

# Curing defects in section 8 notices seeking possession – what is the test?

The Court of Appeal has recently considered whether the “reasonable recipient” test in *Mannai Investment Co Ltd v Eagle Star Life Assurance Co Ltd* [1997] UKHL 19 applies to notices served pursuant to s8 Housing Act 1988.

In the case of *Pease v Carter & Anr* [2020] EWCA Civ 175 the facts were that the landlord served a notice seeking possession due to an accrual of rent arrears. The landlord relied on the discretionary grounds 10 and 11 as well as the mandatory ground 8 set out in Schedule 2 to the Housing Act 1988. The landlord made an error when completing the form. It stated that the earliest date that proceedings would be issued was 26 November 2017. It should have read 26 November 2018. A possession order was granted at first instance and the tenant appealed.

On appeal, the landlord sought to rely on the “reasonable recipient” test established in *Mannai*. However, the Circuit Judge considered the case of *Fernandez v McDonald* [2003] EWCA Civ 1219 and held that the “reasonable recipient” test did not apply to notices served pursuant to s8 and held the notice to be invalid.

As a recap, *Mannai* was a case involving a notice served under break clauses in a commercial lease and held that if a defect in such notices was such that the reasonable recipient would understand the notice notwithstanding the defect, it would be valid despite that defect. In *Fernandez*, the tenants were granted an assured shorthold tenancy which became a statutory periodic tenancy at the end of the term. The expiry date was incorrect by 1 day. The landlord argued that *Mannai* applied but Hale LJ found that the notice did not satisfy the statutory criteria of expiring on the last day of a rental period and found that the reasonable recipient would have understood the notice to have the effect that possession would not be sought until after the incorrect date specified in the notice. The notice was therefore held to be invalid.

In *Pease v Carter* Arnold LJ considered the line of authorities and concluded as follows:

- i. A statutory notice is to be interpreted in accordance with *Mannai*, that is to say, as it would be understood by a reasonable recipient reading it in context;
- ii. If a reasonable recipient would appreciate that the notice contained an error, for example as to date, and would appreciate what meaning the notice was intended to convey, then that is how the notice is to be interpreted;

- iii. It remains necessary to consider whether, so interpreted, the notice complies with the relevant statutory requirements. This involves considering the purpose of those requirements;
- iv. Even if a notice, properly interpreted, does not precisely comply with the statutory requirements, it may be possible to conclude that it is “substantially to the same effect” as a prescribed form if it nevertheless fulfills the statutory purpose. This is so even if the error relates to information inserted into or omitted from the form, and not to wording used instead of the prescribed language.

The appeal was allowed. The Court held that statutory notices are to be interpreted in accordance with Mannai and Fernandez is not authority for the proposition that this approach is inapplicable in relation to s8 notices.

Another useful point to note from this case was that the Court of Appeal found that covering letters enclosing the notice itself could be taken into account when looking at the reasonable recipient test.

This is a useful case for landlords although it is always to be used as a last resort and notices should be checked careful to avoid errors and, where appropriate, saving wording should be included to cure a defect: Spencer v Taylor [2013] EWCA Civ 1600.

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