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IN THE CENTRAL LONDON COUNTY COURT

No. G69YX880

Thomas More Building  
Royal Courts of Justice  
Strand  
London  
WC2A 2LL

Monday, 12 July 2021

Before:

DEPUTY DISTRICT JUDGE COLQUHOUN

B E T W E E N :

STEPHEN JUNG HENG CHUNG

Claimant

- and -

SHALBINDER SINGH MALLE

Defendant

\_\_\_\_\_

MR J. ROWLEY (instructed by Curzon Green Solicitors) appeared on behalf of the Claimant.

MR R. DEVEREUX-COOKE (instructed by Blythe Liggins LLP) appeared on behalf of the Defendant.

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**J U D G M E N T**  
**( V i a B T M e e t M e )**

THE DEPUTY DISTRICT JUDGE:

- 1 Today is the judgment following a hearing of evidence on 3 June 2021 at which the claimant was represented by Mr Rowley and the defendant by Mr Devereux-Cooke. Mr Rowley appears again today for the claimant and Mr Devereux-Cooke again appears for the defendant.
- 2 This is a claim brought by Stephen Jung Heng Chung of Flat 310 Grantham House, London, E14 0LQ against Shalbinder Singh Malle of Malle Manor, Sandy Lane, Blackdown, Leamington Spa, CV32 6QS. It relates to a claim which was issued on 6 July 2020, a defence and counterclaim which was dated 13 August 2020, and a reply to defence and defence to counterclaim dated 8 September 2020, and a case management directions order dated 8 December 2020.
- 3 The claim concerns a claim for damages for personal injury suffered and losses and expenses incurred as a result of the defendant's negligence and/or breach of contract and/or breach of statutory duty, pursuant to a tenancy agreement dated 1 September 2018. The particulars of claim are substantial, over eight pages, and the substance of it is:
  - “(1) The Defendant was at all relevant times the Landlord of an Assured Shorthold Tenancy Agreement (“the Tenancy Agreement”) dated 1 September 2018 for the 12-month tenancy of 64C Bath Street, Leamington Spa CV32 6QS (“the Property”). A copy of the Tenancy Agreement is annexed at Appendix A.
  - (2) The Claimant signed a Tenancy Agreement for the above Property on 30 July 2018 under which the Landlord was responsible for the repair, maintenance and pest control at the Property. There was an implied term in the Tenancy Agreement that the property would be fit for habitation and accordingly, free of pest infestations (*Smith v. Marrable* [1843] 153 E.R 693).
  - (3) The Defendant was the occupier of the Property for the purposes of the Occupiers Liability Act 1957 by virtue of the control which he was able to exercise over the Property. The Claimant was at all relevant times a lawful visitor to the Property pursuant to the Tenancy Agreement. The Defendant was required to take reasonable steps to keep the Claimant reasonably safe for the purposes of habitation within the Property.
  - (4) During the course of the tenancy the Claimant suffered personal injury from bed bugs in the furniture of a bedroom at the Property.
  - (5) The Claimant signed the Tenancy Agreement on 30 July 2018 and paid the deposit and first instalment of three months' rent. Although the tenancy commenced on 1 September 2018, the Claimant did not arrive

at the Property until 25 September 2018. This was the Claimant's first opportunity to inspect the Property.

- (6) An Inventory of the Property had been drawn up on 29 August 2018. The Claimant did not have sight of this document until he arrived at the Property. The Property was rented as furnished accommodation and the Inventory noted the following:

Room 3 (the Claimant's room):

- 'double mattress light blue patterned – loose springs, many stains.'
- 'wooden wall fixed headboard and bed – heavy tape marks to edges below mattress, light wear to edges'

- (7) Within the first week of moving into the Property the Claimant's skin became very irritable. His condition worsened over the following days. The Claimant had not suffered irritable skin or symptoms of bites before moving into the Property. The Claimant had never suffered the symptoms of bed bugs prior to moving into the Property.

- (8) On 5 October 2018 the Claimant discovered bloodstains on the bedsheets of his mattress and bites all over his body which were itchy, red and swollen. The Claimant found two live bed bugs under the mattress, and others in the bedframe itself. On that same evening the Claimant notified the Defendant by telephone of the presence of bed bugs at the Property. The Defendant refused to provide any assistance to the Claimant on that day.

- (9) After the Claimant's mother requested that the Defendant provide alternative accommodation to the Claimant, the Defendant arranged for his son to attend the Property the following day. The Defendant's son replaced the mattress in the Claimant's room."

4 And so forth about the arrangements of a pest control expert by the claimant and the claimant attending his GP, the requesting of evidence of pest control expert visiting the property, which was not forthcoming. There were meetings. The claimant's mother then intervened. There are particulars set out on pp.4, 5, 6 and 7 as to general matters being a pleading under the Occupiers Liability Act 1957, s.2(2), and the Defective Premises Act 1972, s.4, and particulars of injury were given at para.25:

"The Claimant who was 20 years old at the time of injury suffered both physical and psychological symptoms and relies upon the medical report of Dr Keast dated 28 November 2019 in support of his claim for personal injury."

5 The claimant claims interest and damages limited to £10,000. That is dated 28 May 2020, with a signed statement of truth and a signed schedule of loss. That was met by a defence dated 13 August 2020 in which the allegations were denied, both as to bedbugs and as to the

claim for the return of overpaid rent, and accompanied by a counterclaim for rent not paid and that the Claimant do pay for the pest control costs which the defendant asserts were accountable by the claimant to him. There was a reply to defence and a defence to counterclaim, denying liability and putting the defendant to proof of his alleged losses.

6 I now turn to the fact that there is before the court and the court has read the court file and the trial bundle, part of which is the chronology. The chronology reads as follows:

“30.07.18	Claimant signs tenancy agreement
09.08.18	Claimant pays deposit and first rent instalment
29.08.18	Inventory carried out at property
01.09.18	Commencement of tenancy
25.09.18	Claimant moves into the property. Very soon begins to suffer from skin irritation
05.10.18	Claimant discovers bloodstains on his mattress and bite marks on his body
06.10.18	Defendant’s son attends property
08.10.18	Cleaner attends property. Claimant attends GP
18.10.18	Meeting organised by letting agent
19.10.18	Pest control expert (Clean and Maintain) attends property Claimant moves into alternative temporary accommodation
26.10.18	Claimant moves back into property
02.11.18	Claimant’s mother contacts Defendant regarding Rentokil treatment
09.11.18	Pest control expert (Clean and Maintain) attends property again
14.11.18	Claimant contacts Defendant again regarding Rentokil treatment
16.11.18	Claimant writes to Defendant to terminate tenancy agreement
17.11.18	Claimant vacates property and moves into hotel
19.11.18	Claimant moves into emergency student accommodation
04.01.19	Letter of Claim sent by Claimant’s solicitors
27.03.19	Letter of Response sent by Defendant’s solicitors
08.07.20	Court proceedings issued”

- 7 I should also add that, in relation to these matters, I have read the report of Mr Boase on which reliance was placed by the claimant and admitted into evidence, as well as the report of Dr Keast. The report of Mr Boase, who is a management and control of pests' and public health expert, was dated 13 January 2020. I also read the witness statements of the claimant dated 22 January 2021, Mrs Chung dated 22 January 2021, and the defendant's witness statement dated 9 February 2021.
- 8 This is a claim which revolves around the letting of student type accommodation. The claimant was a university student at the time and the claimant's complaint about the property being unfit to occupy and in his case relates to infestation of the provided mattress and bedframe, part of the furniture provided by the defendant, being infested with bedbugs; as a result of which he was badly bitten and maintains that he suffered personal injury as a result of that failure of the landlord to ensure that the property was fit for habitation and free of bedbugs. He relies on the case of *Smith v Marrable* [1843] 153 ER 693, and further he claims because of this effectively a rebate on the rent that he paid three months in advance to reflect his non-occupancy, together with interest and special damages.
- 9 The defendant denies any liability at all and says that he has suffered further loss by the non-payment of rent after the claimant gave up the keys to the defendant's nominated agent, but he is also entitled to costs of the putting right of the infestation in so far as they went and he was concerned.
- 10 I heard oral evidence from both the claimant, Mrs Chung, and Mr Malle. In relation to these matters, I was also addressed in submissions about the law both by Mr Rowley and Mr Devereux-Cooke, who both produced very helpful skeleton arguments which, in both cases, assisted the court and for which I am grateful.
- 11 In relation to these matters, the principal limb of defence in relation to the claim for the return of the monies, Mr Devereux-Cooke cited the case of *Marks and Spencer plc v BNP Paribas Securities Services Trust Company (Jersey) Limited & Anor* [2016] AC 742 and the judgment of Lord Neuberger of Abbotsbury, President of the Supreme Court, particularly the matters cited at para.48, marked B in the margin, and para.49, under the heading "Conclusion," the paragraph between the letters F and B on p.762 of the report I was given.
- 12 In relation to all these matters, having taken evidence from the claimant and the defendant and heard submissions from learned counsel, I make the following findings of fact. All findings of fact that I make in this case are to the civil standard of proof, that is on the balance of probability or more likely than not.
- 13 The claimant is Stephen Jung Heng Chung, who entered into a furnished shorthold tenancy agreement dated 1 September 2018 for a twelve-month term in respect of 64C Bath Street, Leamington Spa, CV32 6QS ("the property") and to occupy Room 3 thereof as the tenant, with Shalbinder Singh Malle as landlord through the agency of Accord Lets of Lake View Drive, Sherwood Park, Nottingham, NG15 0DT. The provision of furniture within the property included a bedframe and mattress in Room 3.
- 14 The tenancy agreement was signed and the deposit paid, together with the first three months of rent in advance, on 30 July 2018. On 29 August 2018 an inventory was drawn of the index premises. The tenancy commenced on 1 September 2018 and the claimant took occupation of Room 3 on 25 September 2018.

- 15 No mention or disclosure was made by the defendant or anyone on his behalf at the time of inspection or subsequently about any pre-existing complaints, if any, by the previous occupier of anything untoward about Room 3. There was no real inspection of the premises at the time by the claimant or, if there was an inspection, it was so cursory that no reasonable intending tenant could have detected what lay ahead.
- 16 However, the claimant on occupation and within a week of taking occupation, suffered noticeable irritation of his skin. By 5 October 2018, blood was visible on the claimant's skin when he had been in contact with either and/or alternatively the bedframe and/or the mattress or bedclothes of the landlord's provided bed. The landlord on being notified of the infestation did exchange the mattress but not the bedframe. Mr Boase, in his report dated 12 January 2021, identified the bedbug infestation, did draw to attention within that report that the bedbugs exist not only in the mattress but also in cracks or nooks and crannies of the bedframe. I accept that report as being a true reflection of evidence supporting the claimant's case on infestation by bedbugs. Part 35 questions were raised of the expert. I also find that no claim under the Defective Premises Act 1972 is made out.
- 17 I fully accept the evidence of the claimant as being an honest, straightforward witness who made appropriate concessions when matters were put to him about his evidence. Mrs Chung's evidence corroborated the evidence of the claimant and was honest and credible. The defendant was an unconvincing witness, whose evidence was both vacuous and dissembling. Where there is a conflict of evidence, the claimant's evidence prevails and is preferred.
- 18 On the civil standard of proof, I find that the probable source of the infestation of bedbugs in Room 3 was both pre-existing and not, as alleged, caused by the claimant at any stage or at all as a latent and/or alternatively patent or any combination thereof infestation occurring in the first mattress provided by the landlord and/or alternatively together in the bedframe provided as part of the furnishing of the property. This is a breach of the statutory duty by the landlord to the claimant.
- 19 I also find that the failure of the landlord to apply a recognised de-infestation programme by a recognised pest control company was a breach by the landlord to ensure(?) that an occupier of the property is a continuing and cumulative breach of the Occupier's Liability Act 1957, the statutory obligation of the landlord to the claimant. I also find that the authority of *Smith v Marrable* [1843] 153 ER 693 is both applied and followed in this claim.
- 20 As to the deposit, the approach to and with the deposit in my judgment was in error and wrong. Having made my finding that there was an infestation of bedbugs then it follows that the deposit is returnable without deduction forthwith, and in its entirety to the claimant.
- 21 In relation to special damages claimed by the claimant, I find that these are reasonable, fair and balanced and evidenced as appropriate and in the main were not seriously opposed by the defendant and are payable as claimed.
- 22 The other part of the claim relates to the return of monies paid as rent in advance. This head of claim is resisted by the defendant. There is no claim for diminution of rent attributable to a failure of the landlord to provide furnishings commensurate with the rent charged under the tenancy agreement. The basis of the resistance of the defendant is founded on the judgment of Lord Neuberger cited in *Marks and Spencer plc v BNP Paribas Securities Services Trust Company (Jersey) Limited & Anor* [2016] AC 742 at para.48B, which states:

“Thus, it is clear that, where a lease provides for payment of rent in advance on the usual quarter days, and the landlord forfeits the lease during the currency of a quarter, he is entitled to retain the whole of the rent due on the quarter day immediately before the forfeiture if it has been paid, and, if it has not been paid, he is entitled to recover and retain the whole of that rent.”

23 At para.49, under conclusion, between letters F and G, Lord Neuberger goes on to say:

“Save in a very clear case indeed, it would be wrong to attribute to a landlord and a tenant, particularly when they have entered into a full and professionally drafted lease, an intention that the tenant should receive an apportioned part of the rent payable and paid in advance, when the non-apportionability of such rent has been so long and clearly established.”

24 I find that the judgment of the Supreme Court prevails in favour of the defendant. Judgment is trite law. It should be remembered that when the Supreme Court gives judgment, it not only sets out the law on the index case before it, but in so doing recites the law as it always was. The Supreme Court judgment predates this claim. This head of claim fails for the reasoning set out in that judgment.

25 As to the counterclaim dated 13 August 2020, that is for £1,100 pursuant to the counterclaim paras.21 and 22, which sets out claims made by the claimant in respect of the damages which are sought therein, there is no evidence of mitigation in the defendant’s witness statement dated 9 February 2021, and by the admitted acceptance of the return of the keys at para.19 of the counterclaim and there being no further protests or indeed claim for those alleged rents due until formal counterclaim and the statement made by Mr Malle at para.22, in which he says:

“I am a reputable and respected landlord in the local area and take my landlord obligations seriously. I have responded and actioned whatever was needed of me in respect of the Claimant’s claims in a timely and efficient manner.”

By his conduct, the defendant expressly and/or alternatively implied acquiescence to the tenancy being terminated and thereby waived his right to any balance so due. However, at law, following the authority of *Smith v Marrable*, in my earlier findings of fact herein above, I have no difficulty in dismissing the claim for alleged rent, the absence of a rent roll being more than notable; it is telling. Furthermore, on my finding that the pre-existing infestation was the extant cause of the claim, which I have upheld for the claimant, it follows that the defendant cannot rely on his own breaches to make a claim founding in damages from that cause, and this head of damage is dismissed.

26 As to the quantification of the general damages suffered by the claimant then aged twenty years, now twenty-two years of age, for personal injury, on the one hand there are no citable cases for the assessment of damages on bedbug infestation. No assistance can be drawn from the **Judicial College Guidelines 15<sup>th</sup> Ed** and the cases cited by counsel were not directly on the point. I had cited by the defendant a media report of *Thomas Campbell v Secretary of State for Scotland*, which was then aligned to uplift, to reflect today’s level of damages of £650. The claimant says £1,600.

- 27 In my judgment, following the Court of Appeal judgment that the guidelines are not binding on the court and that each assessment should be on the basis of the facts of the index case before it, the following features are relevant. The infestation was present at the date of the letting. The remedial measures taken by the landlord on the infestation being reported were, at the very best, insubstantial and amounted to a cheap ‘J’accuse’ reaction to a very serious problem.
- 28 The medical report dated 28 November 2019 is prepared twelve months or so post-event. There is no independent psychological or psychiatric evidence to maintain a psychological stress diagnosis. The skin lesions are assessed to have resolved two months post-event. However, the claimant has attended his GP on 8 October 2018 with “widespread bites over his feet and arms.” Prescription drugs were prescribed to treat the condition. The exacerbation of the condition ceased on leaving the property on 17 November and healed within two weeks thereafter.
- 29 The claimant makes unchallenged complaint that he was anxious and was unable to focus on his work as a university student. It can be fairly deduced that the landlord’s case that the claimant was substantially the author of his own misfortunes is deplorable and wounding to the claimant. This in my judgment was never, ever the case. In my judgment, this is a serious case of bedbug infestation with adverse effects on the claimant, but fortunately clearing up within two months thanks to proper treatment being available and extraction by the claimant from the infected and infested insanitary property.
- 30 Taking all of these factors into account, I therefore assess damages at £2,100. I also award interest on the general damages. I will take submissions now on costs if they are not agreed.
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**CERTIFICATE**

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This transcript has been approved by the Judge.