2nd June, 1988

Before the Deputy Judicial Greffier

BETWEEN	Alan William George English and Olivia Scarlett Brown, his wife	PLAINTIFFS
AND	Helier Falle	DEFENDANT

Assessment of damages

Advocate S.A. Pearmain for the plaintiffs.

Advocate P.A. Bertram for the defendant.

By agreement of lease dated the 21st April, 1987, Alan William George English and Olivia Scarlett Brown, his wife (the plaintiffs) leased to Helier Falle (the defendant) the property known as "Cheval Marin", St. Aubin's Road, First Tower, St. Helier, with gardens and appurtenances (with the exception of the playroom on the ground floor and a four feet strip of land bordering Victoria Avenue), together with the use of fitted carpets, curtains and light fittings and effects as detailed in the inventory attached to the lease, for a period of one year beginning on the 22nd April, 1987, and at the rental specified in the lease.

On the 18th September, 1987, the plaintiffs actioned the defendant to witness confirmation of the Order of Justice served on him alleging various breaches of the convenants contained in the lease and sought the cancellation of the lease, the immediate expulsion of the defendant from the property and damages. By Act of the Royal Court of that day, the Court, by consent, cancelled the lease with effect from the 21st October, 1987, made an order for the eviction of the defendant and any authorised, as well as unauthorised, lodgers and referred

the plaintiffs' claims for damages and costs to the Judicial Greffier for his determination after the 21st October, 1987.

At the hearing of the assessment of damages, Advocate Bertram for the defendant filed, by consent, an answer contending that the particulars filed by the plaintiffs on the 14th January, 1988, do not relate to any head of damage claimed in the Order of Justice and should be dismissed with costs. I have, therefore, to consider that issue first.

Advocate Bertram argued that the items in paragraph 4(b) of the Order of Justice had been rectified by the defendant and were the only items of damage claimed in the Order of Justice. He argued that the items of further damage notified in the particulars were known to the plaintiffs in August, 1987, and should have been pleaded in the Order of Justice when the defendant would have defended the action and convened the lodgers as third parties. He argued further that the defendant was entitled to look only at what had been pleaded in the Order of Justice and that the defendant had been taken by surprise by what is now claimed and was at a disadvantage.

Advocate Pearmain stated that when the Order of Justice was signed in September, 1987, the defendant was still in possession of the premises and the plaintiffs could not therefore fully particularise their claim until they had obtained possession of the premises. She argued that the defendant had not been taken by surprise, because the terms of paragraph 4(b) and paragraph (c) of the prayer of the Order of Justice make it clear what was the nature of the claim. That the particulars of damage flow from the breaches of the lease which had been specified in correspondence and that the defendant was not under a disadvantage or prejudiced because he was able to give evidence.

One of the functions of pleadings is to give fair notice of the case which has to be met so that the opposing party may direct his evidence to the issue disclosed

by them. Having considered the arguments of counsel and the Act of Court recording the consent judgment, it is clear that the judgment was one of liability made on the defendant's admitted breaches of the convenants in the lease and that the only issue to be determined was the quantum of damages. It is clear from paragraph 6 of the Order of Justice that the breaches were continuing and from paragraph (c) of the prayer that the damages to be claimed were not of a minor nature because the plaintiffs were claiming a sum in excess of the deposit paid by the defendant to cover any breakages, losses and damages. The particulars of damages were notified to the defendant's advocate by letter of the 26th October and quantified by letter of the 10th November, 1987. The defendant has had ample opportunity to reply and in my opinion has not been taken by surprise or prejudiced. I therefore reject his plea.

I turn now to the assessment of the damages claimed by the plaintiffs. According to the lease the interior of the premises and all fixtures, fittings and effects therein had to be kept in good and substantial state of repair and decoration and at the termination of the lease had to be given up in as good state of repair, cleanliness and decoration as they were when the defendant entered into occupation, all reasonable wear and tear excepted. The plaintiffs claim that the premises and furniture were filthy, in disrepair (particularly the bathroom) or damaged. The defendant, with some exceptions, denied the plaintiffs' claim.

It is true to say that standards of cleanliness vary between persons and what is filthy to one person would be considered reasonably acceptable to another. Dr. English kept referring to the premises and contents as being in immaculate condition, but the evidence of the other witnesses was that they were in good condition. In the light of the evidence that I have heard I have come to the conclusion that there is insufficient evidence, with certain exceptions, to suggest that the premises and contents were not in a reasonable condition when the defendant left in October 1987, fair wear and tear being taken into account.

Therefore looking at the plaintiffs' claim for damages, I give the following decisions.

The change of locks, that was admitted and therefore the sum of £51.75 is allowed. The cost of re-upholstering furniture, that claim is disallowed for the reasons already given. The Bosco cleaning account, that is disallowed. These were items that the plaintiffs removed to store in August and there was no satisfactory evidence as to their condition at that time, their condition could have been due to storage. The antique restoration/repolishing of furniture, that claim is allowed in the sum of £325.00. These were items that the defendant and his lodgers should never have used. I accept Dr. English's evidence on this claim and the defendant did admit damage to one table. The re-decoration of the property, particularly the bathroom and consequential water damage, in the sum of £495.00. That claim is proved, there was ample evidence on this claim from all the witnesses. The repair to the child's toy box in the sum of £30.00. That was an item from the Play-room which was excluded from the tenancy and should not have been used and is therefore allowed. The repair/replacement of floor covering to the kitchen, that claim is disallowed for the reasons previously given. The replacement of missing items from the Play-room. Again I accept Dr. English's evidence on this claim and it is allowed in the sum of £497.20, which is less the laundry account previously disallowed. The claim for the cost of removing furniture to store for protection in the sum of £97.70 is allowed. I am satisfied that this claim flows from the breach of the lease and that it was not unreasonable for the plaintiffs to store the furniture in order to avoid the repetition of such breach. The claim for the cost of cleaning carpets and furniture is disallowed for the reason as I have already said, that the condition was not more than fair wear and tear. The claim for the cost of telephone calls in the sum of £100.00 appears to me to be excessive and therefore I allow this claim in the sum of £50.00. The claim for water rates was admitted and therefore the sum of £71.02 is allowed. After some discussion the claim for heating oil was agreed to be 100 gallons at £1 per gallon and therefore I allow the

sum of £100.00. The claim for occupier's rate, which the defendant admitted had not been paid and which Dr. English said was £53.00, is allowed in that sum. As regards the claim for restoring the garden, Dr. English said that he did the work himself and therefore I allow the nominal sum of £10.00. As regards the claim for loss of rental due to the early termination of the lease, I allow this claim in the sum of £1,740.00. That amount is calculated as follows:

6 months rent (21 Oct - 21 April, 1988) at £550 per month	3,300
less amount received on re-letting property	
13 weeks (15 Jan - 21 April, 1988) at £120 per week	1,560
	£1,740

I do not regard the delay in re-letting the property as unduly excessive and therefore the plaintiffs have not failed properly to mitigate their loss.

As regards the claims for air fares, annoyance and inconvenience to holiday in August, embarrassment to professional reputation and annoyance, inconvenience and time in relation to compiling case, I consider these claims to be too remote. They are not in my opinion consequences which flow directly and naturally from the breach of the terms of the lease or which may reasonably be supposed to have been within the contemplation of the parties. I therefore disallow these claims.

Therefore, adding all these amounts together the total award comes to £3,520.67. Consequently, by virtue of clause 4 of the lease, the defendant forfeits his deposit of £1,000.00. As to costs, the defendant will pay the plaintiffs' taxed costs.