Grounds of Appeal 6BM74906

Robin Clarke

(in respect of the application to suspend the eviction warrant)

1. The Judge erred in law in stating that Housing Act 1980 s.89(2)(c) could only apply to cases involving the statutory tenancies specified elsewhere in that Act.

   a) Nothing in s.89(2)(c) or elsewhere in that Act (or others or amendments thereof) specifies or even vaguely hints that that s.89(2)(c) applies only to those statutory forms of tenancy.

   b) And that s.89(2)(c) comes in the context of the other four exceptions (a), (b), (d) and (e), none of which relate to types of tenancy created by the Act.

   c) From those wordings, it follows that s.89(2)(c) applies to all cases where, as it says, "the court had power to make the order only if it considered it reasonable to make".

   d) In the present case, the landlord is an RSL and therefore its tenancies are subject to the statutory conditions specified in the Housing Corporation's Regulatory Code. (This is also clumsily indicated in the tenancy agreement para 2(10).) In particular, Regulatory Code paragraph 3.5.2 specifies that housing associations (meaning all RSLs) must offer "the most secure form of tenure compatible with the purpose of the housing and the sustainability of the community." This comes in the context that all the claimant's tenancies are self-contained flats or houses, of indefinite duration, and even granting rights of succession.

e) It follows from that paragraph 3.5.2 that if it is not to infringe the statutory Code, the tenancy agreement must also be granting that same criterion of reasonableness which applies to alleged breach cases in respect of all three types of statutory tenancy – Protected, Secure and Assured. (Otherwise the court would be absurdly obliged to grant possession merely because a tenant had accidentally made a little dent while carrying a fridge through a doorway, supposedly justifying a notice to quit.)

2. The Judge also erred in law in stating that the court was obliged to grant possession by reason solely of expiry of the notice to quit. Such an interpretation of the tenancy agreement is clearly incompatible with the abovementioned Regulatory Code paragraph 3.5.2 and the equally binding Residents Charter which states that "Your housing association must only take action to evict you from your home as a last resort, when there is no reasonable alternative." (p.11, fourth paragraph)

3. There is nothing in the lengthy tenancy agreement that even hints that the court could be obliged to grant possession without even considering whether it be reasonable. And indeed, to the contrary, there are the abovementioned statutory requirements that clearly imply that it must not contain such reductions of security of tenure. In the present case it is bizarre in the extreme that an adjudication on alleged breach can supposedly be considered properly made by an unspecified procedure in secret by parties who have a very strong interest in forcing tenants out to obtain control of valuable premises for their own occupation or that of relatives or other colluders. The court thereby lays itself open to abuse by criminals motivated only by greed.

4. The Judge therefore erred in law in stating that s.89(1) applies to this case and that therefore no more than 6 weeks stay could be granted.

5. The attention of the court is drawn to the weighty evidence that it would be greatly oppressive for no suspension of this eviction to be allowed.