



3 December 2014

PRESS SUMMARY

Loveridge (Appellant) v Mayor and Burgesses of the London Borough of Lambeth (Respondent) [2014] UKSC 65
On appeal from [2013] EWCA Civ 494

JUSTICES: Lord Neuberger (President), Lord Wilson, Lord Sumption, Lord Carnwath, Lord Toulson

BACKGROUND TO THE APPEALS

Section 28 of the Housing Act 1988

The Housing Act 1988 ('the 1988 Act') was brought in with a view to stimulating the availability of rented accommodation in the private sector; it allowed landlords to let new tenancies on terms more advantageous to themselves [4]. Parliament included safeguards to deter unscrupulous landlords from evicting existing tenants with protected tenancies [15]. Section 27 of the 1988 Act provides the right to claim damages for unlawful eviction [6]. Section 28 sets out the method by which such damages are calculated, being the difference in value between two alternative calculations of the landlord's interest in the building at the time immediately prior to the unlawful eviction:

- (1) *The basis for the assessment of damages [for unlawful eviction] is the difference in value, determined as at the time immediately before the residential occupier ceased to occupy the premises in question as his residence, between—*
- (a) *the value of the interest of the landlord in default determined on the assumption that the residential occupier continues to have the same right to occupy the premises as before that time; and*
 - (b) *the value of that interest determined on the assumption that the residential occupier has ceased to have that right.*
- (2) *In relation to any premises, any reference in this section to the interest of the landlord in default is a reference to his interest in the building in which the premises in question are comprised (whether or not that building contains any other premises) together with its curtilage.*
- (3) *For the purposes of the valuations referred to in subsection (1) above, it shall be assumed—*
- (a) *that the landlord in default is selling his interest on the open market to a willing buyer...*

Mr Loveridge's flat at 19 Moresby Walk

From November 2002 Mr Loveridge lived in the downstairs flat at 19 Moresby Walk, a two-storey house. Both his flat and the upstairs flat were owned by the London Borough of Lambeth ('Lambeth') and let under secure tenancies conferring certain statutory protections. From July to December 2009 Mr Loveridge made a trip to Ghana. While he was away, Lambeth changed the locks on his flat and cleared his possessions, mistakenly believing that he had died. Two days after he returned to the UK, his flat was rented to somebody else [2]. Mr Loveridge sued Lambeth for damages.

The parties' approaches to damages under section 28

Mr Loveridge and Lambeth each instructed a surveyor to value Lambeth's interest in 19 Moresby Walk for the purposes of subsections 28(1)(a) and (b). Mr Loveridge's surveyor calculated valuation (a) on the basis that 19 Moresby Walk was sold with both the upstairs and downstairs flats subject to secure tenancies. He calculated valuation (b) on the basis that 19 Moresby Walk was sold with vacant possession of the downstairs flat but with the upstairs flat subject to a secure tenancy. The difference in value was £90,500 [22].

Lambeth adopted a different approach. It relied on subsection 28(3)(a), which requires both valuations (a) and (b) to be calculated on the assumption that the property is sold on the open market to a willing buyer [18]. If 19 Moresby Walk had in fact been sold on the open market, say to a private landlord, the secure tenancies (which do not apply to private landlords) would have been converted into assured tenancies, thus allowing the new landlord to bring the rents up to market level [20]. Lambeth's surveyor therefore conducted valuation (a) on the basis that both flats were subject to assured tenancies. He concluded that valuation (b) produced the same figure as valuation (a) because the downstairs flat with vacant possession would be worth the same as if it were subject to an assured tenancy [23].

The procedural history

At the hearing in the Lambeth County Court, the judge found that Mr Loveridge had been unlawfully evicted. He preferred Mr Loveridge's approach to the section 28 valuation exercise. On 25 September 2012 he awarded Mr Loveridge £90,500 under section 28 and £9,000 at common law in respect of the trespass to his goods [2]. Lambeth appealed against the quantum of damages. The Court of Appeal accepted Lambeth's argument and 10 May 2013 set aside the section 28 award [1]. It ordered Lambeth to pay £7,400 in damages at common law for unlawfully evicting Mr Loveridge, and, as before, £9,000 for trespass to goods.

JUDGMENT

The Supreme Court unanimously allows the appeal and restores HHJ Blunsdon's order for damages. Lord Wilson (with whom Lord Neuberger, Lord Sumption, Lord Carnwath and Lord Toulson agree) gives the judgment.

REASONS FOR THE JUDGMENT

The words of section 27 of the 1988 Act are wide enough to cover local authority landlords as well as public landlords, even though local authority landlords rarely perpetrate unlawful evictions of their tenants [15]. Section 28(1) requires the court to make two valuations, namely (a) and (b), of the landlord's interest [16]. Valuation (a) is based on the assumption that the tenant continues to have the same right to occupy the premises, and the landlord continues to be subject to the same restrictions on recovering possession, as before the eviction occurred. Valuation (b) is based on the assumption that the tenant's right to occupy and the restrictions on recovering possession have ceased [17]. The issue in this case was whether the valuation of both the upstairs and downstairs flats at 19 Moresby Walk (for valuation (a)) and of the upstairs flat (for valuation (b)) should be conducted on the assumption that they were subject to *secure* tenancies or to *assured* tenancies [24].

The assumption of a sale on the open market (subsection 28(3)(a)) is "*for the purposes of*" the valuations at subsection 28(1), in which other assumptions are mandated, namely (a) that the tenant "*continues to have the same right to occupy the premises*" as he had immediately prior to the eviction and, alternatively, (b) that he "*has ceased to have that right*" [26]. Prior to eviction, Mr Loveridge's right to occupy the downstairs flat was that of a secure tenant. The notional exercise required by subsection 28(3)(a) does not extend to making adjustments to the nature of the tenants' rights that are consequent upon sale. Such adjustments are barred by subsection 28(1)(a) which stipulates that the "*same right*" continues [27]. The likely effect upon a secure tenancy of a sale to a private landlord should not therefore be taken into account [28].

References in square brackets are to paragraphs in the judgment

NOTE

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at:

www.supremecourt.uk/decided-cases/index.html