

IN THE COUNTY COURT AT EDMONTON

Case No. K03ED411

Neutral Citation Number: [2024] EWCC 13

Courtroom No. 2

Court House
59 Fore Street
Edmonton
N18 2TN

Friday, 26th January 2024

Before:
DISTRICT JUDGE COHEN

B E T W E E N:

METROPOLITAN HOUSING TRUST

and

CIFCI

MS SMITH (Solicitor) appeared on behalf of the Claimant
NO APPEARANCE by or on behalf of the Defendant

JUDGMENT

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DJ COHEN:

1. This is a claim for what is commonly known as a “gas injunction”. The claimant is a social landlord, Metropolitan Housing Trust. The defendant is a tenant of the claimant, Ms Besima Cifci who resides at Flat A, 67 Alexandra Road, London, N8 0LG (“the property”).
2. According to the terms of the lease between the parties, the defendant must allow the claimant access to do works of repair and maintenance and so on and so forth including an annual gas safety inspection. That would obviously include inspecting the gas installations and appliances and flues to ensure that they are safe and if they are not, to do the necessary works of maintenance and repair.
3. There is also a duty imposed on the claimant by regulation 36(3) of the Gas Safety (Installation and Use) Regulations 1998 to ensure that each gas appliance and flue at the property is checked for safety at intervals of not more than 12 months.
4. The claimant also relies on section 11(6) of the Landlord and Tenant Act 1985 which implies into a tenancy agreement a term requiring the defendant to allow the claimant access to the property to inspect its condition and state of repair at reasonable times of the day and on being given 24 hours notice in writing.
5. In this case, as in many other virtually identical cases, pre-issue communications have been passing to and fro between the claimant and the defendant. In fact, nearly all the communications have been from the claimant to the defendant. What the claimant has tried to do is gain access to the property on a voluntary basis to undertake the annual gas safety inspection. However, the defendant has been uncooperative. So the claimant asserts it is left with little option but to apply for an injunction.
6. Proceedings were issued on 29 December 2023 and the matter comes before me today at the first hearing. The defendant was served personally with the claim and the notice of hearing on 16 January 2024 by a process server. But she has not attended the hearing today. The claimant was represented by Ms Smith, a solicitor.
7. The terms of the draft injunction are what I would call “the usual” terms. Paragraph 1 says that on the claimant delivering a written demand for access to the property at a date or time or period specified, giving not less than 7 days notice, the defendant must allow the claimant’s employees and/or contractors access for the purpose of carrying out the necessary works.
8. Paragraph 2, as drawn by the claimant says this:

“In the event the defendant fails to provide access as required by paragraph 1, the claimant shall be entitled to enter the property (by drilling the lock if necessary) to carry out the said service and inspection or replacement of all gas installations and appliances. If the lock is drilled out, the property will be made secure”.

9. Paragraph 2 was the subject of discussion between me and Ms Smith for the claimant. It has been my practice, and I shall say it in this judgment, not to allow Paragraphs like that because the impression I always had was that that making such an order would be authorising an act of criminal damage, and that cannot be right. That was also the view taken by other district judges up and down the country. Nevertheless, Miss Smith sought to persuade me to make Paragraph 2 of the order and so I asked her to undertake some immediate research into how she might justify the making of this particular part of the order and then to address me in detail. It would have been disproportionate and unfair to the claimant for me to have put the case off to another date for the research to be done and so of necessity, Ms Smith has had to do her research and gather her thoughts very quickly and I am most grateful to her for her efforts.

10. These are her submissions.

11. CPR 25.1 is headed “Orders for interim remedies” and says this at 25.1(1)(d):

“(1) The Court may grant the following interim remedies:

...

(d) an order authorising a person to enter any land or building in the possession of a party to the proceedings for the purposes of carrying out an order under sub-paragraph (c)”.

CPR 25.1(1)(c)(ii) says that an interim order can be made “for the inspection of relevant property”. Ms Smith says this seems to cover this application. It is exactly what the claimant is seeking.

12. Then, we turn to the County Courts Act 1984, section 38(1) which says:

“Subject to what follows, in any proceedings in the county court, the court may make an order which could be made by the High Court if the proceedings were in the High Court”.

13. Accordingly, what order can the High Court make? Ms Smith has the answer. The answer is in section 37(1) of the Senior Courts Act 1981 – which says under the heading “Powers of High Court with respect to injunctions and receivers”:

(1) The High Court may by order (whether interlocutory or final) grant an injunction or appoint a receiver in all cases in which it appears to the Court to be just and convenient to do so”.

14. Then we turn to section 37(2) of the same Act, which says this: “Any such order may be made either unconditionally or on such terms and conditions as the Court thinks just”.
15. So, I have the power to make an injunction and attach conditions to that injunction.
16. Accordingly, we now turn back to the draft order. Paragraph 2 is certainly a term or condition (it does not really matter which) and it regulates the manner in which the claimant can carry out the gas safety inspection, which is the essence of the injunction itself.
17. If I decide to include Paragraph 2 in the order, I must ask myself if it is an order that authorises criminal damage - because, if it is, it seems to be against public policy for a Court to authorise an act which is criminal damage.
18. But does paragraph 2 authorise an act of criminal damage? Criminal damage, Ms Smith tells me, is the act of damaging property belonging to another. The precise definition is contained in section 1(1) of the Criminal Damage Act 1971: “A person who without lawful excuse destroys or damages any property belonging to another intending to destroy or damage any such property or being reckless as to whether any such property would be destroyed or damaged shall be guilty of an offence”.
19. With that in mind, does Paragraph 2 authorise criminal damage? If the lock is drilled out, there will be damage to the lock and the door, of course. But Ms Smith says the key words are “property *belonging to another*”. Who does the door belong to? This is a rented property. Ms Smith submits that the lock and the door belong to the claimant. The claimant is the landlord and owns the property. The defendant is the tenant and is there by permission of the landlord pursuant to a lease. She does not own the lock or the door. The lock and the door belong to the claimant. Therefore, although the lock and the door will be damaged these do not *belong to another*. And so an essential element of the crime of criminal damage is missing. Which means there is no crime.
20. Looked at in that way, Paragraph 2 does not authorise criminal damage.
21. But is there a civil wrong contained in Paragraph 2? I do not think there is. Certainly, I cannot think of one now. Ms Smith has not addressed me specifically about that.
22. Ms Smith’s submissions are careful, logical, on point, and entirely convincing. I accept everything she has said.
23. And so it seems to me that for the purposes of today, not only do I have the jurisdiction to make the order contained at paragraph 2, but there is nothing in Paragraph 2 which authorises either a crime or a civil wrong. Therefore, I will include Paragraph 2 in my order.

24. The draft words, “If the lock is drilled out, the property will be made secure” will be replaced with these words: “If the lock is drilled out, the claimant will ensure that immediately on departure from the property, a replacement lock is installed at the property and a replacement set of keys is given to the defendant as soon as is reasonably practicable”.
25. That is the end of my judgment.

End of Judgment.

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