has left and therefore the plaintiffs were not obliged to visit the premises to see that they had and accordingly, rent was due until the notice expired, or until earlier termination of the agreement by the landlord taking possession of the premises. On the other hand, we are satisfied that if the plaintiffs had

visited the premises on the 1st January, they could have got in; from the evidence of the defendants, it wouldn't have been disputed.

We have come to the conclusion therefore, that so far as the termination of the lease is concerned and putting the landlord into possession, that did not take effect until the 31st December, 1986. It therefore follows that in addition to the two months due, and because of our finding on the fact that the £495.00 was in respect of damages and not rent, there is an additional seven 'thirty-firsts' of £495.00, which works out at £111.77, due to the plaintiffs in addition to the £990.00. So therefore, so far as the rental claim is concerned, the figure which the Court has come to the conclusion is the proper figure under 1(f) in the final paragraph of the Order of Justice, is a figure of £1,101.77.

According to the lease, the premises had to be kept interiorly by the tenant in a good state of repair but fair wear and tear was accepted. The plaintiffs are claiming that not only were the premises filthy but that they had to effect substantial fumigation and cleaning operations in the premises after the tenants had left, or at any rate, after they took possession on the 5th January. We have come to the conclusion that there is insufficient evidence to suggest that the property was not in a reasonable state when the tenants left at the end of the year. There is the evidence of the two Mr Le Moines and the other witness produced by Mr Sinel to show that the property was in reasonable condition. The photographs are insufficient, in our opinion, to establish to the contrary. Of course, it is perfectly true that standards of cleanliness vary between persons and what is filthy to one person would be a reasonably acceptable standard of cleanliness to another, having regard to the fact that, as I have already said, the defendants knew that when they moved out the premises were going to be totally refurbished.

Therefore, in the light of the evidence that we have heard we have made the following decisions, and I look at the claim for special damages. First of all the repairs to the kitchen door. On the admission of one of the defendants, Mrs Cruickshanks, that door was broken during the course of the tenancy. We therefore allow the £30.00. The Parish and water rates have been agreed and therefore they are formally awarded. We disallow the claim under fumigation, cleaning and rubbish removal for the reasons, as we have

already said, that we didn't think that the condition was anything much more than fair wear and tear. We have already dealt with the rental due. We now come to (g) the loss of one month's rental from 20 Clos des Pas. The reason advanced for this claim by the plaintiffs through the husband, Mr Dodkins, is that as a result of some window glaziers not being able to enter the premises during the tenancy, it was impossible to measure up and that because of the delay in gaining entry, his own refurbishment of 18 Clos des Pas was held up and therefore he lost one month's rental from 20 Clos des Pas where he had been living and which he was going to substitute for his investment property, 18 Clos des Pas, when he moved in there. Because we have found that there was very little that he had to do other than what one would expect a tenant to leave in respect of fair wear and tear, we disallow that amount also.

So far as the last claim is concerned, the heating oil, we are satisfied that this claim is proved. It is unlikely that Mr Dodkins would have gone to the trouble of getting a valuation from Fuel Supplies if it had not been in his head that he would in due course recover this amount from the tenants, or alternatively have a similar amount left in the tank. Therefore we will allow that amount.

And so the final award works out like this; we'll come to the interest in a moment. We allow claim (a) for the repairs to the kitchen door. We allow claims (b) and (c) which of course are not disputed. We disallow claims (d) and (e). We give a total of £1,101.77 under (f). We disallow (g) and under (h) we allow a figure of £146.41. Therefore, adding all those figures together, we come to a total award of £1,601.69. Interest, however, is claimed and therefore the interest is as follows: for the plaintiff on items (a), (b) and (c) at 10 per cent from the 31st December, 1986, to date. The plaintiff will also have 10 per cent on £495.00 from the 25th October, 1986, to date, 10 per cent on £495.00 from the 25th November, 1986, to date and 10 per cent on £111.77 from the 25th December, 1986, to date. The defendant on the other hand will have interest on £495.00 which was the damages deposit from the 6th March, 1985, to date, at 10 per cent.

I haven't worked out those figures, I rely on counsel to do it, but you get your allowances on that. And the cross-interest cancels out the £30.00 and the £495.00. Now, on costs?

(Indistinct submissions by counsel on the matter of costs)

The defendants will pay one half of the plaintiffs' taxed costs. We think that is a proper figure, having regard to the way the case went and what you have read out, Mr Sinel. There is no doubt that what is at issue was the question of rent and on that basis (that was the main issue) your clients failed, but it is perfectly fair to say that on the other hand in respect of the claim for damages of some £500.00 for loss of rent, the plaintiffs failed. We think the Order I've made is right.

Authorities referred to:-

Woodfall, Landlord and Tenant Vol. I, Chapter 13 at p.595 (para 1-1431).