Neutral Citation Number: [2020] EWCA Civ 854

Case No: B5/2019/2258

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE COUNTY COURT AT SWANSEA
Her Honour Judge Garland-Thomas
Case No. E1PP056A

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 07/07/2020

Before:

LORD JUSTICE HICKINBOTTOM
LORD JUSTICE NEWEY
and
LORD JUSTICE BAKER

- -

Between:

DARREN STEVE JARVIS	**Appellant**
- and -	
(1) DARRYL EVANS	**Respondents**
(2) KAREN EVANS	
- and -	
SHELTER CYMRU	**Intervener**

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Mr Justin Bates and Miss Kimberley Ziya (instructed by **Anthony Gold Solicitors**) for the **Appellant**
Miss Sarah Salmon and Mr Christopher McCarthy (instructed by **Hugh James**) for the **Respondents**
Miss Rachel Anthony (instructed by **Shelter Cymru**) for the **Intervener** (written submissions only)

Hearing date: 16 June 2020

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Approved Judgment

Lord Justice Newey:

1. In recent years, Welsh and English law have diverged in some important respects. One of the areas in which the law applicable in Wales is no longer identical to that which applies in England is private rented housing. The Housing (Wales) Act 2014 ("the 2014 Act") passed by the National Assembly for Wales ("the Assembly") includes provision for the regulation of landlords and their agents which has no parallel in England. Among other things, the regime requires landlords to be registered in respect of any dwelling let under a "domestic tenancy" and to be licensed to carry out either lettings activities or property management activities for dwellings the subject of "domestic tenancies". The present appeal relates to the scope of the licensing requirement and the consequences of failing to comply with it. Must a landlord be licensed to serve a notice under section 8 of the Housing Act 1988 ("the 1988 Act")? If he must, is a notice served by an unlicensed landlord nugatory?

The facts

2. The appellant, Mr Jarvis, owns a house called "The Leys" in Saundersfoot, near Tenby, in Pembrokeshire of which the respondents, Mr and Mrs Evans, have been tenants since 2012. On 1 December 2015, the parties entered into a tenancy agreement granting Mr and Mrs Evans an assured shorthold tenancy for a six-month term at a rent of £2,000 per month. When the term came to an end in mid-2016, the Evans became periodic tenants pursuant to section 5 of the 1988 Act.

3. In October 2018, Mr Jarvis served a notice on Mr and Mrs Evans under section 8 of the 1988 Act informing them that he intended to seek possession on grounds 8, 10 and 11 of those specified in schedule 2 to the 1988 Act. Possession proceedings followed in December 2018. Mr Jarvis alleged that Mr and Mrs Evans had not paid rent for August, September, October or December of 2018 and so were now in arrears to the extent of £8,000.

4. The matter came before District Judge Pratt in the County Court at Haverfordwest on 24 June 2019. At that stage, Mr and Mrs Evans contended that they had undertaken renovation works for which they were entitled to credit, but the District Judge concluded that on their own case there was "a significant amount outstanding well above two months' rent" and that that "makes out the mandatory ground for possession". He considered that there was no real prospect of expenditure on some adjoining land affecting "The Leys" and, as regards that property, said this:

> "That therefore leaves what reductions can be made by way of renovations and/or disrepair to the Residential Property. However phrased and on any analysis, there is a gap of more than two months' rent between the outstanding arrears and the amount of contributions [Mr Evans] has made. For me to proceed on the basis that there [are] outstanding improvements which are not evidenced would be unreal and simply fanciful. Therefore, I must give judgment in respect of the possession element of the application."

The District Judge accordingly made a possession order as regards "The Leys" while giving directions in relation to the Evans' money claim.

5. Appealing the District Judge's decision, Mr and Mrs Evans took a new point. They asserted that Mr Jarvis "was not licensed or registered at the time that he served the section 8 notice relied upon" and that it "must follow that service of the same was ineffective".

6. The appeal was heard by Her Honour Judge Garland-Thomas, sitting in the County Court at Swansea, on 20 August 2019. Giving judgment the same day, she allowed the Evans' appeal. She noted in her judgment that Mr Jarvis had not been registered as landlord of "The Leys" until July 2019 and had been licensed only "within the last few weeks". While, therefore, a company of which he was a director was already licensed, Mr Jarvis was not himself registered or licensed when the section 8 notice was served. That meant, Judge Garland-Thomas held, that the section 8 notice was ineffective. Her core reasoning can be seen from paragraph 9 of her judgment, in which she said:

> "I am satisfied … that a Section 8 notice is a notice within Section 7 of the [2014] Act. The [2014] Act was brought into effect or more particularly, these sections of the Act were brought into effect to protect tenants from landlords who were unregistered and unlicensed and it seems to me that there is no reason why Section 8 should not come within that Act. There is nothing which excludes Section 8; it is simply that it is not specifically mentioned. However, the wording of Section 7, in my judgment, is clear and it is clear that the landlord of a dwelling subject to a domestic tenancy must not or cannot serve notice to terminate a tenancy, it is not qualified in any way."

7. Mr Jarvis now challenges Judge Garland-Thomas' decision in this Court.

The 1988 Act

8. Part I of the 1988 Act introduced a new species of residential tenancy, the "assured tenancy", with a sub-species, the "assured shorthold tenancy". By virtue of section 1(1) of the 1988 Act, a tenancy under which a dwelling-house is let as a separate dwelling to one or more individuals at least one of whom occupies it as their only or principal home is, in general, an "assured tenancy". Following the passing of the Housing Act 1996, such a tenancy is, moreover, presumed to be an "assured shorthold tenancy" (see section 19A of the 1988 Act).

9. For the most part, an assured tenancy cannot be brought to an end by a landlord except by obtaining and executing an order for possession under section 7 or section 21 of the 1988 Act. In its present form, section 5(1) of the 1988 Act states:

> " An assured tenancy cannot be brought to an end by the landlord except by–
>
> (a) obtaining–
>
> (i) an order of the court for possession of the dwelling-house under section 7 or 21, and
>
> (ii) the execution of the order,

> (b) obtaining an order of the court under section 6A (demotion order),
>
> (c) in the case of a fixed term tenancy which contains power for the landlord to determine the tenancy in certain circumstances, by the exercise of that power, or
>
> (d) in the case of an assured tenancy—
>
> (i) which is a residential tenancy agreement within the meaning of Chapter 1 of Part 3 of the Immigration Act 2014, and
>
> (ii) in relation to which the condition in section 33D(2) of that Act is met,
>
> giving a notice in accordance with that section,
>
> and, accordingly, the service by the landlord of a notice to quit is of no effect in relation to a periodic assured tenancy."

Section 5(1A) spells out that, where an order for possession is obtained, the tenancy ends only when the order is executed. Section 5(2) provides for a fixed term tenancy which comes to an end otherwise than by virtue of a Court order or an action on the part of the tenant to be replaced by a periodic tenancy: "the tenant shall be entitled to remain in possession of the dwelling-house … and … his right to possession shall depend upon a periodic tenancy arising by virtue of this section".

10. Section 7 of the 1988 Act provides for an order for possession of a dwelling house let on an assured tenancy to be made on one or more of the grounds set out in schedule 2 to the Act. Some of those grounds are mandatory and others discretionary. For the most part, the Court is bound to make a possession order if satisfied that any of the grounds in part I of schedule 2 (viz. grounds 1-8) is established, while the Court "may make an order for possession if it considers it reasonable to do so" if any of the grounds in part II of schedule 2 (viz. grounds 10-17) is established.

11. Section 7 of the 1988 Act is subject, however, to section 8. Section 8(1) provides:

> "The court shall not entertain proceedings for possession of a dwelling-house let on an assured tenancy unless—
>
> (a) the landlord or, in the case of joint landlords, at least one of them has served on the tenant a notice in accordance with this section and the proceedings are begun within the time limits stated in the notice in accordance with subsections (3) to (4B) below; or
>
> (b) the court considers it just and equitable to dispense with the requirement of such a notice."

A possession order cannot, accordingly, be made on any of the grounds set out in schedule 2 to the Act unless a notice has been served in accordance with section 8 or the Court has dispensed with service of such a notice. Moreover, "[t]he court may not

exercise the power conferred by subsection (1)(b) above if the landlord seeks to recover possession on Ground 7A, 7B or 8 in Schedule 2 to this Act" (section 8(5)). As regards, therefore, grounds 7A, 7B and 8, there is no possibility of dispensing with service of a section 8 notice.

12. In the present case, Mr Jarvis has relied on grounds 8, 10 and 11. These all relate to non-payment of rent. They are as follows:

Ground 8

> "Both at the date of the service of the notice under section 8 of this Act relating to the proceedings for possession and at the date of the hearing—
>
> (a) if rent is payable weekly or fortnightly, at least eight weeks' rent is unpaid;
>
> (b) if rent is payable monthly, at least two months' rent is unpaid;
>
> (c) if rent is payable quarterly, at least one quarter's rent is more than three months in arrears; and
>
> (d) if rent is payable yearly, at least three months' rent is more than three months in arrears; and for the purpose of this ground *'rent'* means rent lawfully due from the tenant"

Ground 10

> "Some rent lawfully due from the tenant—
>
> (a) is unpaid on the date on which the proceedings for possession are begun; and
>
> (b) except where subsection (1)(b) of section 8 of this Act applies, was in arrears at the date of the service of the notice under that section relating to those proceedings"

Ground 11

> "Whether or not any rent is in arrears on the date on which proceedings for possession are begun, the tenant has persistently delayed paying rent which has become lawfully due"

13. In the case of an assured shorthold tenancy, a landlord can also recover possession pursuant to section 21 of the 1988 Act. This provides:

> "(1) Without prejudice to any right of the landlord under an assured shorthold tenancy to recover possession of the dwelling-house let on the tenancy in accordance with Chapter I above, on or after the coming to an end of an assured shorthold tenancy

> which was a fixed term tenancy, a court shall make an order for possession of the dwelling-house if it is satisfied—
>
> (a) that the assured shorthold tenancy has come to an end and no further assured tenancy (whether shorthold or not) is for the time being in existence, other than an assured shorthold periodic tenancy (whether statutory or not); and
>
> (b) the landlord or, in the case of joint landlords, at least one of them has given to the tenant not less than two months' notice in writing stating that he requires possession of the dwelling-house.
>
> …
>
> (2) A notice under paragraph (b) of subsection (1) above may be given before or on the day on which the tenancy comes to an end; and that subsection shall have effect notwithstanding that on the coming to an end of the fixed term tenancy a statutory periodic tenancy arises.
>
> (3) Where a court makes an order for possession of a dwelling-house by virtue of subsection (1) above, any statutory periodic tenancy which has arisen on the coming to an end of the assured shorthold tenancy shall end (without further notice and regardless of the period) in accordance with section 5(1A).
>
> (4) Without prejudice to any such right as is referred to in subsection (1) above, a court shall make an order for possession of a dwelling-house let on an assured shorthold tenancy which is a periodic tenancy if the court is satisfied—
>
> (a) that the landlord or, in the case of joint landlords, at least one of them has given to the tenant a notice in writing stating that, after a date specified in the notice, being the last day of a period of the tenancy and not earlier than two months after the date the notice was given, possession of the dwelling-house is required by virtue of this section; and
>
> (b) that the date specified in the notice under paragraph (a) above is not earlier than the earliest day on which, apart from section 5(1) above, the tenancy could be brought to an end by a notice to quit given by the landlord on the same date as the notice under paragraph (a) above.
>
> …."

14. Lord Neuberger and Baroness Hale summarised the upshot in these terms in *McDonald v McDonald* [2016] UKSC 28, [2017] AC 273 at paragraph 26:

> "a landlord under an AST [i.e. assured shorthold tenancy] can obtain an order for possession from a court against the tenant either (i) under section 21, after giving two months' notice once

> the AST has come to an end, or (ii) under section 7, where the AST is a periodic tenancy or has come to an end or could be brought to an end, and one of the specified grounds is made out by the landlord. In practice, the majority of possession proceedings issued against tenants who have been granted ASTs are brought under section 21 rather than section 7."

The 2014 Act

15. The Explanatory Memorandum which the Welsh Government issued in November 2013 in respect of what was to become the 2014 Act said this about the background to the Bill in paragraph 3.14:

> "In October 2010, the National Assembly for Wales' Communities and Culture Committee undertook an inquiry into standards in the [private rented housing] sector. The Committee published its report in February 2011. It highlighted areas where improvements were needed in order to deliver better housing and better management standards. The Committee welcomed the Welsh Government's commitment to tackle the problems that had been identified and recommended that the Welsh Government explore the possibility of a national, mandatory registration and licensing scheme to regulate private landlords, letting and management agents. This idea, which is a significant development, is in the Bill."

The Bill was clearly intended to improve the position of tenants.

16. Section 1 of the 2014 Act provides an "Overview" of Part I of the Act, which comprises sections 1-49. Section 1(2) explains that Part I:

> "regulates—
>
> (a) the letting of dwellings under certain kinds of tenancy (which are defined as *'domestic tenancies'* in section 2), and
>
> (b) the management of dwellings subject to such tenancies,
>
> by means of a system of registration and licensing."

Section 1(2) states that Part I:

> "requires landlords to be—
>
> (a) registered for each dwelling subject to, or marketed or offered for let under, a domestic tenancy in respect of which they are the landlord (section 4), subject to exceptions (section 5);
>
> (b) licensed to carry out certain kinds of lettings activities for dwellings marketed or offered for let under domestic tenancies (section 6), subject to exceptions (section 8);

> (c) licensed to carry out certain kinds of property management activities for dwellings subject to a domestic tenancy (section 7), subject to exceptions (section 8)".

Agents, too, are subject to licensing requirements. "[P]ersons acting on behalf of a landlord", section 1(3) says, are required:

> "to be licensed to carry out—
>
> (a) lettings work in respect of a dwelling marketed or offered for let under a domestic tenancy (section 9);
>
> (b) property management work in respect of a dwelling subject to a domestic tenancy (section 11)".

17. The expression "domestic tenancy" is defined in section 2(1) of the 2014 Act in these terms:

> "(a) a tenancy which is an assured tenancy for the purposes of the Housing Act 1988 (which includes an assured shorthold tenancy), except where the tenancy—
>
> (i) is a long lease for the purposes of Chapter 1 of Part 1 of the Leasehold Reform, Housing and Urban Development Act 1993 ("the 1993 Act"), or
>
> (ii) in the case of a shared ownership lease (within the meaning given by section 7(7) of the 1993 Act), would be such a lease if the tenant's share (within the meaning given by that section) were 100 per cent;
>
> (b) a regulated tenancy for the purposes of the Rent Act 1977, or
>
> (c) a tenancy under which a dwelling is let as a separate dwelling and which is of a description specified for the purposes of this Part in an order made by the Welsh Ministers".

As yet, the Welsh Ministers have not made any order under section 2(1)(c).

18. By section 4(1) of the 2014 Act, "The landlord of a dwelling subject to, or marketed or offered for let under, a domestic tenancy must be registered under this Part in respect of the dwelling … , unless an exception in section 5 applies". A landlord who contravenes section 4(1) commits an offence: section 4(2).

19. Section 6 of the 2014 Act imposes a requirement for landlords to be licensed to carry out "lettings activities". Subsections (1) and (2) provide:

> "(1) The landlord of a dwelling marketed or offered for let under a domestic tenancy must not do any of the things described in subsection (2) in respect of the dwelling unless—

> (a) the landlord is licensed to do so under this Part for the area in which the dwelling is located,
>
> (b) the thing done is arranging for an authorised agent to do something on the landlord's behalf, or
>
> (c) an exception in section 8 applies.
>
> (2) The things are—
>
> (a) arranging or conducting viewings with prospective tenants;
>
> (b) gathering evidence for the purpose of establishing the suitability of prospective tenants (for example, by confirming character references, undertaking credit checks or interviewing a prospective tenant);
>
> (c) preparing, or arranging the preparation, of a tenancy agreement;
>
> (d) preparing, or arranging the preparation, of an inventory for the dwelling or schedule of condition for the dwelling."

A landlord who contravenes section 6(1) commits an offence: section 6(4).

20. Section 7 of the 2014 Act deals with "property management activities". Subsections (1) and (2) state:

> "(1) The landlord of a dwelling subject to a domestic tenancy must not do any of the things described in subsection (2) in respect of the dwelling unless—
>
> (a) the landlord is licensed to do so under this Part for the area in which the dwelling is located,
>
> (b) the thing done is arranging for an authorised agent to do something on the landlord's behalf, or
>
> (c) an exception in section 8 applies.
>
> (2) The things are—
>
> (a) collecting rent;
>
> (b) being the principal point of contact for the tenant in relation to matters arising under the tenancy;
>
> (c) making arrangements with a person to carry out repairs or maintenance;
>
> (d) making arrangements with a tenant or occupier of the dwelling to secure access to the dwelling for any purpose;

> (e) checking the contents or condition of the dwelling, or arranging for them to be checked;
>
> (f) serving notice to terminate a tenancy."

"Authorised agent" is defined in subsection (7) as:

> "(a) a person licensed to carry out lettings work and property management work under this Part for the area in which the dwelling is located,
>
> (b) a local housing authority (whether or not in exercise of its functions as a local housing authority), or
>
> (c) in relation to serving notice to terminate a tenancy only, a qualified solicitor (within the meaning of Part 1 of the Solicitors Act 1974), a person acting on behalf of such a solicitor or any person of a description specified in an order made by the Welsh Ministers".

A landlord who contravenes section 7(1) commits an offence: section 7(5).

21. Section 8 of the 2014 Act contains "Exceptions to requirements for landlords to be licensed". It reads:

> "The requirements in sections 6(1), 7(1) and 7(3) do not apply—
>
> (a) if the landlord has applied to the licensing authority to be licensed, for the period from the date of the application until it is determined by the authority or (if the authority refuses the application) until all means of appealing against a decision to refuse an application have been exhausted and the decision is upheld;
>
> (b) for a period of 28 days beginning with the date the landlord's interest in the dwelling is assigned to the landlord;
>
> (c) if the landlord takes steps to recover possession of the dwelling within a period of 28 days beginning with the date the landlord's interest in the dwelling is assigned to the landlord, for so long as the landlord continues to diligently pursue the recovery of possession;
>
> (d) to a landlord who is a registered social landlord;
>
> (e) to a landlord who is a fully mutual housing association;
>
> (f) in cases specified for the purposes of this section in an order made by the Welsh Ministers."

22. Sections 18-27 of the 2014 Act are concerned with licensing. By section 19(2), a "licensing authority" must be satisfied before granting a licence:

> "(a) that the applicant is a fit and proper person to be licensed (see section 20);
>
> (b) that requirements in relation to training specified in or under regulations made by the Welsh Ministers are met or will be met (as the case may be)."

As things stand, the "licensing authority" for the whole of Wales is Cardiff City Council, which in this context uses the brand name "Rent Smart Wales".

23. Sections 28-35 of the 2014 Act are headed "Enforcement". Section 28 empowers licensing and local housing authorities to bring criminal proceedings while section 29 allows for fixed penalty notices. Sections 30-32 are concerned with "rent stopping orders". A residential property tribunal may make such an order on an application by a licensing or housing authority if satisfied, among other things, that "an offence is being committed under section 7(5) or 13(3) in relation to the dwelling (whether or not a person has been convicted or charged for the offence)" (section 30(5)). By section 30(3):

> "Where the tribunal makes a rent stopping order—
>
> (a) periodical payments payable in connection with a domestic tenancy of the dwelling which relate to a period, or part of a period, falling between a date specified in the order (the 'stopping date') and a date specified by the tribunal when the order is revoked (see section 31(4)) are stopped,
>
> (b) an obligation under a domestic tenancy to pay an amount stopped by the order is treated as being met,
>
> (c) all other rights and obligations under such a tenancy continue unaffected,
>
> (d) any periodical payments stopped by the order but made by a tenant of the dwelling (whether before or after the stopping date) must be repaid by the landlord, and
>
> (e) the authority which made the application for the order must give a copy of it to—
>
> (i) the landlord of the dwelling to which the order relates;
>
> (ii) the tenant of the dwelling."

Section 31, however, empowers the tribunal to revoke a rent stopping order if satisfied that an offence is no longer being committed and, where it does so, by subsection (4):

> "periodical payments in connection with a domestic tenancy of the dwelling become payable from a date specified by the tribunal (which may, if the tribunal considers it appropriate, be a date earlier than the date on which the order is revoked)".

24. Sections 32 and 33 provide for "rent repayment orders". A "rent repayment order" requires a landlord to pay to the applicant (who can be a licensing or housing authority or the tenant) an amount in respect of payments of universal credit or housing benefit or "periodical payments in respect of the tenancy of the dwelling" made by the tenant. By section 32(7), the residential property tribunal must if it is to make a rent repayment order:

> "be satisfied that—
>
> (a) a person has been convicted of an offence under section 7(5) or 13(3) in relation to the dwelling, or that a rent repayment order has required a person to make a payment in respect of—
>
> (i) one or more relevant awards of universal credit, or
>
> (ii) housing benefit paid in connection with a tenancy of the dwelling;
>
> (b) the tenant paid to the appropriate person (whether directly or otherwise) periodical payments in respect of the tenancy of the dwelling during any period during which it appears to the tribunal that such an offence was being committed in relation to the dwelling, and
>
> (c) the application is made within the period of 12 months beginning with—
>
> (i) the date of the conviction or order, or
>
> (ii) if such a conviction was followed by such an order (or vice versa), the date of the later of them."

25. Sections 43 and 44 of the 2014 Act are in a group of sections headed "Supplementary". Section 43, with the heading "Activity in contravention of this Part: effect on tenancy agreements", provides:

> "(1) No rule of law relating to the validity or enforceability of contracts in circumstances involving illegality is to affect the validity or enforceability of any provision of a domestic tenancy of a dwelling in respect of which a contravention of this Part has occurred.
>
> (2) But periodical payments—
>
> (a) payable in connection with such a tenancy may be stopped in accordance with section 30 (rent stopping orders), and
>
> (b) paid in connection with such a tenancy may be recovered in accordance with sections 32 and 33 (rent repayment orders)."

Section 44 is in these terms:

> "(1) A section 21 notice may not be given in relation to a dwelling subject to a domestic tenancy which is an assured shorthold tenancy if—
>
> (a) the landlord is not registered in respect of the dwelling, or
>
> (b) the landlord is not licensed under this Part for the area in which the dwelling is located and the landlord has not appointed a person who is licensed under this Part to carry out all property management work in respect of the dwelling on the landlord's behalf.
>
> (2) But subsection (1) does not apply for the period of 28 days beginning with the day on which the landlord's interest in the dwelling is assigned to the landlord.
>
> (3) In this section, a *'section 21 notice'* means a notice under section 21(1)(b) or (4)(a) of the Housing Act 1988."

26. The Bill which became the 2014 Act did not originally include what is now section 44. It was inserted following consideration of the Bill by the Assembly's Communities, Equality and Local Government Committee. In a report of March 2014, the Committee recommended that the Minister amend the Bill:

> "to include provisions equivalent to those in the Housing Act 2004 to prevent an unregistered landlord or agent from serving notice under section 21 of the Housing Act 1988 to evict a tenant".

The Committee explained in paragraph 129 that it believed that:

> "in order to provide additional protection for tenants, … an unlicensed landlord should be prevented from serving a 'non-fault eviction notice', as is currently the case for Houses in Multiple Occupation licensing and selective licensing".

Such measures, the Committee noted, "are currently used in the enforcement of tenancy deposit legislation and Houses in Multiple Occupation (HMO) licensing" (paragraph 119).

27. In that connection, section 44 of the 2014 Act can be compared with, say, section 215 of the Housing Act 2004. At the date of the Committee report, that stipulated that when a tenancy deposit had been paid in connection with a shorthold tenancy:

> "no section 21 notice may be given in relation to the tenancy at a time when–
>
> (a) the deposit is not being held in accordance with an authorised scheme, or
>
> (b) section 213(3) has not been complied with in relation to the deposit."

The issues

28. The appeal gives rise to two issues:

    i) Does section 7(2)(f) of the 2014 Act ("serving notice to terminate a tenancy") extend to the service of a notice under section 8 of the 1988 Act?

    ii) If the answer to issue (i) is in the affirmative, is a notice served in breach of section 7 of the 2014 Act invalid?

Issue (i): Scope of section 7(2)(f)

29. Section 7(1) of the 2014 Act bars an unlicensed landlord of a dwelling subject to a domestic tenancy from himself doing any of the things described in section 7(2). Those things include, by section 7(2)(f), "serving notice to terminate a tenancy".

30. Mr Justin Bates, who appeared for Mr Jarvis with Miss Kimberley Ziya, argued that a notice under section 8 of the 1988 Act is not a "notice to terminate a tenancy". A section 8 notice is merely a preliminary to an application for the Court to make a possession order under section 7 of the 1988 Act. The notice itself does not do anything to the tenancy. Aside from the exceptional cases mentioned in section 5(1)(b)-(d) of the 1988 Act, a landlord cannot bring an assured tenancy to an end except by obtaining and executing a possession order and "the service by the landlord of a notice to quit is of no effect in relation to a periodic tenancy" (see section 5(1) and (1A)).

31. Mr Bates pointed out that, if (contrary to his case) an unlicensed landlord were prohibited from serving a section 8 notice, the landlord could instead issue proceedings seeking possession on any of the schedule 2 grounds other than grounds 7A, 7B and 8 and ask the Court to dispense with the requirement of a notice under section 8(1)(b) of the 1988 Act. The fact that possession can be obtained without any section 8 notice would, Mr Bates suggested, render a bar on serving one largely meaningless. Mr Bates also relied on the fact that section 44 of the 2014 Act specifically states that a notice under section 21 of the 1988 Act may not be given by a landlord who is not licensed. There would have been no need so to provide, Mr Bates said, if section 7(2)(f) had not been limited in the way for which he contended, since a section 21 notice would, like a section 8 notice, have been a "notice to terminate a tenancy". Finally, Mr Bates referred to the forms prescribed for use in possession proceedings. He explained that form N5B Wales, which is applicable where a landlord seeks possession on the strength of section 21 of the 1988 Act, asks whether the landlord is licensed but that there is nothing comparable in forms N5 and N119, which apply to proceedings under section 7 of the 1988 Act. The distinction, Mr Bates submitted, reflects the fact that, while a landlord is obliged by section 44 to be licensed if he is to serve a section 21 notice, there is no requirement for a landlord serving a section 8 notice to have a licence.

32. On the other hand, in the first place, the words "notice to terminate a tenancy" are apt to refer to a section 8 notice. Had the Assembly intended to confine section 7(2)(f) of the 2014 Act to notices which themselves terminated tenancies, it could have said so more explicitly, by speaking, say, of "notice terminating a tenancy" or "notice which terminates a tenancy". It did not do so. The language it chose to adopt instead is perfectly capable of being understood as encompassing notices which are served in

order to bring tenancies to an end but which do not achieve that of themselves. A section 8 notice is of that kind.

33. Secondly, section 7(2)(f) of the 2014 Act would be all but nugatory if limited to notices which themselves terminated tenancies. The provision would have no application to assured tenancies, which come to an end by the execution of orders for possession, not by the service of notices. It is true that, by virtue of section 2(1)(b) of the 2014 Act, a "regulated tenancy for the purposes of the Rent Act 1977" will also be a "domestic tenancy" and that a Rent Act "protected tenancy" (which is a kind of "regulated tenancy") can potentially be terminated by service of a notice to quit. However, Rent Act tenancies were already rare by the time the 2014 Act was passed and, moreover, a tenant whose "protected tenancy" is terminated immediately becomes a "statutory tenant" under section 2 of the Rent Act. It therefore seems unlikely section 7(2)(f) was included in the 2014 Act with Rent Act tenancies in mind. Mr Bates pointed out that section 2(1)(c) of the 2014 Act allows the Welsh Ministers to enlarge the definition of "domestic tenancy" and suggested that tenancies so added might well be susceptible to termination by notice to quit. It seems to me, however, that the Assembly is unlikely to have inserted section 7(2)(f) against the possibility that the power conferred by section 2(1)(c) might be exercised in the future in such a way as to make section 7(2)(f) useful.

34. That leads to a third point: that the structure and purpose of the 2014 Act suggest that the Assembly would have wished to apply section 7 to the service of notices under section 8 of the 1988 Act. As section 1 explains, the 2014 Act "regulates … the management of dwellings subject to [domestic] tenancies" and requires landlords to be licensed "to carry out certain kinds of property management activities". Those activities can be seen from section 7 to include, for example, "collecting rent", "making arrangements with a person to carry out repairs or maintenance" and, even on Mr Bates' case, the service of certain notices. Service of a section 8 notice seems to me to fall naturally within the scope of such "property management activities". Or, putting things slightly differently, why should the Assembly have intended section 7 to apply to, say, a notice to quit but not a section 8 notice, the more so since service of a notice to quit could be expected to be of little significance even in the context of a Rent Act tenancy?

35. Fourthly, I do not think the fact that a landlord applying for possession on some of the grounds in schedule 2 to the 1988 Act can invite the Court to dispense with the requirement of a section 8 notice lends any real weight to Mr Bates' construction of section 7(2)(f) of the 2014 Act. There is no question of that possibility rendering a bar on the service of such notices meaningless. The Court cannot dispense with a section 8 notice as regards ground 7A, ground 7B or, more importantly, ground 8 (see section 8(5) of the 1988 Act). Even where there is power to dispense with a section 8 notice, the Court will do so only if it considers that to be "just and equitable" in the particular circumstances. In *Braintree DC v Vincent* [2004] EWCA Civ 415, Neuberger LJ said at paragraph 14 of a comparable power to dispense with the requirement of a notice that "it is obviously only in relatively exceptional cases where the court should be prepared to dispense with a section 83 notice".

36. Fifthly, section 44 of the 2014 Act, to which I return later in this judgment, can be accounted for in more than one way. Its existence does not demonstrate that section 7(2)(f) was not intended to extend to the service of section 8 notices.

37. Sixthly, the Court forms used for possession claims do not help. Form N5B Wales post-dates, of course, the 2014 Act: we were told that it was not published until 2017. The forms could, at most, reveal how those responsible for the forms understood the 2014 Act. They cannot cast light on the intentions of the Assembly in passing the legislation. Moreover, the fact that form N5B Wales asks about licensing when forms N5 and N119 do not can potentially be explained on the basis that form N5B Wales is used in the context of an accelerated possession procedure under which claims are often dealt with without a hearing (see CPR 55.15, CPR 55.16 and *Manel v Memon* (2001) 33 HLR 24, at paragraph 38).

38. In all the circumstances, it seems to me that service of a notice under section 8 of the 1988 Act constitutes "serving notice to terminate a tenancy" within the meaning of section 7(2)(f) of the 2014 Act. I would therefore answer issue (i) in the affirmative. It is perhaps worth adding that that conclusion does not prevent an unlicensed landlord from arranging for an authorised agent to serve a section 8 notice on his behalf and that, in this particular context, the "authorised agent" can be a solicitor (see section 7(7)).

Issue (ii): Consequences

39. If, as I think, section 7(2)(f) of the 2014 Act extends to the service of a notice under section 8 of the 1988 Act, is a notice served in breach of section 7 of the 2014 Act invalid? Or does failure to comply with section 7 result solely in criminal liability?

40. Mr Bates argued that non-compliance with section 7 of the 2014 Act does not affect a notice's validity. Section 7(5) provides that a landlord who contravenes subsection (1) commits an offence and is liable on conviction to a fine. It is nowhere stated, Mr Bates pointed out, that a notice served in contravention of section 7 is ineffective. That criminal and civil consequences need to be distinguished is confirmed, so Mr Bates contended, by section 43. That section stipulates that, without prejudice to the possibility of rent stopping orders and rent repayment orders, "No rule of law relating to the validity or enforceability of contracts in circumstances involving illegality is to affect the validity or enforceability of any provision of a domestic tenancy of a dwelling in respect of which a contravention of this Part has occurred". Contractual provisions are thus to remain valid and enforceable despite contravention of, for example, section 7. It can be seen, Mr Bates submitted, that section 7 creates criminal offences but leaves the landlord and tenant relationship untouched. Mr Bates also relied once again on the existence of section 44. There would, he said, have been no need to include a provision barring service of a section 21 notice by an unlicensed landlord (as section 44 does) if section 7 would anyway have invalidated notices served under the 1988 Act for the purpose of obtaining possession (whether in reliance on section 7 or section 21).

41. For her part, Miss Sarah Salmon, who appeared with Mr Christopher McCarthy for Mr and Mrs Evans, maintained that section 7 of the 2014 Act has civil as well as criminal implications. A notice served in breach of section 7, she argued, is ineffective. In a similar vein, Miss Rachel Anthony, who made written submissions on behalf of Shelter Cymru, suggested that it would be perverse if a landlord who had served a notice without complying with the 2014 Act's licensing regime could rely on it even though he had thereby committed a criminal offence.

42. On balance, I agree with Miss Salmon and Miss Anthony that a section 8 notice served in breach of section 7 of the 2014 Act is invalid. My reasons include these:

i) Section 7 of the 2014 Act states that a landlord "must not do" any of the things described in subsection (2) unless licensed or arranging for an authorised agent to do something on his behalf or an exception applies. It is true that subsection (5) provides for contravention of subsection (1) to be a criminal offence, but that need not detract from the general bar in subsection (1). Neither in subsection (5) nor elsewhere in section 7 is it said that breach of subsection (1) is to have exclusively criminal consequences;

ii) It is common ground that section 44 of the 2014 Act renders a section 21 notice ineffective if served by a landlord who is not registered or licensed. Failure to comply with a provision stating that a notice "may not be given" thus results in invalidity. Likewise, a section 21 notice given when there has been non-compliance with the regime governing tenancy deposits will be ineffective because section 215 of the Housing Act 2004 stipulates that "no section 21 notice may be given". If a notice given when a statute has said that it "may not be" or no notice "may be given" can be nugatory, a provision stating that a landlord "must not" serve a notice must also be capable of implying invalidity;

iii) In *Evans v Fleri* (County Court at Cardiff, 18 April 2019, unreported), Judge Jarman QC remarked at paragraph 35 that "It would be surprising if the intention had been to make the serving of a notice to terminate a tenancy by an unlicensed landlord a criminal offence and yet allow that landlord to obtain a possession order in reliance upon such a notice". There is force in that observation;

iv) As Miss Salmon pointed out, tenants would to a great extent be reliant on local authorities for enforcement of the system of registration and licensing introduced by the 2014 Act if notices served in breach of the regime were nonetheless effective. Any prosecution has to be brought by a licensing or housing authority and a fixed penalty notice can be given only by someone authorised by a licensing authority. Similarly, it is a licensing or housing authority that can apply for a rent stopping order and, while an application for a rent repayment order can be made by a tenant as well as by a licensing or housing authority, there must have been a prior conviction or rent repayment order in the case of an application by a tenant. Yet the Assembly will have been aware when enacting the 2014 Act, which was evidently designed to benefit tenants, that local authorities have many other demands on limited resources. That tends to suggest that the Assembly would not have wished to leave tenants dependent on local authorities and, hence, that it would not have intended a notice served in contravention of section 7 to be effective;

v) It is plain from the 2014 Act that contractual obligations are not negated by breaches of its registration and licensing regime. Section 43(1) states in terms that "No rule of law relating to the validity or enforceability of contracts in circumstances involving illegality is to affect the validity or enforceability of any provision of a domestic tenancy of a dwelling in respect of which a contravention of this Part has occurred". More specifically, it is implicit in section 30 that a tenant remains liable for rent unless and until a rent stopping order under the section provides otherwise (at which point "an obligation … to pay an amount stopped by the order is treated as being met" – see section 30(3)(b)). Again, there can be no question of a landlord being excused from maintenance obligations under the tenancy on the basis that section 7(2)(c) bars

him from "making arrangements with a person to carry repairs or maintenance" (the more so since section 7(1) leaves a landlord free to arrange for an authorised agent to do something on his behalf). Somewhat cryptically, perhaps, section 43 even refers to the *enforceability* of a provision of a tenancy being unaffected, which, taken at face value, might indicate that an unlicensed landlord can bring proceedings to recover outstanding rent despite the fact that, by virtue of section 7(2)(a), he is prohibited from "collecting rent" (though it is by no means clear that that means that he is barred from merely *receiving* rent, say, pursuant to a standing order). Be that as it may, however, what is at issue on this appeal is not the validity or enforceability of any provision of a tenancy, but rather whether a notice served in compliance with a statutory provision is effective. Section 43 does not purport to deal with the impact of breaches of the Act on statutory requirements nor obviously address the validity of even contractual notices;

vi) It is fair to say, as Mr Bates did, that section 44 of the 2014 Act overlaps section 7 to an extent if the latter provision is interpreted in the manner for which Miss Salmon contended. A section 21 notice served by an unlicensed landlord will, I think, be invalidated by section 7 as well as section 44. That prompts the question: why was section 44 inserted into what became the Act? As, however, Miss Salmon pointed out, section 44 addresses section 21 notices served by unregistered landlords as well as unlicensed ones. It is, moreover, to be found in a group of sections with the heading, "Supplementary". On top of that, as Mr Bates recognised, the report of the Assembly's Communities, Equality and Local Government Committee which recommended provisions to the effect of what is now section 44 does not explain the Committee's reasoning in any detail. In the circumstances, section 44 is, as it seems to me, best seen as a belt-and-braces provision in so far as it relates to unlicensed (as opposed to unregistered) landlords. I do not think it should be inferred from its inclusion in the 2014 Act that a notice served in breach of section 7(2)(f) was intended to be effective.

Conclusion

43. I would dismiss the appeal. I agree with Judge Garland-Thomas that the fact that Mr Jarvis was not licensed when he served the section 8 notice on Mr and Mrs Evans rendered it invalid.

44. I should like, finally, to thank Miss Salmon, Mr McCarthy and Miss Anthony for acting pro bono. I have found their submissions, as well as those of Mr Bates and Miss Ziya, very helpful.

Lord Justice Baker:

45. I agree.

Lord Justice Hickinbottom:

46. I also agree.