Case No: **J03EC228**

IN THE COUNTY COURT AT CENTRAL LONDON

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

14 August 2023

BEFORE:

HIS HONOUR JUDGE LUBA KC

B E T W E E N:

RICHWORTH LIMITED

Claimant

-v –

DEREK BILLINGHAM

Defendant

Hearing dates: *1 June 2023 and 10 July 2023*

Mr Mark Warwick KC (instructed by Bude Nathan Iwanier LLP) appeared on behalf of the Claimant

Ms Liz Davies KC with **Ms Angharad Monk** (instructed by Hodge, Jones & Allen, London) appeared on behalf of the Defendant

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JUDGMENT

I direct that no recording shall be taken of this Judgment and that copies of this version as sealed and handed down may be treated as authentic.

Introduction

1. This is an appeal from an order for possession of residential premises made against an assured tenant by District Judge Beecham ('the Judge") on 8 November 2022 (sealed on 9 November 2022) when sitting at the County Court at Clerkenwell and Shoreditch.

2. The Judge herself gave the tenant permission to appeal from that Order on a single ground (essentially, on a pure point of law) as to "whether or not delivery of a cheque, not cashed by a tenant, constitutes return of a deposit".

3. The appeal came on for hearing on 1 June 2023. Ms Monk appeared for the tenant (as she had below) led by Ms Liz Davies KC. Mr Mark Warwick KC, who had not been instructed below, appeared for the landlord. In the event, and in circumstances explained more fully below, the appeal was re-listed for further hearing on 10 July 2023. The same representation was offered at that hearing. I am grateful to counsel for their assistance by way of well-focussed skeleton arguments and eloquent oral submissions.

4. As will appear from the account given below, this appeal may serve to encourage caution in the pursuit of interesting points of law through an appeal process in circumstances dissociated from the factual matrix against which they are said to arise.

The essential facts

5. The property subject of this claim is Flat G, 94 Hornsey Lane, London, N6 ("the flat").

6. The tenant has held an assured shorthold tenancy of the flat for many years. A written tenancy agreement granted him a fixed term of 12 months commencing on 27 June 2011. The agreement records the rent as being £780 per month and a deposit being payable in the sum of £780. The agreement required the deposit to be paid on the date on signature of the agreement (28 June 2011) together with the first month's rent.

7. The agreement is silent as to any requirements as to the *method* of payment (cash, cheque, direct debit, standing order, bank transfer, etc) of the rent or of the deposit. The agreement expressly provided at clause 4.1 that "the deposit…shall be repaid one month after the end of the tenancy" (emphasis added). The agreement is equally silent as to the *method* by which the deposit shall be repaid.

8. The tenancy has not yet ended. Since the expiry of the 12-month term in June 2012, the tenancy has, by operation of law, continued for more than a further ten years as a statutory periodic (monthly) tenancy. The tenancy will end if and when an order for possession is executed.

9. It was common ground before me that: (1) the tenant paid the deposit as required by the agreement; and (2) the landlord failed to protect it in a statutory scheme as required by Housing Act 2004.

10. In the spring of 2022, almost a decade after expiry of the fixed term, the landlord and tenant corresponded by email about noise nuisance complaints relating to the flat and similar complaints made by the tenant about a neighbouring flat. On 14 April 2022, in one such email, a Mr Connelly of the landlord company added: "Can I have your bank account number and sort code in case we ever need to make payments to you?"

11. On 26 April 2022, the landlord wrote a letter to the tenant stating: "Please find enclosed a cheque for £780 from Richworth Limited (cheque no 104224), the sum of your deposit for the flat." The enclosed cheque was dated the same day and drawn on the landlord's account number 00701637.

12. On 5 May 2022, solicitors acting for the landlord wrote a letter to the tenant enclosing a notice under Housing Act 1988 section 21 and stating: "We are advised that your deposit has been returned to you by check (sic) delivered by hand on 27 April 2022".

13. On 12 August 2022, the landlord presented a claim for possession to the County Court at Clerkenwell & Shoreditch. It was issued on 24 August 2022. The claim was made under the 'accelerated procedure' for possession contained in Civil Procedure Rule 55 Section II. The Claim Form (Form N5B England, August 2020 version) states that: (1) the tenant had been served with a notice under Housing Act 1988 section 21 by hand on 6 May 2022 (para 10); (2) a deposit had been paid by the tenant (para 12); and (3) the deposit had been returned to the tenant on 27 April 2022 (para 13).

14. The Claim Form attached copies of the tenancy agreement, the solicitors' letter of 5 May 2022 and a copy of the section 21 notice that the latter had enclosed. Also attached was the evidence of a process server who had delivered the solicitor's letter and enclosures by both putting them through the letter box of the flat and under the door of the flat on 6 May 2022. The attachments did not include a copy of the *How to Rent* booklet because, as explained in the Claim Form, the tenant had not been given a copy (para 18b).

15. According to a Certificate of Service made on the Claim Form by a member of the Court's staff, the Claim Form was posted to the tenant about a month later on 26 September 2022 and deemed served on him on 28 September 2022.

16. The front page of the Claim Form warned the tenant that because the landlord was using the accelerated procedure, there "will not normally be a hearing". It continued with advisory notes including "Fill in the Defence Form (N11B England) and send or deliver it to the Court…"

17. Upon receipt of the Claim Form, the tenant acted very promptly and followed the advice given. He completed the Defence Form N11B in manuscript and dated it 29 September 2022. The rules required the tenant to "file" his defence but imposed no requirement to serve it: CPR 55.14. He did so but did not retain a copy. It was received by the Court at Clerkenwell & Shoreditch a few days later on 4 October 2022.

18. In the Defence Form, the tenant confirmed that he had received the section 21 notice on 7 May 2022 (para 4). He also confirmed that he had received the cheque tendered earlier by the landlord. He wrote "They put a checque (sic) under my door but as I do not accept checques (sic) due to previous bounce (sic) checques (sic), I have not cashed

it. They, Richworth Ltd, have since closed their old bank account so the checque (sic) is void. I have not received my deposit" (para 7). He added "I do not accept checques (sic) and the checque (sic) is now void. I have not cashed it and they have since changed banks so I can't cash it even if I accepted checques (sic) which I do not" (para 8).

19. The Defence Form also made the point that the Claim Form had not attached any tenancy deposit scheme certificate and was missing the *How to Rent* booklet (para 9). The tenant wrote that he could not recall having received gas safety certificates (para 12) and that this is "a revenge eviction" (para 20).

20. That last reference arose because, as the Defence Form explains, the tenant believed that he was being evicted because he had complained about another tenant's noise nuisance and about repairs not being done. He attached to the Defence Form copies of emails dealing with those subjects including the landlord's email of 14 April 2022 (see para 10 above). In an attachment sheet to the Defence Form (which he dated 1 October 2022), he wrote "they then asked for my bank details so they could pay my deposit back! This is evidence of revenge eviction".

21. The Court was required by CPR 55.15(1)(a) to send a copy of this Defence Form to the landlord. It appears that the requirement was overlooked. As a result, the landlord neither received the Defence Form from the tenant nor from the Court.

22. However, in accordance with CPR 55.15(1)(b), the papers were promptly referred to a judge. On consideration of the papers, District Judge Bell made an Order on 12 October 2022 (drawn 18 October 2022) recording that she "was not satisfied that the landlord has established that he (sic) is entitled to recover possession against the tenant under section 21 of the Housing Act 1988". Her Order directed the matter be listed for a 10-minute hearing on 8 November 2022.

23. Receipt of this Order by email on 19 October 2022 gave the landlord's solicitors notice that a defence had been filed. They replied to the Court by email, within minutes, to request a copy. The Court did not respond. In the absence of any sight of the Defence Form, the landlord had no opportunity to file any evidence in response to it.

24. On 2 November 2022, the tenant approached his present solicitors for assistance. Because he had not retained a copy of the Defence Form that he had filed, nor the attachments to it, he was unable to pass a copy to his solicitors.

25. On 7 November 2022, the day before the hearing, Hodge Jones & Allen filed notice of acting for the tenant and notice of the grant of legal aid. In breach of CPR 39.8, those communications to the Court contained no evidence that the documents had been simultaneously copied to the landlord.

26. The hearing fixed for the following day for 10 minutes was, in all those circumstances, likely to be somewhat challenging for both parties, their representatives and the Judge.

A diversion

27. Despite the unhappy procedural course taken by the possession claim, described above, worse was to follow.

28. By 30 August 2022, less than a week after issue of the claim described above, the landlord's solicitors realised that the Claim Form had been presented unsigned by the landlord or its representative.

29. Instead of taking steps to address that omission within the current claim, the solicitors submitted a fresh Claim Form N5B to the Court at Clerkenwell and Shoreditch, this time signed, and again invited the Court to take an issue fee.

30. On 13 September 2022, the Court issued this new or second claim and allocated it case number J03EC484.

31. On 14 October 2022, the Court sent the tenant the new Claim Form and its attachments including a new blank pro-forma Defence Form N11B.

32. Again, the tenant responded promptly. He wrote by email to the Court on 17 October 2022 that "I have received a second legal pack with my accelerated eviction and the defence form in it and I was wondering why as I have already sent in my defence form by post recorded delivery from the first pack you sent me 2 weeks ago? I have a postal receipt. Can you confirm you have received my defence form please? I have no where to go and I have not received my deposit back among othere (sic) defences."

33. The tenant did not complete and file at Court a Defence Form for this new claim.

34. The Court did not respond to his email until 11 January 2023, when it confirmed that the Defence Form in the first claim had been received on 4 October 2022.

35. Thus matters stood - in relation to this second claim - when, on 8 November 2022, the first claim appeared in the Judge's 10-minute possession list.

The relevant law

36. Before turning to the hearing of 8 November 2022, and the judgment and Order that flowed from it, I should address the statutory provisions.

37. As is well known, the Housing Act (HA) 2004 introduced a new regime for the protection of tenancy deposits. In short summary, it required landlords of assured shorthold tenants to protect tenancy deposits that they had received in one of certain approved statutory schemes. Landlords were additionally required to give tenants certain prescribed information about the way in which their deposits had been protected. A number of statutory sanctions, developed over time by amendment, may apply if a landlord does not act in accordance with that statutory regime.

38. Among those sanctions is a set of provisions which prevent a landlord from giving a HA 1988 section 21 notice until the tenancy deposit requirements are complied with: HA 2004 s215(1), (1A) and (2). But those sanctions are lifted where the deposit has been returned *before* the giving of a section 21 notice. HA 2004 s215(2A)(a) provides that:

> "Subsections (1), (1A) and (2) do not apply where…the deposit has been returned to the tenant in full…"

39. There is not understood to be any direct appellate authority on what a landlord must do in order to 'return' a deposit. Nor as to how, or in what circumstances, that may be done by cheque. The point has previously been considered at first instance. Although I was taken to notes and short reports of the decisions in some of those cases, I do not believe they generally assist. Not least because they will have been determined on the different facts in each of those cases.

40. In the instant case, the cheque in the sum of the original deposit was said to have been received by the tenant on 27 April 2022. The cheque was not presented for payment. A section 21 notice was given on 6 May 2022 (assuming, without deciding, that such a notice may be capable of being 'given' by delivery to the premises rather than to the tenant personally).

The hearing on 8 November 2022

41. The hearing had been listed for 2pm, no doubt with myriad other short matters. There was a delayed start. The case was not reached until 2:46pm. Both parties appeared by counsel. The hearing lasted a little under 25 minutes. I have the benefit of the transcript.

42. At the outset of the hearing, neither counsel had seen the Defence Form and the tenant had not arrived at court. The Judge checked with the representatives whether they had seen the Defence Form which she had on file. Both counsel confirmed they had not. The Judge apologised for the Court's failure to send out a copy of it to the landlord and confirmed that it had been received on 4 October 2022. Neither party asked for a copy of it, nor for a short adjournment so that copies could be produced, considered and instructions taken. The Judge said: "I think we had better crack on".

43. Very properly, counsel for the landlord drew attention at the outset to the fact that *two* claims had been issued. He had informed the tenant's counsel about that on arrival at court. She had not been instructed in, and earlier knew nothing about, the second claim. The Judge explained that she only had the Court File for the first case. At the Judge's instigation, counsel for the tenant invited the striking-out of the first claim because the Claim Form had not been signed.

44. So, the Judge was dealing with two issued claims, an oral application to strike out the first, and what she accurately described as "a mess".

45. Much of the available court time was taken up in working out what should be done. It was decided that a director of the landlord company who was in attendance (Ms Fluss)

should be called to give oral evidence confirming that the content of the first Claim Form was true. But having been affirmed and examined, it transpired that she was reading the Claim Form for the first time in the witness box. It would take significant time for her to read all 20 pages of the form itself, and the attachments, before being able to attest to the truth of the content. The attempt to rely on her evidence was abandoned. The Judge decided to allow the claim to proceed but to direct that the landlord file a signed statement of truth for the first Claim Form, within 7 days. She so ordered. No application was made to vacate the hearing and re-list it after the proceedings had been regularised in that way.

46. At this point in the hearing, the tenant arrived. His counsel told the Judge that only "one point" of defence was being pursued; namely, that: (a) the deposit had not been protected; (b) in consequence, the prescribed information about deposit protection had not been provided; and (c) the deposit "has not effectively been returned to the defendant". She explained that any other defences that may have been canvassed - about the *How to Rent* guide, gas certificates, 'revenge evictions', and the like – were not being pursued because the tenancy pre-dated the legislation making those matters available to tenants as defences.

47. Beyond the unsigned Claim Form and its attachments, and the Defence Form and its attachments (which neither counsel had seen), there was no other *evidence* before the Court on the question as to whether and when the deposit had been returned to the tenant (or not) before the giving of the section 21 notice. The Judge did not have before her, for example, the letter of 26 April 2022 and accompanying cheque by which it was said that the deposit had been returned.

48. The Judge heard submissions, and was taken to some authority, as to the effect of tendering payment by cheque. In the course of those submissions, she was told that the cheque had been tendered to the tenant on 27 April 2022 and that the section 21 notice was dated 5 May 2022. The danger of proceeding on submissions rather than evidence was well demonstrated by the Judge being given by counsel three different dates (within a few moments) as the date of delivery of the cheque – 25 April, 26 April and 27 April.

49. No attention was given to the question of when the tenant had actually first seen the cheque or as to fact that the dates prior to the giving of the section 21 notice were only, at most, the 10 days: 27 April (Wednesday), 28 April (Thursday), 29 April (Friday), 30 April (*Saturday*), 1 May (*Sunday*), 2 May (*Bank Holiday Monday*), 3 May (Tuesday), 4 May (Wednesday), 5 May (Thursday), and 6 May (Friday). The last date being the date of delivery of the section 21 notice to the flat.

50. On the available material, the lines were drawn at the hearing as follows: counsel for the landlord contended that the deposit had been returned before the section 21 notice was given; and counsel for the tenant contended that it had not been returned by that date or at all.

51. The Judge had no evidence (as distinct from submissions) as to: how (in the sense of *by what method*) the deposit had been originally paid; how (in the same sense) rent was being paid over the many years of the tenancy; what (if any) dealings between the parties there had previously been by cheque; when the tenant had first had the cheque

in his hands after 27 April 2022; when the landlord's bank account had been closed (against which the cheque had been drawn); etcetera.

52. Counsel for landlord made two central submissions. The first drew a distinction between whether a deposit has been paid and whether it has been 'returned'. The submission was that:

> "…what the statute says is that the deposit has to be *returned.* Giving a cheque is returning the deposit. The cheque is an asset. It cannot just be cancelled. So that is the fundamental point. We are still within the statute if we give a cheque in the amount of the deposit and the tenant has not returned it, which he has not done here, ... returning the deposit by cheque is perfectly permissible."

53. The second submission turned on the difficulties landlords would face in the absence of prompt presentation or rejection of a tendered cheque (this has subsequently been described as the 'ambush submission'). Counsel for the landlord said:

> "The difficulty for the landlord here, madam, is that the landlord had no reason to believe that the tenant had not accepted the cheque, had not accepted the return of the deposit, until I was told today by my learned friend that they were taking this point about the deposit. Effectively, this approach leads to ambushes where the cheque was given on 27 April.
>
> We are now here in November on the day of the hearing and the tenant suddenly tells us that the cheque which he has not returned was not accepted, so that the deposit was never returned, meaning effectively that if the, and this cannot have been the intention of the provisions of the Housing Act 2004, that the section 21 notice procedure cannot be used with any degree of confidence at all if the landlord has returned, as the landlord is entitled to, the deposit by cheque."

54. Counsel for the tenant submitted, in answer to the first of those points, that:

> "It is plainly a twisting of the common sense meaning of *return* itself to suggest that in circumstances where the monies have not actually been received by the relevant person that it can be said that that money has been returned to them any more than it could be said that it has been paid to them…. I would invite you to consider the natural meaning of the word *return.*"

55. As to the second point, counsel was unable to deal with the submission about 'ambush' because she had been unaware that in the Defence Form the tenant had very promptly taken the point that he did not accept payment by cheque.

56. Neither party applied for an opportunity to put in any further material evidence or sought an adjournment of the hearing. Both counsel appear to have been content for the Judge to decide the claim summarily, there and then, on the sparse material she had (which was at least more than they each had). As Ms Davies put it in her oral argument, on the second day of this appeal hearing, "the whole thing is extraordinary".

57. The Judge delivered an immediate five-minute *ex tempore* judgment at 3:08pm. I will deal with its content below. She allowed the claim. Her Order was one for possession of the flat in 14 days.

58. Counsel for the tenant sought from the Judge permission to appeal on two grounds:

> "the first being that madam respectfully applied the wrong definition in terms of the meaning of return under the deposit protection legislation and that, in fact, it essentially does require that money to have been received …The second ground of appeal is that reliance was placed on the lack of evidence in respect of the defendant's lack of acceptance, but this being a CPR 55.8 hearing, essentially that would be a matter that fell to be determined in due course with directions being made to a trial of the issues of fact."

59. The Judge gave permission on the first ground only. On Form N460, she expressed herself as follows:

> "I found that leaving the cheque with the tenant was 'return of the deposit' within the meaning of s215(2A) Housing Act 2004, inter alia, on the basis that the statutory language was 'return' not 'repaid' and that the construction contended for by D would enable an ambush of proceedings for possession… I take the view that the D has met the threshold test for appeal of real prospect of success on whether I erred in law in treating the delivery of the cheque as return of the deposit, where it was not cashed by D. I refused permission on the further ground …whether there should have been a further hearing under CPR 55.8 on the issue of his lack of acceptance of the cheque. I was not invited to consider adjourning for further hearing and I do not consider that ground met the threshold test for an appeal."

60. The day after the hearing, the landlord's solicitors sent the tenant directly (notwithstanding that he had solicitors on the record) a copy of the first Claim Form, with a signature added, together with a notice of discontinuance of the second claim.

The Judge's judgment

61. Notwithstanding the 'mess' she had faced, and the short but difficult hearing, the Judge delivered a judgment of admirable clarity. She began it by correctly identifying the issue before her: "The sole issue… relates to whether or not a deposit was returned prior to the service of the section 21 notice."

62. As to the relevant dates, she assumed it to be 'common ground' that the cheque was with the tenant before the service of the section 21 notice. She proceeded on the basis that the cheque "was left by hand with the tenant on 27 April and the notice was dated in May".

63. She set out the submissions made for the parties and in particular the twin submissions made for the landlord. Those she accepted. She said:

> "[Counsel for the landlord] takes me to the wording of section 215(2A). He submits the requirement in the Housing Act 2004 is that the deposit is 'returned' rather than 'paid' to the tenant by the time the section 21 notice is served.
> He says that in construing the requirement under subsection (2A) to mean that the tenant actually has to be paid can lead to ambush because a tenant can do what he says the tenant has done in this case, which is simply not to communicate with the landlord that he does not accept the cheque, and to leave it until the eleventh hour and thereby ambush the validly of the section 21 notice, by simply remaining silent.
> As I say, his position is that the tenant has done just that. He has not ever intimated, until today, that he was not prepared to accept the cheque or that he was not going to cash the cheque.
> I prefer the submissions of the landlord on this point. The Housing Act could very easily have said that the tenant must be paid, but the language of return is used. It is difficult to see that the delivery of a cheque is not returning the deposit. It is entirely within the gift of the tenant whether or not to cash that cheque and it could very easily lead to ambush of the type that the

> [landlord's] counsel identifies. It is not clear that the cheque was ever rejected, and I thereby expressly take the view that its delivery, coupled with non-communication of non-acceptance, is sufficient to amount to a return within the meaning of the Housing Act…"

The appeal

64. The tenant presented an Appellant's Notice under cover of a letter dated 23 November 2022. The sole ground of appeal was the one for which the Judge had given permission, namely:

> "The judge wrongly held that the Appellant's tenancy deposit had been returned to him in the meaning of 215(2A)(a) of the Housing Act 2004 in circumstances where a cheque had been provided to the Defendant, but not cashed."

65. Sadly, the course of the proceedings on the appeal was as bad, if not worse, than it had been in the proceedings in the Court below.

66. First, in breach of the rules, the Appellant's Notice was sent by email and then again by DX. By luck only, or perhaps by the vigilance of the Court staff, the appeal was not issued twice.

67. Second, despite being authorised to take the fee from the solicitor's PBA account, the court at Clerkenwell delayed for a month in taking the fee from the tenant's solicitors account until the Appellant's Notice was marked as filed on 22 December 2022.

68. Third, despite the Appellant's Notice including an application for a stay of an already expired possession order, the Court at Clerkenwell did not initiate a transfer of the Appellant's Notice to this Court until 22 December 2022.

69. Fourth, the landlord wrote a letter (rather than making an application) personally addressed to the Designated Civil Judge for this Court asking that the listing of the appeal be expedited. They later chased for a reply to the letter, again without making an application.

70. Fifth, despite having known since 8 November 2022 that the Court at Clerkenwell held on file a completed Defence Form from the tenant received on 4 October 2022, neither party sought access to the court file at Clerkenwell for the purpose of its retrieval so that it would be before the Court in the appeal (as it had been before the Judge below). The tenant's solicitors wrote to the court to request a copy, for the first time, on 21 December 2022. When no response was received, no further steps were taken to secure a copy.

71. Sixth, despite knowing that they were required by the rules to provide a transcript of the Judge's judgment on 8 November 2022 for the purposes of the appeal, the tenant's solicitors first applied for a transcript in January 2023.

72. The appeal file was first seen by me on 27 February 2023, and I gave directions for the appeal to be listed with expedition on a date convenient to leading counsel and in any

event before 30 April 2023. I additionally gave firm directions as to how the parties were to conduct themselves in relation to the appeal.

73. Notwithstanding those clear directions, it took three attempts before the tenant's solicitors complied with an instruction to provide available dates for both leading counsel. On receipt of those dates, the hearing was immediately fixed for 4 April 2023.

74. A few days before that hearing date, I became aware that the parties proposed to argue the appeal without the transcript of the Judge's judgment, as it had not been produced. Further, no note of the judgment had been jointly prepared by counsel or submitted to the Judge for her approval. No transcript of the proceedings had been secured.

75. I was not satisfied that the appeal should be heard on that basis. I directed that the hearing be vacated. It was re-fixed for the first available date, 1 June 2023.

76. In the course of the hearing on that date, it became clear that, contrary to CPR 52.21(2)(b), without obtaining any direction of the Court or any permission, the parties had included in the Appeal Bundle material that had not been before the Judge. That comprised the letter of 26 April 2022, with a copy of the cheque, and extracts from the bank account of the landlord purporting to demonstrate that had the cheque been presented before the section 21 notice was given (on 6 May 2022) it would have been honoured.

77. More importantly, the Appeal Bundle included an incomplete copy of what purported to be the Defence Form for the *second* claim (see para 29 above). That contained nothing of substance and only the odd numbered pages of it were reproduced. In any event, no such document had ever been sent to the Court prior to, or even after, the hearing before the Judge. Crucially, the *actual* Defence Form filed in the first claim was not included in the Appeal Bundle at all.

78. Notwithstanding these matters emerging during the hearing, the parties did not seek an adjournment but argued the appeal to the conclusion of oral submissions, over a full day, without either side having seen the Defence Form that had actually been before the Judge. I reserved judgment.

79. Immediately after the hearing, I formed the view that this was not a satisfactory basis on which to determine the appeal, particularly as anything I said as a Designated Circuit Judge - in an appeal argued by Leading Counsel - might later be considered to set some form of precedent.

80. I directed that the Court Files for both claims be transferred from Clerkenwell to this Court. On their receipt, I extracted the Defence Form for the first claim and immediately sent copies of it to the parties.

81. On receipt of that material, and by Application Notice dated 5 June 2023, the tenant applied for permission to amend the Grounds of Appeal to add an additional ground. The application was supported by a witness statement of the same date prepared by the tenant's solicitor. The landlord indicated that it opposed the application.

82. The application was listed before me on the first available date, 10 July 2023. The Court was presented with a supplementary Appeal Bundle and supplementary skeleton arguments.

83. After hearing argument, and for reasons I gave in a short *ex tempore* judgment, I decided that: (a) the Court had jurisdiction to re-open an appeal hearing, even after argument had concluded and judgment had been reserved; (b) exceptionally, in the events which had happened, it was just and proportionate to exercise that jurisdiction on the instant appeal; (c) that the application to amend the grounds of appeal should be allowed; (d) permission to rely on the new ground of appeal should be granted because it had a real prospect of success; and (e) the parties should have liberty to make further submissions on the original ground of appeal. To preserve the landlord's ability to challenge the correctness of those orders, I extended time to appeal from them until the making of the final order in the appeal.

84. I then heard both further argument on the original ground of appeal (in light of the additional material before the Court) and argument on the new ground of appeal. I again reserved judgment.

The new ground(s) of appeal

85. The new ground is expressed in these terms:

> "The District Judge was wrong to rely on "non-communication of non-acceptance". "Noncommunication of non-acceptance" is not relevant to whether a deposit has been returned.
>
> Alternatively, if it is relevant, the District Judge failed to identify that any relevant period for "non-communication of non-acceptance" could only be the period between receipt of the cheque and service of the s.21 notice. The submissions before her from the landlord were entirely to the effect that it had been subject to "ambush" at the hearing on 8 November 2022 and the issue of non-acceptance of the cheque had only been raised with it on that day. The District Judge failed to consider the representation by the tenant in his defence form, dated 29 September 2022 and received by the Court on 4 October 2022, that he had received a cheque and did not accept it."

86. In reality, this ground is making two distinct and alternative points. First, that the Judge had been wrong to direct herself that whether there had been non-communication from the tenant to the landlord, as to acceptance or rejection of payment by cheque, was or could be material to the question of whether the deposit had been returned. Second, if it *was* material, the Judge had misdirected herself as to the relevant dates. She had failed to focus on the correct period (perhaps as short as 27 April to 6 May 2022).

87. Before addressing these new grounds, I should make it clear that the tenant expressly disavowed before me any possible ground of appeal based on the Judge being wrong to have proceeded to determine the defence (that the deposit had not been 'returned') in the absence of any evidence beyond the statements of case and then to have disposed of the possession claim on a summary basis in a short hearing. As I have recounted, that had been a possible ground aired before the Judge after judgment on an application to her for permission to appeal. She had refused permission to pursue it. Ms Davies KC fully appreciated that such a ground might still be pursued by, yet another, (and oral)

application to amend the Grounds of Appeal so as to rely on it. Having taken instructions, she did not pursue that course.

88. Nor was I invited to determine the appeal on any basis other than that the Judge had been 'wrong'. More particularly, I was not invited to allow the appeal on the alternative basis that her Order had been "unjust because of a serious procedural or other irregularity in the proceedings in the lower court": CPR 52.21(3)(b).

Discussion

89. The oral and written submissions before me cannot sensibly be set out at length in this already long judgment. Any short summary by me would not do justice to their quality. Suffice it for me to record that I have had them fully in mind in preparing this judgment, having revisited my extensive hearing notes more than once and having read the various skeleton arguments (and their supplementaries) several times.

The first ground of appeal

90. Can a deposit *ever* have been "returned", for the purposes of HA 2004 section 215(2A), by simple delivery to the tenant of a cheque for the full amount where the cheque has not been presented to a bank for encashment (or for crediting to the tenant's bank account). That is the stark question of law raised by the original ground of appeal.

91. Before I furnish my own answer to it, I must first deal with what both parties considered to be an important question about the use of the word "returned" in subsection 215(2A)(a). The term "is returned" is used in the same section, at subsection 215(3).

92. The landlord's submissions, accepted by the Judge, sought to give some particular significance to the use of "returned" and to distinguish return or returning from the concept of repaying or repayment. The tenant's submission was that there is no distinction and that they mean the same things.

93. The question for the Court is what the word "returned" means in the statutory context in which it is used. In the present case, the relevant wording appears in Chapter 4 of Part 6 HA 2004.

94. That Chapter introduces a scheme of tenancy deposit protection. In the very first subsection it deals with deposits "paid" in connection with shorthold tenancies: s212(1). The term "tenancy deposit" is defined as meaning "money…intended to be held…as security…": s212(8). But, to meet the point that money might be treated as meaning only cash, the statute provides that money means "money in the form of cash or otherwise": s212(8). Without that provision, it would have been impossible to pay the sum of money, needed to constitute a deposit, by cheque, postal order, banker's draft, direct debit or otherwise.

95. The statutory requirements as to tenancy deposits so paid are then set out in s213. That section refers not only to "paid" and "payment" but also to a deposit being "received" (and also to "receives" and "receiving"). It is that section which introduces the obligation to protect the deposit in an authorised scheme, established pursuant to section 212. In Schedule 10 to the Act, provision is then made in relation to tenancy deposit schemes. The Schedule refers to a deposit that has been "paid" and to payments onwards by landlords of "amounts representing the deposits": Sch 10 para 1(2). The Schedule then deals with arrangements for amounts to be "paid" back out of the schemes to landlords and tenants.

96. In s214, there is reference to the deposit being "held" (and "holding") and to a landlord being ordered to "pay" the deposit onwards (e.g. in section 214(3)(b), in that case into a scheme). More significantly, that section twice references a potential obligation on a landlord to "repay" the deposit: in ss(3)(a) and (3A).

97. By the time the statutory scheme in Part 6 Chapter 4 reaches s215, the section with which I am concerned, the rubric begins to make reference not only to the deposit being "paid" to the landlord or having been "received" but also to its having been "given": s215(2) and (3).

98. It is against this background that the term "returned" in s215(2A)(a) must be viewed. In my judgment, in its proper statutory context, it means what it says. The deposit must have been "returned". But that cannot sensibly mean returning only the precise cash, or the original cheque or postal order, by which the deposit was first (perhaps many years ago) "paid". It must mean, in the context of the language used by the rest of the Part 6 Chapter 4, the return of the *amount* of money that the tenant had first paid or given and that the landlord had originally received. In this sense it is synonymous with giving back what had earlier been "given", returning what had been "received", and repaying what had earlier been "paid". I feel confident in reaching this conclusion given that the Court of Appeal in *Superstrike Ltd v Rodrigues* [2013] 1 WLR 3848 was able to give a wholly elastic treatment to the concepts of payment and/or receipt of a tenancy deposit.

99. It follows that the landlord was wrong to contend, and the Judge was wrong to hold, that any special or different approach was to be taken to the word "returned" as distinct from the use of the words "repaid" or "given back" or even "reimbursed". They all mean the same thing. An amount which is given is returned by its being given back. An amount which is paid is returned by its being repaid. To the extent that the Judge drew any material distinction, she was in error. It was an understandable one. She determined the point after a few minutes' submissions and only the briefest opportunity for reflection. I heard argument over two full days from experienced leading counsel, was treated to considerable authority, and took time to deliver judgment.

100. This enables me to move to the final issue under his ground which is whether a deposit can *ever* have been returned, or repaid, by a cheque which has not been presented for payment.

101. Ms Davies puts the point simply. If the landlord, or the statutory scheme in which the landlord protected it, still has the money - or an amount equivalent to it - then the deposit cannot be said to have been paid or repaid. That is the position if a cheque has been tendered to the tenant but not presented. Mr Warwick contends that the

statutory scheme recognises that the "money" constituting a deposit can be "paid" otherwise than by cash e.g. by cheque. It must follow that a deposit can be "returned" or "repaid" by cheque.

102. No-one disputes that a deposit *can* be returned by the presentation of a cheque to a tenant by a landlord which is then encashed by the tenant or deposited in the tenant's account. So, the dispute narrows down to whether a deposit can *ever* be returned or repaid by cheque, in circumstances where it is not (for whatever reason) encashed or credited to the tenant's account.

103. Posing the question in the abstract requires each party to adopt positions at the extremes. I understood Mr Warwick to be prepared to accept that where, for example, payments were routinely being made by landlord to tenant or vice versa by cheque and a cheque for the deposit sum was delivered, but was not presented sufficiently promptly to be honoured, there would have been the return of the deposit. Ms Davies' position requires her to accept that a tenant has not had a deposit "returned" even where they have expressly asked the landlord "please return my deposit by cheque" or agreed to a tenancy term mandating payments be made by cheque. Even where the landlord has presented the cheque in such circumstances, if the tenant has not then presented it to a bank in time for it to be honoured (whether deliberately, accidently, or otherwise) it has not been returned. I think she would even contend that there had been no deposit "returned" where the cheque had been presented, the sum had been drawn-down from the landlord's account, but it had then had not actually reached the tenant's account (e.g. where the sum could no longer be credited to the tenant's account because he had closed it).

104. In my judgment, the first step is to consider whether the law has, in any context, recognised that a payment or repayment of a sum may be made by the delivery of a cheque which has not in fact been encashed or credited on presentation to a bank.

105. The common law has long recognised that presentation of a cheque can amount to at least *conditional* payment: "the condition being that the cheque…should be duly met or honoured at the proper date": per Byrne J in *Felix Hadley & Co v Hadley* [1898] 2 Ch 681 at 682. In that case, on the facts, the condition was found to have been met and "there was payment as from the time of giving the…cheques" (p.683). In *Marreco v Richardson* [1908] 2 KB 584, the Court of Appeal was dealing with a limitation point arising from the date of presentation of a cheque. It had the decision in *Hadley* before it. In the course of the judgments, reference was also made to *Pearce v Davis* [1989] 2 Ch 680 in which Patteson J had stated: "The production of this cheque is not evidence of any loan; if it be evidence of anything, it is rather evidence of payment; ***it operates as payment, until it has been presented and refused***; and even if payment of it be refused, the refusal must be proved to have taken place before action brought." [Emphasis added]. Having cited that passage, Farwell LJ stated that:

> "In other words, if a man pays his tailor's bill by cheque and the cheque is accepted as payment, the tailor cannot sue for his account until the cheque has been presented and dishonoured. And ***if the receiver of a cheque does not present it for payment within a reasonable time, and the bank upon which the cheque is drawn fails***, ***the loss will fall upon the holder***; …payment is made at the time when the cheque is given, and I infer from the judgment of Patteson J. that the giving of a cheque would support a plea of payment. In the more recent case of [*Hadley*] Byrne J. held that a cheque or a bill of exchange given in respect of a pre-existing debt operated as a conditional payment thereof, and on the condition being performed by actual payment, the

> payment related back to the time when the cheque or bill was given. That is only expressing the same principle in another form, and I should myself prefer to say that the giving of a cheque for a debt is payment conditional on the cheque being met, that is, subject to a condition subsequent, and if the cheque is met it is an actual payment *ab initio* and not a conditional one." [Again, emphasis added]

106. Mr Warwick took me to *Homes v Smith* [2000] Lloyds LR 139 in which that passage from Farwell LJ's judgment was expressly approved. Lord Woolf MR stated (at para [35]) that:

> "The general position in law … is clear. Where a cheque is offered in payment, it amounts to a conditional payment of the amount of the cheque which, if accepted, operates as a conditional payment from the time when the cheque was delivered."

107. The issue then arose in a housing context in *Day v Coltrane* [2003] 1 WLR 1379 in which the Court of Appeal had to decide whether an amount of rent remained "unpaid" at the date of a hearing. The tenant had tendered a cheque for the rent which had yet to be presented. Based on the above authorities, the Court decided that "if the cheque is cleared, the debt has been paid when the cheque is delivered". Tuckey LJ said:

> "An uncleared cheque delivered to the landlord or his agent at or before the hearing and which is accepted by him, or which he is bound by earlier agreement to accept, ***is to be treated as payment at the date of delivery*** provided the cheque is subsequently paid on first presentation" (at para [9]).

He added that:

> "In the absence of express or implied agreement, the landlord is not bound to accept a last-minute cheque. If he is sent a cheque shortly before the hearing which it is not possible to have cleared through the normal clearing system in time for the hearing, ***he can refuse to accept it. He should obviously do so promptly*** and return the cheque, otherwise he may be taken to have accepted it." (at para [11]) [Emphasis added to both extracts.].

On the facts of that case, no attempt was made to return the cheque or reject payment by the cheque, and it was later presented and honoured. 'Payment' had therefore been made <u>from the date of receipt of the cheque</u>. The other members of the Court agreed with Tuckey LJ.

108. Drawing the strands together, I am satisfied that these authorities establish that a payment, and to my mind a <u>re</u>payment, may be made by cheque. That may be the result of express agreement to accept payment by cheque or of the imputation of agreement by the absence of rejection within a reasonable time from receipt. Further, that if presented and honoured, the date of payment is the date of delivery of the cheque to the holder. Applying *Day v Coltrane*, the sum due to be paid or repaid is treated as "paid", even if the cheque is not yet presented to a bank by the material date on which payment or repayment falls to be tested.

109. However, Ms Davies submitted that a different view should be taken in the present context from that which might be adopted in the general law. Here, the starting point is that the landlord is 'in the wrong'. HA 2004 Part 6 Chapter 4 was introduced to cure a social mischief and to safeguard tenancy deposits in a novel and highly specific way. Here the landlord did not comply with its legal obligations to protect a deposit that it had received. In consequence, it had not been able to give the tenant the assurance

that prescribed information, about the whereabouts of the deposit, would provide. It had, when desirous of seeking possession, not sought to establish any fault or wrongdoing on the tenant's part (and then used the procedure under HA 1988 s8, which it could do without any relevance to a tenancy deposit). It had instead sought to rely on a no-fault section 21 notice. It was debarred from doing so unless it had returned the deposit before service. That required it to get the 'money' into the tenant's hands before serving the notice. Unless and until that had occurred, it should not be permitted to rely on its notice.

110. I cannot accept the last of these submissions. There is certainly a statutory requirement in this regime to return, for present purposes by repayment, the deposit. The language of 'pay' and 'repay', 'give' and 'return', in respect of a sum of money is not specific but general. If one can 'pay' money other than by cash, as this statutory regime recognises, then one can pay by cheque. Likewise, one may repay money by cheque.

111. A tenant may or may not be bound to accept a payment tendered by cheque. That depends on the facts. A failure to reject a cheque may be taken as an implied acceptance of satisfaction with payment by it. Whether such time has passed as to amount to implied acceptance will depend on the facts and circumstances.

112. The repayment date will be the date of delivery of the cheque to the tenant (leaving open a question as to how and when a cheque might reach or be treated as reaching a tenant sufficiently to be treated as having been 'delivered'). That date will be the date of the 'return' of the deposit, if on presentation to a bank the cheque is honoured. If the cheque is presented and not honoured, there will have been no valid repayment or return of the deposit at that earlier date and the landlord will be unable to rely on the section 21 notice.

113. If the cheque is simply not presented to a bank, that *may*, at least in my judgment, not disable the landlord from reliance upon it. If a tenant, having expressly or impliedly agreed to accept payment by a cheque, simply tears up one properly tendered or sends it back, that too *may*, at least in my judgment, not disable the landlord from reliance upon it as having achieved a repayment or 'return' of the deposit. In this respect I am agreeing with the reasoning of McGowan J, albeit on an application for permission to appeal, in *Lingfield Point No2 Limited v Hodgson* briefly noted at 2015 October *Legal Action* 40, QBD.

114. It follows that the answer to the question posed by the first ground of appeal is that there *may* be circumstances in which a landlord can be found to have returned a deposit by the delivery of a cheque for the full amount even if: (a) the cheque has not been presented to a bank by the tenant before a section 21 notice is served; and (b) the cheque is not presented by the date by which it would have been honoured. As ever, the result in a particular case will need to be determined by the particular facts. As even Ms Davies stated in her supplemental skeleton (at para 11) the "question of whether a deposit was returned" is a "factual question". As Mr Warwick put it in his closing, it is a "fact sensitive exercise".

The new ground of appeal: first limb

115. The first limb of the new ground of appeal is:

> The District Judge was wrong to rely on "non-communication of non-acceptance". "Noncommunication of non-acceptance" is not relevant to whether a deposit has been returned.

116. It follows from the discussion of Ground 1 above that, in the absence of some *prior* express or implied agreement to accept payments by cheque, "non-communication of non-acceptance" after delivery *may* be properly considered by a trial judge as a *relevant ingredient* in determining whether a tenant is to be treated as having agreed to accept payment, or (more relevantly here) repayment, by cheque. As I have already held (see [111] above), failure to reject a cheque reasonably promptly may be taken as an implied acceptance of satisfaction with payment by it. Whether such time has passed as to amount to implied acceptance will depend on the facts and circumstances of each case.

117. To the extent the Judge here found "non-communication" not only relevant but the sole issue and determinative, she was wrong. The facts as to what happened after the cheque was 'received', in the sense of it coming to the notice of the tenant (once that date is established), are certainly material. But so too are any relevant dealings between the parties as to payments, or receipt of monies, *prior to* the receipt of the cheque.

118. As to what occurs *post-receipt* of the cheque, it will not only be a question of whether the recipient can be taken to have accepted payment by cheque. It is also highly material to determine whether the account on which the cheque was drawn was still open and in funds as at the expiry of what would have been a reasonable time for presentation of the cheque to a bank. Some learning on that point may be derived from the following discussion in *Chitty on Contracts* at 24-078:

> Where a negotiable instrument, upon which the debtor is not primarily liable, is accepted by the creditor as conditional payment, the creditor is bound to do all that a holder of such an instrument may do in order to get payment; thus it is the creditor's duty to present a cheque within a reasonable time, and if it fails to do so, and the debtor is thereby prejudiced, the creditor is guilty of laches and makes the cheque its own, so that it amounts to payment of the debt.

The new ground of appeal: second limb

119. The second limb of the new ground is:

> Alternatively, if it is relevant, the District Judge failed to identify that any relevant period for "non-communication of non-acceptance" could only be the period between receipt of the cheque and service of the s.21 notice. The submissions before her from the landlord were entirely to the effect that it had been subject to "ambush" at the hearing on 8 November 2022 and the issue of non-acceptance of the cheque had only been raised with it on that day. The District Judge failed to consider the representation by the tenant in his defence form, dated 29 September 2022 and received by the Court on 4 October 2022, that he had received a cheque and did not accept it."

120. I have no hesitation in allowing this appeal on the second limb of the new ground. That is because, even if the Judge was correctly directing herself that a deposit could be 'returned' by presentation to the tenant of a landlord's cheque, followed by a reasonable period of non-communication of rejection of payment by cheque, her finding that there was such 'return' in the instant case cannot stand.

121. First, and most obviously, she had *no evidence* as to what, if anything material, had occurred in the initial period between 27 April 2022 (date of asserted delivery of the cheque) and 6 May 2022 (date of asserted delivery of the section 21 notice). When had the tenant first seen the letter of 26 April 2022 and the enclosed cheque? Was that before or after 6 May 2022? What, if any, communication had there been between the parties from the point at which the tenant had seen the cheque – whenever that was - and 6 May 2022. As the attachments to the Defence Form indicated, the parties had been in communication by email in March and April 2022. Copies of those exchanges on the third page of the attachment included a reference to a message forwarded on 29 April 2022.

122. The Judge needed to be satisfied that between 27 April 2022 and the expiry of a reasonable time in which to accept or reject payment by cheque, the cheque had come to the notice of the tenant, and he had then failed to communicate a decision not to accept the cheque to the landlord reasonably promptly. The Judge had no evidence at all on which to base findings to that effect. Put another way, her finding on "non-communication" within a reasonable period was one without any evidential basis.

123. Nor had she any evidence at all about the pre-April 2022 course of dealings between the parties as to payments of money (either way) and the impact of that evidence on determining whether the tenant had already expressly or impliedly agreed to accept payment by cheque. She did not know how the deposit had been paid, how the rent had been paid, whether there had previously been tender or honouring of cheques (the Defence Form referred to a previous 'bounced' cheque), and so forth. Had she been taken to the attachments to the Claim Form she would have found among them a curious document dating back to 28 June 2011, under the landlord's letterhead, identifying an amount of £216.66 "to be used towards the first month's rent". That certainly raised questions about how payments passing between the parties were being made.

124. Second, the Judge directed her attention to the wrong period or, more accurately, failed to direct herself to the right period. The initial period for consideration was, at most, one of 10 days from 27 April 2022 to 6 May 2022. That included a weekend and a bank holiday. As recounted above, her judgment refers only to a section 21 notice "dated in May" (para 1). Her judgment contains no reference at all to 6 May 2022. That date may or may not have represented the end of a reasonable period for rejection of the cheque. She made no finding either way. What she did not find was that by "X date" the tenant must have been taken to have accepted repayment by cheque because that was a reasonable date by which he ought to have rejected payment by cheque.

125. Indeed, it is quite possible that that reasonable period had neither started nor elapsed by 6 May 2022. For example, if the tenant had been away from home for a fortnight covering 26 April to 9 May 2022, during which period the cheque and section

21 notice were each said to have been delivered, the period may not have even started to run until he returned home i.e. until after delivery of the section 21 notice.

126. As already explained, the Judge also needed to consider whether the reasonable period in which the tenant should have presented an *accepted* cheque might have extended beyond the date on which the landlord closed the account on which the cheque would have been drawn. But there was no evidence as to that date before the Judge (save that the tenant's case in the Defence Form was that it had already been closed before the date he signed that form) and nothing in her judgment suggests she was looking to identify or fix that date either.

127. In this respect, the Judge had been understandably misled by the landlord's submissions about 'ambush' i.e. that the tenant's rejection of payment by cheque was not known until the date of hearing. There had been no 'ambush'. The landlord knew, or could have known, by checking with its bank, that the cheque had not been presented to the bank for payment by 5 May 2022, the day the section 21 notice was dated. It nevertheless decided to issue and serve that notice. It knew that only a matter of a few days had passed since delivery of the cheque to the flat and of those days, three had been days on which the banks were closed. It was therefore taking a chance as to whether and when the tenant had discovered the cheque and whether and when he would accept payment by cheque (or would be treated as having done so).

128. The fact that the Court was dealing with the point only as late as 8 November 2022 was no fault of the tenant at all. The landlord had not filed the possession claim until 12 August 2022 (the section 21 notice having expired on 18 July 2022). It had not been served on the tenant until 28 September 2022. He had promptly responded and the Court itself had then directed the hearing for 8 November 2022.

129. Had the Judge appreciated the full chronology (available from the papers on the Court File), but not from the submissions before her, she would have seen that the tenant had advanced his point about the cheque in his Defence Form which he had returned to the Court virtually immediately following its receipt. That is the reverse of 'ambushing'.

130. A fair reading of the submissions made to her, the Judge's judgment, and her statement of reasons for refusing permission to appeal – taken together – is that the Judge was misled into thinking that she was concerned with the period from 27 April 2022 to 8 November 2022 which was the date on which she was told by the landlord's representative that the tenant was raising – for "the first time" (see para 1 of her judgment) – that he would not accept payment by cheque.

131. If she had correctly directed herself to the question of whether the tenant had impliedly accepted payment by cheque, given the expiry of a reasonable period after its having come to his attention, it is difficult to see how the Judge – on the sparse material she had – could have determined that question. Further, she had no material at all (beyond the tenant's assertion that the bank account had been closed) on which to find that had the tenant presented the cheque within a reasonable period after accepting it (or being expressly or impliedly bound to accept it) it would have been honoured.

132. For all those reasons, the Judge's Order cannot stand.

Outcome

133. For the reasons given above, this appeal is allowed. The order for possession will be set aside. I am not prepared to take the course adopted in *Day v Coltrane* of finding primary facts. Any such findings would be based on concessions or admissions made piecemeal in argument (whether oral or written) before me or before the Judge below. Neither I nor the Judge had any joint statement of any such agreed or admitted facts. I shall give (if sought) appropriate case management directions for the claim or shall simply remit the matter to Clerkenwell for directions to be given at that Court.

134. In circulating this draft for corrections in the usual way, I shall invite counsel to agree a suitable order, to avoid an attended hearing at the hand-down. If they cannot reach agreement, the judgment will be handed down and then followed by a short oral hearing to deal with consequential matters.

Endnote

135. To the extent (if at all) that this judgment may be taken to establish any points of potential general application, the following should be noted:

a. at the first hearing of this appeal, the landlord tendered to the tenant a sum of cash equivalent to the full deposit, and it was accepted. On any view, if it had not earlier been returned, the deposit was thereby returned. By the date of the second hearing of the appeal, the landlord had served a fresh section 21 notice. No doubt before, or perhaps shortly after, the delivery of this judgment, the landlord will bring a third set of proceedings seeking to recover possession. That may deflect at least the present parties from exploring further the matters considered in this judgment; and

b. there is presently before the UK Parliament a Government Bill which, if enacted, will remove the ability of a landlord to recover possession by service of a section 21 notice. That legislation, in its final form, may or may not transfer the present embargo on service of a notice seeking possession - absent refund of an unprotected deposit - into the other route(s) to recovery of possession and may or may not do so in the same language as provided for by HA 2004 s215(2A)(a).

HHJ Luba KC

14 August 2023