Fair Rent

R v West Sussex Rent Officer, ex parte Haysport Properties Limited
Court of Appeal

30 January 2001

The overturn on appeal of a government fair rent victory in the High Court represents a common sense outcome for private landlords who might otherwise have had little incentive to carry out substantial repairs to premises let to Rent Act tenants.

The case, which involved an interim application by the appellant landlord to register a fair rent, revolved largely around the construction and meaning of section 67(3) of the Rent Act which states that where a fair rent has been registered no application by the tenant or the landlord for registration of a different rent will be entertained before the expiry of two years from the date of registration (or, where applicable, confirmation of a registered rent), except where the applicant can show that there has been a change in "(a) the condition of the dwelling-house (including the making of any improvement therein), ... or (d) any other circumstances taken into consideration when the rent was registered or confirmed, as to make the registered rent no longer a fair rent."

The appellant landlord had made an application under section 67(1) of the Rent Act 1977 to register a fair rent in respect of premises let under a "regulated tenancy" within the meaning of the Rent Act. The premises had been occupied by the tenant since 1956. In July 1998 the weekly rent of £54 was increased by the rent officer to £62 following the landlord's application. The tenant objected to that increase and the matter was referred to the rent assessment committee who reduced the weekly rent to £35 owing to the very poor state of repair and uninhabitability of at least part of the premises.

In the meantime a repair notice had been served on the landlord by the local authority under section 189(1) of the Housing Act 1985 in respect of premises unfit for human habitation. The rent assessment committee stated that once the urgent repairs had been carried out the landlord could apply to re-register the rent. The landlord carried out the repairs to the premises required by that notice and, relying on Section 67(3) of the Rent Act, made a further application to register a fair rent.

The landlord's application was refused by the rent officer on the ground that a period of less than two years had expired since the previous registration date and there had not been a sufficient change in the condition of the dwelling house to render the registered rent unfair. The landlord sought judicial review of that decision but his application was dismissed in the High Court.

The rent officer successfully defended his decision in the High Court on the basis that the repairs carried out by the landlord did not constitute a change in the condition of the dwelling-house. Whilst such change might include, inter alia, the making of any improvement or any other circumstances taken into consideration when the rent was registered, the rent officer contended that

such change may not include any change attributable to repair because section 75(1) of the Rent Act states that "improvement" for the purposes of the Rent Act includes "structural alteration, extension or addition and the provision of additional fixtures and fittings, but does not include anything done by way of decoration or repair."

The rent officer further contended that where any change was consequent on a landlord complying with its obligations under a repair notice or under the tenancy, the benefit of such obligations was already reflected in the rent.

The High Court ruling was overturned on appeal. It was held that repair could constitute a "change in the condition" of the premises, and the fact that repair is excluded from the definition of "improvement" in section 75(1) does not take repair out of section 67(3)(a).

Section 67(3)(a) states that a "change in the condition" of premises may include improvement. Simply because section 75(1) states that "improvement" does not include repair does not, as a matter of basic construction, mean that repair cannot constitute a change in condition. As the definition of improvement is restricted by section 75(1) so that it does not include repair, the repair element falls to be considered within the first part of section 67(3)(a), namely whether or not the repair constitutes a "change in the condition of the dwelling-house". Rendering premises fit for human habitation, when they have formerly been declared unfit for human habitation, was held by the Court of Appeal to be a change in condition for the purposes of section 67(3).

The Court of Appeal (having considered the case of *Sturolson & Co v Mauroux* [1998] 1 EGLR 66) also held that section 67(3) should be read in conjunction with section 70 of the Rent Act which makes it clear that the state of repair of premises is to be taken into consideration when determining a fair rent. Except where it is virtually certain that the landlord is about to carry out repairs, a fair rent for premises in disrepair would be expected to be lower than for premises in repair. Where a change in condition arises as a result of repairs having been carried out, what constitutes a fair rent will change, the state of repair of the premises having been taken into consideration in the earlier determination. The High Court had therefore wrongly refused the landlord's application by contending that the existing fair rent reflected the landlord's repairing obligations.

The matter of the appellant landlord's repairing obligations under the tenancy does not appear to have been the subject of much (if any) discussion in the case and details of the extent of those obligations have not been reported. The fact that the landlord had to comply with a repair notice issued by the local authority does however appear to have been taken into consideration.

The conclusion of the High Court is undoubtedly not what would ever have been intended by the Rent Act, and it is curious that neither the rent officer nor the High Court questioned the outcome of their interpretation of the Rent Act, namely that a fair rent determined for uninhabitable premises was not unfair once those premises had been made habitable.

It is apparent that the rent officer (and subsequently the High Court when upholding the rent officer's decision) misinterpreted the construction of the Rent Act and disregarded the most pertinent fact that formerly uninhabitable premises were now habitable. The Court of Appeal ruling manifests a profoundly common sense approach to what the legislation must have been drawn to achieve, so that the substantial repairs carried out by the landlord did not fall outside the scope of a change in condition.

Although the decision on appeal may at first glance appear to be a "victory" for private landlords at the expense of their Rent Act tenants, benefits to both landlords and tenants are likely to evolve from it. Landlords may be more willing to carry out substantial and urgent repairs in the knowledge that an interim application to re-register the rent may not be challenged if the repairs constitute a change in condition of the premises. The Rent Acts (Maximum Fair Rent) Order 1999 imposing a cap on increases of registered rents for Rent Act regulated tenancies will ensure that tenants (especially those who are not entitled to housing benefit) are not unfairly disadvantaged by over-zealous bouts of repair by their landlords. The government should be content that the current plethora of privately let dwellings unfit for human habitation may be reduced as a result of their defeat, but for which the High Court ruling might well have proved to be something of a pyrrhic victory.

(At the time of writing this article a full transcript of the case was not available from the Court of Appeal).

Katherine Simpson
Solicitor
Pemberton Greenish