Neutral Citation Number: [2024] EWHC 1414 (KB)

Claim No: KB-2022-002777

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 7 June 2024

Before:

HIS HONOUR JUDGE SIMPKISS

((sitting as a Deputy Judge of the High Court)

Between :

FILIPE ALEXANDER SCALORA

Claimant

- and –

CLARION HOUSING ASSOCIATION

Defendant

- -
- -

SanMari Martins instructed under the Bar Public Access Scheme for the **Claimant**
Michelle Caney instructed Clarke Willmott for the **Defendant**

Hearing date: 8th, 9th, 12th, 13th, 14th, 15th, 16th, 21st, 22nd February 2024

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APPROVED JUDGMENT

His Honour Judge Simpkiss :

(Sitting as a Deputy High Court Judge)

Introduction

1. The Claimant brings this claim for damages as a result of an alleged wrongful eviction from a one bedroom flat ("the Flat") Flat 42B Leverstock House, Cale Street, Chelsea, London SW3 3QZ which he occupied as assured tenant under a tenancy agreement dated 7th February 2019 ("the Tenancy"). The Defendant is a registered provider of Social Housing which is registered with the Regulator of Social Housing and a Charitable Community Benefit Society under the **Co-operative and Community Benefit Societies Act 2014**. The Defendant owns the freehold of Leverstock House. It is the largest provider of social housing in the country and owns some 125,000 homes.
2. The Claimant's case is that the Defendant unlawfully evicted him from the Flat. In short he says that the Defendant, through its employees, deceitfully engineered a situation whereby it could claim that he had surrendered the tenancy and returned the keys. He said that he never surrendered the tenancy and was tricked into returning the keys.
3. Communications between the Claimant and the relevant officers of the Defendant were predominantly by email and the result of this case turns on the authenticity of the relevant emails. If they are authentic and were in fact sent by the Claimant, then this case is a very simple one.
4. The importance of this issue is demonstrated by the length of trial. It was estimated originally at 4 days but in fact took 9. This was mostly because the Claimant was in the witness box for 5 days (interposed by some other short witnesses) and there was a very thorough examination of his evidence and credibility and his case. The number

of documents and the way he put his case made this inevitable and I was satisfied that the length of the cross-examination was entirely justified. It could have been achieved in a shorter time but only if the Claimant had been much more straightforward in his answers and had focussed on the matters that are in fact relevant to deciding this case. I do not intend to set out my decision in relation to each and every issue of fact that was canvassed during this trial, only those that I need to in order to illustrate or explain my overall decision.

5. The Claimant exhibited a report from Dr. Joseph Ikhalia to his reply and in her opening skeleton Ms. Martins said that the Claimant relied on this. The court has ordered a joint expert report in this case and made no order permitting the Claimant to rely on any other report. I have not therefore taken any account of Dr. Ikhalia's report which is not admissible in evidence.

Legal Framework

6. At this stage I will set out the broad legal principles which are not in dispute.
7. The Tenancy was an assured tenancy. These are governed by the **Housing Act** 1988:

(1) A tenancy under which a dwelling-house in England is let as a separate dwelling is for the purposes of this Act an assured tenancy if and so long as:

a. the tenant or, as the case may be, each of the joint tenants is an individual; and
b. the tenant or, as the case may be, at least one of the joint tenants occupies the dwelling-house as his only or principle home; and
c. the tenancy is not one which, by virtue of subsection (2) or subsection (6) below, cannot be an assured tenancy.

1(A) Subsection (1) has effect subject to section 15A (loss of assured tenancy status).

8. Section 15(1) imports an implied term into every assured tenancy that the tenant shall not assign or sub-let the whole or part of the property without the landlord's consent. This has effect unless there is an express term to the contrary (section 15(3)). Where an assured tenant parts with possession or sub-lets their dwelling-house in breach of

an express term or implied term of the tenancy, the tenancy ceases to be an assured tenancy and cannot subsequently become an assured tenancy (section 15A).

9. It is not enough that the tenant occupies a dwelling as a home: it must be their only or principle home. Ms. Caney listed the following principles which can be drawn from **Islington BC v Boyle** [2012] HLR 18 per Etherton LJ:
    a. The length or circumstances of the tenant's absence may raise the inference that the dwelling which is the subject of the proceedings ceased to be the tenant's principle home so as to cast on the tenant the burden of proving the contrary.
    b. In order to rebut the presumption, it is not sufficient for the tenant to prove that at the material time it was their subjective intention and belief that the dwelling remained the principal home, The objective facts must bear out the reality of that belief and intention both in the sense that the intention and belief are or were genuinely held and also that the intention and belief themselves reflect reality.
    c. The issue is one of fact to be determined by the light of the evidence as a whole.
10. Ms. Martins emphasised that there was no requirement for the tenant to be in occupation the whole time and the court must consider the overall circumstances and reasons behind why the Claimant was absent from the property. I agree with that submission.
11. Any periodic tenancy can be determined by a notice to quit given by the tenant. This is a unilateral act which operates to end the tenancy (**Fareham v Miller** [2013] EWCA Civ 159). Once given a notice to quit may not be withdrawn or abandoned.

12. The appropriate period for a notice to quit is determined by any express stipulation in the tenancy agreement or by common law. In this case there are express provisions which I have set out below.

13. In the case of a residential dwelling the only requirement is that a notice must be in writing and at least four weeks (**Protection from Eviction Act 1977** section 5(1).

14. Ms. Caney also relied on the principles applicable to the surrender of a tenancy. Surrender may be by express agreement, in which case it must be by deed, or may take place by operation of law as an exception to the general rule that dispositions of interests in land must be in writing (**Law of Property Act** 1925 section 52(2(c)).

15. There is no distinction between surrender by operation of law and an implied surrender: The term "*is implied to cases where the owner of a particular estate has been a party to some act the validity of which he is afterwards estopped from disputing and which would not be valid if his particular estate had continued to exist. There the law treats the doing of such act as constituting a surrender*" (**Lyon v Reed** (1844) 13 M. & W. 285, per Parke B approved by Morritt LJ in **Allen v Rochdale BC** [2000] Ch. 221).

16. The doctrine of surrender by operation of law does not depend on the actual intention of the parties. It is founded on estoppel. A surrender by operation of law therefore does not depend on the intention of the parties, it takes place independently, and even in spite of intention (**Artworld Financial Corporation v Safaryan** [2009] EWCA Civ 303.

17. A claim for unlawful eviction can only be brought under section 27 and 28 of the **Housing Act** 1998 if the tenancy has not already come to an end through alternative means. Ms. Caney helpfully set out the undisputed principles:

a. Section 27 applies if the landlord, or anyone acting on behalf of the landlord unlawfully deprives a residential occupier from occupation (section 27(1)).

b. Section 27 also applies if a landlord or any person acting on behalf of the landlord attempts unlawfully to deprive a residential occupier to give up occupation, knowing or reasonably believing that it will do so (section 27(2)).

c. Subject to the following provisions, where section 27 applies, the landlord in default shall be liable to pay damages assessed under section 28 (section 27(3)).

d. Any liability under section 27(3) shall be in the nature of a liability in tort and, subject to section 27(4) shall be in addition to any other liability (section 27(4)).

e. Nothing in section 27 affects the right of a residential occupier to enforce any other liability, but damages shall not be awarded in respect of such liability arising by virtue of section 27 on account of the same loss (section 27(5)).

f. No liability shall arise by virtue of section 27(3) above if: (a) before the date on which the proceedings are finally disposed of: (a) the former residential occupier is reinstated in the premises; or (b) at the request of the former residential occupier a court makes an order that they will be reinstated (section 27(6)).

g. If it appears to the court: (a) that, prior to the event which gave rise to the liability, the conduct of the former residential occupier was such that it is reasonable to mitigate the damage for which the landlord in default would otherwise be liable, or (b) that, before the proceedings began, the landlord offered to reinstate the former occupier in the premises, the court may reduce the amount which would otherwise be payable as he thinks fit (section 27(8)).

18. Section 27 only applies if a landlord or person acting on their behalf acts in default of the statute. The words "*a person acting on behalf of the landlord in default*" require them to be acting on the landlord's behalf: (**Sampson v Wilson** (1993) 26 HLR 486).
19. A landlord who in principle acts in default of section 27 has a defence to a claim if they believed that the residential occupier had ceased to reside in the premises at the time.
20. I was also referred to the authorities in relation to liability for deceit of an employee. This depends on whether they were acting within their actual or ostensible authority (**Winter v Hockley Mint Ltd** [2019] 1 WLR 1617).
21. This case is, essentially, a fact-finding exercise. Ms. Caney referred to the principles summarised in the judgment of Dexter Dias KC sitting as a deputy judge of the King's Bench Division in **Briggs v Drylined Homes Ltd** [2023] EWHC 382 (KB). The judge set out the approach the court should take deciding the disputed facts which he had drawn from a number of authorities. They are:
    a. The burden of proof rests exclusively on the person making the claim. Each determination is governed by the civil standard of balance of probabilities.
    b. The court must survey the "*wide canvas*" of the evidence; the factual determination "*must be based on all available materials*". The court must "*consider each piece of evidence in the context of all the other evidence*".
    c. The court must decide whether the facts to be proved happened or not.
    d. There are important limits on the reliability of human memory: a) memory is a notoriously imperfect and fallible recording device; b) a greater confidence displayed by a witness does not necessarily correlate with a correspondingly more accurate recollection; c) the process of civil litigation subjects the memory to powerful biases, particularly in the case of a party seeking a

particular outcome or where a witness has a tie of loyalty (**Gestmin SCPS S.A. v Credit Suisse (UK) Ltd** EWHC 3560 per Leggatt J at 15-22).

e. Common sense, not law, requires that … regard should be had, to whatever extent appropriate, to inherent probabilities (**Re H** [2008] UKHL Per Lady Hale at 15). Contemporary documents are always of the utmost importance, but in their absence, greater weight will be placed on inherent probability or improbability of witness's accounts.

f. The court must be vigilant to avoid the fallacy that adverse findings on one issue are determinative of another, but they are relevant to the analysis.

g. Decisions should not be based solely on demeanour, but this retains a place n the evaluation of credibility and may "*offer important information to the court about what sort of person the witness truly is, and consequently whether an account of past events or future intentions is likely to be reliable*" (**Re B-M (Children: Findings of Fact** [2021] EWCA Civ 1371 per Ryder LJ at 23).

The witnesses

22. The Claimant relied on witness statements he had made and was cross-examined at length. I'm afraid that I found him a very unreliable witness. The main (but not the only) reason that his cross-examination took so long was that he was extremely reluctant to accept anything. When Ms. Caney started to ask him about the number of bank accounts he had, he refused to answer and then said that he didn't remember. When pressed, with some documentary evidence, it was clear that he had a good memory of them. This was a characteristic development of his answers to many of the questions.

23. In relation to questions about contacts with the Defendant's staff, his reason was that he didn't trust anything that emanated from the Defendant. Although Ms. Caney had

believed that there were only 12 emails the authenticity of which was challenged and the parties agreed that these were the ones to be considered by the expert, at trial the Claimant refused to accept that any were genuine. Ms. Caney had to press him on a number of points which he had previously admitted because he denied them as his first response to her questions. Eventually, he conceded on some of these but stuck doggedly to his guns in relation to the emails which I refer to below and which he knew would be extremely damaging to his case if he admitted their authenticity, even though they fit the agreed chronology and in most cases related to matters that he agreed he was in contact with the Defendant at this time. I will deal with these in more detail below.

24. A central issue of this case is what to make of the Claimant's purported belief (stated on several occasions in his oral evidence) that he is the victim of a conspiracy involving many of the Defendant's employees to manufacture a case that he has willingly surrendered his tenancy. His principal targets are the original Housing Officer, Ms. Miller, and the investigating officer, Mark Connolly, who carried out an investigation into the case following the Claimant's complaint that Ms. Miller had tricked him into giving her the Flat keys and then let Mr. Brown occupy it. He also carried out a PACE interview of the Claimant on 23rd November 2023 with Paul Henderson and other interviews of the Defendant as there was also an investigation of the Claimant's involvement.

25. Although I take account of the possibility that he has persuaded himself that there was a fraud being perpetrated here because of the expert evidence, this doesn't get over the difficulty he has that he must in fact sent most, if not all of the emails apart from those which the parties asked the expert to consider and that his attempts to deny that he sent them on technical grounds cannot overcome the overwhelming other evidence

that he did send them. That means that he knows that he sent them and in putting forward the case he does he is being thoroughly dishonest. I have to decide the authenticity of the emails (or sufficient of them) and if I decide that they are his case falls apart as does his credibility. The circumstances under which Mr. Brown came to occupy the Flat clearly raise concerns but even if he was put into the Flat by Ms. Miller without her bosses' knowledge, this does not mean that she tricked him into giving it up. It is equally likely that she took advantage of his absence to use the Flat. Although there is no evidence to justify a finding that the Claimant acted in collusion with Ms. Miller in allowing Mr. Brown into the Flat, this would also be a possibility which would be consistent with his having agreed to give up the Flat. The Claimant's communications with Ms. Miller strongly suggest that he was on very friendly terms with her and this conflicts with his evidence that he had little to do with her for and only saw her twice apart from when he signed the Tenancy.

26. The Claimant has lied to the court on a number of occasions. For example, in his witness statement he challenged the email in which it appears that he is asking for reimbursement of £2,500 spent on refurbishing the Flat. He says that he would never have done this because he spent £26,000 on the Flat but in cross-examination it became clear that he had spent nothing like this sum. In his original complaint statement he said he spent £19,000 and he was unable to produce any evidence to show what he has spent. He included the cost of the flooring which he had cancelled, soft furnishings and electrical appliances.

27. The Claimant was asked about his own financial position in relation to his application for social housing. He was extremely evasive about this and whether he was working at the time. In particular he was asked about a sum of £100,000 paid into his own Barclays Premier account in February 2014. When asked what this was for he replied

that it was a loan to his company Total Compliance and that we would find it on a list of payments to that company. He gave an elaborate explanation that it had to be paid into his account first. It became clear that this was untrue and that only £8,250 of the money was transferred to the company following receipt by him. The remainder stayed in his account. He also said that he had wound the company down but this was also untrue as it had been wound up by HMRC for failure to pay tax.

28. Other examples of the Claimant's lack of credibility are referred to below.
29. I therefore conclude that I can't rely on any evidence given by the Claimant unless it is uncontroversial or backed up by some other solid evidence. I am satisfied that his evidence has been designed by him to present a case that fits in with the result he wants to achieve and has little or no connection with the truth.
30. For reasons given later, I am unable to rely on the evidence of Ms. Kelly Sallinger. Firstly, because she has, inexplicably, destroyed what she says was a contemporaneous note of the telephone conversation she says that the Claimant asked her to make a note of; and, secondly because her statement has been closely discussed with the Claimant and I cannot therefore accept that it is necessarily her own recollection. Her evidence is coloured by what she has been told by the Claimant since he decided that he wanted to return to the Flat or to be re-housed in a larger property.
31. There was nothing to suggest that any of the witnesses that the Defendant called were giving anything other than evidence that they believed was true and they came across as honest witnesses who were assisting the court and not afraid to say things that a less fastidious witness might resist as damaging their employer's case.
32. The Claimant made much of the fact that the Defendant did not call Ms. Miller to give evidence nor Mr. Mark Connolly. Clearly each would have faced some challenging

questions but the actions and evidence of neither decides this case. The Claimant's case (as articulated by him) was that Ms. Miller and Mr. Connolly were dishonest and had concocted emails to suit or cover up their positions. There are no adverse inferences to be drawn from their absence. The Claimant's case is not that she tricked him into giving up the Tenancy but that she created evidence to suggest he had and then moved Mr. Brown into the Flat. The Defendant's case is that the Claimant gave notice to terminate the Tenancy. The Defendant's case does not depend on Ms. Miller's evidence and establishing that she or Mr. Connolly were dishonest doesn't affect this.

The chronological events

33. I will start by setting out the background facts and those facts that cannot be contested if the emails are found to be authentic. Their authenticity is hotly contested.
34. The Claimant was born on 30th July 1980. Prior to being granted a tenancy of the Flat he held a secure tenancy of a one bedroom flat at Flat 30 Trellick Tower, 5 Goldborne Road, London, W10 5PA.
35. The Claimant had previously studied to be a solicitor but his student membership of the Law Society was cancelled by the Solicitors Regulation Authority in 2008 on grounds of dishonesty. That decision was upheld on appeal to the Court of Appeal: **Re a Solicitor, Scalora** [2009] EWCA 928. The Claimant's student membership of the Law Society had been terminated on the grounds of dishonesty. This was because in January 2006 he had applied to Linklaters for a training contract but and in his application form he had dishonestly said that he had passed in the GDJ at the University of Westminster when he had not sat the exam. He pleaded that he had been very ill and that was why he had not taken the exam. Lord Justice Waller dealt with his appeal and upheld the decision. Clearly this does not mean that the Claimant has

not given reliable evidence in the present case, and as this happened many years ago the court should be very wary about giving a great deal of weight to this, but it is relevant as it shows that the Claimant, who is highly intelligent and has the ability to be offered a training contract at a major law firm, is prepared to make dishonest statements and is not someone of impeccable credibility.

36. The Tenancy was granted by a written agreement dated 7th February 2019 at an initial rent of £604.15 per month. The express terms which are or may be relevant imposed the following requirements:

    a. to pay rent in advance on the 1st of each month (clause 2(2)(a).

    b. to live there, and use it as his only or principal home (clause 2(8)(a).

    c. Not to alter the structure of the Flat or any fixtures and fittings without first obtaining the Defendant's written permission (clause 2(10)(a).

    d. Not to sub-let the whole or any part of the Flat (clause 2(22).

    e. Not to take a lodger without written permission (clause 3(2).

37. The Tenancy also contained the following contractual termination provisions in clause 8:

"1 ***Your ability to end the Tenancy***

a) You can end this tenancy at any time by giving us at least one calendar month's written notice (for example, if you give us notice on the 14th September, the tenancy will end on the 13th October). You just pay us any rent or other charges owed before leaving. At the end of the notice period, the tenancy will end.

b) You must return all keys to your home to us no later than 10am on the day after the tenancy has ended. If the keys are not returned on time you will have to pay a month's rent.

c) You must give us vacant possession when you leave and must leave your home in a clean and tidy condition and free of rubbish and personal belongings. If we have to clean or clear your home, we will charge you with the cost of doing this. We may sell your belongings but if they have no monetary value you agree we can treat them as abandoned, dispose of them and charge you any costs involved."

38. Clause 2(10)(b) of the Tenancy provides that any improvements made during the tenancy or fixtures and fitting installed (a) would become the landlord's property if left behind at the end of the tenancy; or (b) if removed, the Flat must be reinstated.

39. Six weeks after the start of the Tenancy (19th March 2019), the Claimant emailed Clair Drake, Available Homes Officer of the Defendant, copying the email to his then Housing Officer, Alecia Miller, stating that he was "*looking at renting [his] front room out*". This was sent on email account: as@countermail.com ("the countermail account").Ms. Miller responded on 20th March 2019 attaching a copy of the tenancy agreement and stating that he could not rent the room out. In fact, the Claimant admitted in cross-examination that it would be impossible to rent out the front room of the Flat if he remained in occupation as there simply wasn't enough room. In cross-examination the Claimant denied that he had ever requested to rent out a room. I will dispose of that point now. He was interviewed following his return from abroad and there is a transcript of the interview. In that he admits that he requested to let out "*the spare room*". His subsequent denial is an example of his inability to accept anything which might conceivably contradict his case against the Defendant even when there can't be any real dispute about it. He even disputed that he had said this during the interview and continued to deny it when the interview was played to him in court.

40. The Claimant then emailed Ms. Miller (using the countermail account) and pointing out that the tenancy agreement gave him a right to take a lodger with written permission. Ms. Miller confirmed that he could but that if rent was paid then the Defendant would "*reclaim the property back from you*". All emails from the Claimant referred to below were on the countermail account unless or until I indicate otherwise in the this judgment.

41. On 13th May 2019 the Claimant emailed Ms. Miller informing her that "*I am in Dublin working at the moment. I will be here for the next few months. I am sending a set of keys to a mate so that she can check on the flat every now and then. If there's any problems can you email me to let me know.*"
42. Ms. Miller replied by email the same day asking for him to state his name and address as "*there is quite a few parcels in the office*" and he responded "*Hey Alicia Its Alex*" and gave his full name and address as the Flat. The next day she emailed back to say that his friend should contact her to pick up the parcels which were in the office.
43. All this fits in with the chronology what the Claimant accepts – namely that he was in Ireland working.
44. The Claimant later sought the Defendant's permission to make some alterations to the Flat and by letter dated 30th September 2019 was granted permission to replace the bath, basin and toilet, subject to specific conditions. These included: (a) that no changes were made to the plumbing; (b) the Defendant would be responsible for any reinstatement works or the cost of the same; and (c) any costs associated with the project were the Claimant's sole responsibility.
45. On 19th October 2019 the Claimant emailed Ms. Miller and Ms. Drake stating that he had noticed a storage unit "*downstairs*" was for rent and that he would like to rent it. Ms. Miller's response was to tell him that "*I am no longer your housing officer*" and that he was now under the "*North London Team*" and should contact the contact centre who could help him. At that state the Claimant was aware that Ms. Miller was no longer his Housing Officer and that he should deal with a new Housing Officer going forward. He denies these emails and I will deal with this later, but he has to deny them because they confirm the emails with Ms. Miller when she tells him she is no longer his Housing Officer.

46. The Claimant did not deny that he made enquiries about storage and in his reply he admits that he removed some of his furniture into storage before he left the UK. The emails are therefore consistent with this. He also accepted that he was in London then, and the flight information confirms this. His only explanation for the email about storage is that it is forged.

47. The Claimant was asked why he needed storage. In his first witness statement he gave an elaborate explanation that the Flat was "*barely liveable in and required extensive renovation*". He arranged for John Lewis to survey and measure the Flat for new flooring and paid for it. The survey was carried out on 30th October 2019. The installers asked him to remove some of his furniture from the Flat before the flooring work could commence. Originally the work was to be done before Christmas but the fitting date was moved to 6th January 2020. He says that therefore moved the furniture to a storage facility he had used before in Somerset. This included a fridge, Habitat desk, 3 Habitat glass coffee tables, a large wardrobe, a small wardrobe, a chest of drawers and a TV, although the Claimant says the TV remained in the Flat.

48. If the email from the Claimant to Ms. Drake on 19th October 2019 is genuine then this account must be untrue because he didn't place the John Lewis order until 30th October 2019.

49. The Claimant failed to make any mention in his evidence of what really happened. On 12th December 2019 he cancelled the John Lewis order and asked for a refund. He cancelled the 6th January 2020 installation date. He was not given a full refund because the flooring had already been purchased. This refund was paid into his bank account.

50. There are a number of problems with his account, one of which is that he was completely unable to explain why he cancelled the order and didn't defer laying down

the floor for 6 months or so when he says he intended to return to the UK. Nor does this explain why he did not leave the furniture in situ even though he knew he was not going to be in the Flat for 6 months. Alternatively, why he did not arrange for a friend – eg Ms. Laccorte – to supervise the floor-laying in his absence. In short, I got the clear message from the Claimant's evidence on this point that he was simply making it up to meet whatever questions were put to him. At the end of the hearing on Friday 9th February he said that the flooring had been delivered to the Flat – with the clear implication that this was by John Lewis. When it was put to him the following Monday that this was inconsistent with the documents and that John Lewis had delivered it to the installers who had put it into storage he immediately said that the installers had delivered it to the flat. The Claimant has produced no documentation relating to any of this. During the course of the Defendant's investigation of this matter Mr. Connolly contacted John Lewis on 4th October 2022 and asked for information about the flooring order. John Lewis responded on 4th November 2022 quoting a note that had been added to the order on 12th December 2019 in the John Lewis system:

"customer called to say he wants to look at cancelling the order as he is leaving the country on 31st December and will not be back until June which means he will have to give up his flat. he will need his fit date cancelling. I have advised a potential 40-50% handling fee of flooring it supplier takes it back".

The Claimant says that this is not genuine because it has been doctored by Mark Connolly, but there is nothing to suggest that it has been forged and no reason nor evidence why John Lewis would make this note unless the Claimant had given them this information on the phone as recorded. The Claimant accepted under cross-examination that the Defendant's solicitor had not been involved in any conspiracy and had not concocted emails. Since the John Lewis email was sent by John Lewis to Mr. Connolly but copied to the Defendant's solicitor at the same time, the Claimant's

allegation is ludicrous and false. The email otherwise accords with the uncontested fact that the Claimant did speak to John Lewis and was refunded.

51. On 31st December 2020 the Claimant flew to Mumbai, India. He did not return to the UK until 11th April 2022 when he flew to London Heathrow from Dubai International Airport. In between he had been in working in various other countries as well as being locked down in Australia as explained later. He booked the flight to India on 11th December 2019 with a ticket that enabled him to return by 16th June 2020.

52. I will now refer to a number of emails which the Defendant relies on and which both parties agreed to instruct a cyber expert to examine in order to advise on their authenticity. I have labelled each one to cross refer to the expert report.

53. On 27th January 2020 the Defendant's Contact Centre Team received an email ("email 1") stating:

"Hello Nicola
I've not heard anything. What's going on with this?
Also, I am looking to give my flat up. I have spent about 2,500 on improvements (painting decorating, new kitchen bench top, etc) I would want this money back
Can you please let me know what the process is?"

54. The Claimant's case is that this email has been forged, although he does not say by whom. In cross-examination he said "*it has to be a forgery*".

55. This email was sent via as@cmail.nu. ("cmail account") which the Cyber expert has confirmed is from the same domain as the countermail account. This email forms part of a chain of emails involving an earlier complaint by the Claimant about a community water tank. The complaint is first referred to in a letter from the Defendant's customer solutions co-ordinator, Charlotte Canty, dated 23rd December 2019 and a telephone call from the Claimant dated 13th December 2019. The Claimant responded by email on 30th December 2019 using the cmail account leading to the email of 27th January 2020. Sue Marsh (customer contact advisor) responded about

the water tank and her email informed the Claimant that he would need to give one month's notice of termination and directed him to the Defendant's website for the form that he needed to complete or that they could post the form to him.

56. On 13th February 2020 the Claimant emailed on cmail ("email 2"):

> *"Sue" at the Contact Centre Team:*
> *"I am abroad and won't be able to complete the form if mailed. Can you please email it to me? It will be from 30th March 2020".*

57. Nicola L (customer contact advisor) responded to that email on 14th February 2020 informing the Claimant that he would not be reimbursed for improvements and could not email the form, but pointing out the Defendant's website address where he could find the form for moving home. The Claimant responded on cmail ("email 3") saying that he would need to be sent the form by email as he couldn't find it and that the website stated that certain improvements could be reimbursed.

58. The Claimant made his last rental payment on 28th January 2020 and has paid nothing since. The Claimant cancelled his direct debit payments of rent on 20th February 2020 and has never attempted to set them back up. The Claimant's case is that the bank (HSBC) cancelled the direct debit without his knowledge. In his Reply he said that he "*didn't cancel the direct debit until Ms. Miller said to me that she had got a nominee tenant*". His evidence under cross-examination appeared to be suggesting that he didn't cancel it but that the Defendant did. This is all completely inconsistent with the Reply. I am satisfied that the Defendant must have cancelled the direct debit after the payment on 28th January 2020 on 20th February 2020. His account in the Reply can't be true because at the time the direct debit was cancelled (before the February rent payment) he had not been in contact with Ms. Miller who he says told her that there was a nominated tenant.

59. There is also clear evidence that the gas account with British Gas was cancelled on 11th January 2020, although the Clamant said it was closed in October 2020 or 2021. He was asked when the Thames Water account was closed and said October 2020. In fact the documentary evidence showed that it closed on 31st December 2019 which Thames describe as "*the move out date*" in their response to the Claimant's request for details.

60. The Claimant sought to explain the British Gas closure by suggesting that he had greatly overpaid and was in credit but has produced no gas accounts to support this assertion. He said that payments to Thames continued to be taken by direct debit and he was reimbursed for the overpayment. This is not in his witness statement which is misleading on this point.

61. The next important event was an email sent on 25th February 2020 ("email 4") from the countermail account to Ms. Miller stating:

"Hey Alicia
How are you? I sent an email to customer services letting them know I want to move out at the end of March. I have some mail that needs collecting, and I need to send the keys to someone, as I am abroad. Are you able to help?"

62. This email also forms part of a chain of emails with Ms. Miller going back to 21st October 2019 when the Claimant had asked her who his new Housing Officer was.

63. On 2nd February 2020 the Claimant flew from Mumbai to Brisbane Australia with a return ticket booked for 23rd February 2020. He says that it was his intention to visit his parents who lived there. As a result of breaking a bone in his foot on 16th February 2020 he re-booked his return flight for 1st March 2020 but delayed his return to 20th March 2020. Australia closed its borders due to the Covid crisis on 16th March 2020 and the Claimant remained in Australia. On 31st October 2020 he flew from Brisbane to Dubai. He says he was there for about 5 months and then flew to Malta for work

reasons, returning to Dubai. At some point he was in Abu Dhabi. He also went back to Australia once the lockdown had ended.

64. Following the email of 25th February 2020 there were a number of further emails relating to post and to the keys to the Flat ("emails 5 to 8").

65. The Claimant says that he telephoned Ms. Miller on a number that he had written down on a notepad before he left the UK. He exhibited what he said was a page of his paper notepad which contains a list of names with their telephone numbers. Most of it looks as if it was copied down from another source at the same time. He told me that this was his travelling notebook and he wrote the numbers down sometime in 2019. This was not disclosed on disclosure and only came to the Defedant's notice when it was exhibited to the Claimant's first witness statement in October 2023. He says he took a photograph of it in 2020 which was on his phone.

66. I find it impossible to believe any of this. It is probable that Ms. Miller's number was on his phone in London. He has concocted the list in order to explain why he was able to phone Ms. Miller consistently with his saying that he has lost the phone he had when he was in London. Ms. Salinger's evidence was that it was Ms. Miller who phoned the Claimant who then asked her to listen in and make the note referred to below.

67. The Claimant has produced no WhatsApp messages at all and no emails from his systems earlier than April 2020. As explained later, I find that he has deliberately wiped his WhatsApp messages and his emails in order to avoid revealing material that would show beyond any doubt that the relevant emails were in fact authentic.

68. The Claimant's written evidence is that during this telephone conversation (which he said in cross-examination was in March 2020) he told Ms. Miller that he was stuck in Australia and she told him that the Defendant required access to the Flat for gas

inspections that were overdue. She told him that injunctions would be applied for if he didn't allow access and he would lose his home. Court proceedings were about to be commenced and that he should send her the keys. His case is that he sent one set of keys to Ms. Miller and kept the other set of keys in Australia.

69. The Claimant then says in his statement that in a call with Ms. Miller in March she told him that it would be necessary to house people in the Flat because of the pandemic and she would need to make arrangements to store his belongings. She promised that he would be able to return to the Flat or that the Defendant would give him an alternative large two-bedroom property.

70. So important did the Claimant consider this conversation to be that he asked Ms. Kelly Sallinger (with whom he was staying in Australia) to make a note of it. I do not accept Ms. Sallinger's account. She has known the Claimant since he was 17 as he was a friend of her daughter's at university. She told me that she had spoken to the Claimant "*on numerous occasions*" between 2020 and June 2022 about the Flat and he typed out the statement for her to sign once she had spoken to him over the phone.

71. She said she made a contemporaneous note which she destroyed after making her statement. She was a senior criminal lawyer in Australia and it is very difficult to accept that she would not have been aware of the importance of a contemporaneous note at the time she destroyed it – ie when making a formal statement. Nor is it credible that the Claimant would ask her to make a note at a time when he had no suspicions of Ms. Miller and she is alleged to have called him out of the blue. All he had to do is to email Ms. Miller – or WhatsApp her - setting out what she had just told him and ask her to confirm it. That would have been far more secure.

72. It is very surprising that he contacted Ms. Miller rather than phone Clarion's Contact Service Centre since he was well aware she was no longer his housing officer. When

asked why not, he said that he emailed Clarion but this email has not been produced and in his witness statement he says he told Ms. Miller at this time that he did not have access to emails as he had lost his phone in India.

73. The emails produced by the Claimant show that on 28th February 2020 an email was sent to Ms. Miller on the countermail account ("email 9"):

"Hey Alicia
Thanks again for all your help. I sent the keys off yesterday. The tracking number is EY105503815AU and can be tracked on www.auspost.au/track".

74. There were email communications between the Claimant and Ms. Miller about the keys (all of which are disputed by the Claimant) and ("emails 10 and 11") on 23rd March 2020 she confirmed to him that she had received the keys. This was in fact the day that the UK was put into national lockdown because of Covid. The Claimant does not dispute that he sent a set of keys to Ms. Miller.

75. On 12th March 2020 the Claimant emailed Ms. Miller and copied Ms. Lacorte ("email 12"):

"Hi A
How did you get on with the keys? I've asked Paola (copied above) to collect the sofa and other small items in the flat. Can you let her in when you get the keys arrive? Thank you!

76. Ms. Lacorte arranged to collect some of the Claimant's belongings from the Flat which she says was on 19th June 2020. Having done this she realised that part of a coffee machine was missing and she sent a text to Ms. Miller about it.

77. On 15th June 2020 the Claimant sent an email to Ms. Miller, asking "*when you get a a second can you re-send those pictures of the letter from the Revenue and the two from Companies House. WhatsApp is ok. Also, did you manage to find that tracking number? There are a few cards* [a reference to credit cards] *in that parcel that I need to set up* …". Then on 14th July 2020 he emailed Ms. Miller again about the cards:

"*Messaged you on WhatsApp. I've got some mail coming. Its from the Bank and will need to be forwarded on to me. Is that okay? This should be the last of it now.*"

78. On or before 20th July 2020 the Claimant made a web enquiry asking the Defendant to update his details by changing his email address to: user@theptrust.com ("ptrust account") on the grounds that he no longer had access to the email address he used to register for online services. He accepts that this was genuine and that he made the enquiry. Customer services asked for further details for security. He was asked why he was updating his details and explained that it was because he had received a delegated authority document. On 20th July 2020 the Claimant made another web enquiry using the ptrust email in which he said he received a delegated authority notice but had not completed or signed one. He asked about the status of the Flat – whether it was still in his name? and said "*I did advise that I was travelling when I left earlier this year*".

79. On 14th August 2020 the Customer Service Advisor – Sophie S – replied that she had looked on the system and saw that a request had been made "*to add your partner Cyril Brown as a delegated authority on the account, if this request was not made by you please could you let us know*".

80. If the Claimant believed that he was still the tenant and, as he says, did not know anyone called Cyril Brown and he was not his partner. It is astonishing that his response to the news was as lame as is set out above. The Claimant says that he contacted the Royal Borough of Kensington and Chelsea the next day and also Ms. Miller by WhatsApp. What we do have is an email to Ms. Miller dated 20th December 2020 from the Claimant on the ptrust account wishing her a Happy Christmas and telling her that they will speak on WhatsApp and: "*I need by flat back! Or (preferably) another flat on the Estate. My business is slowly taking shape, and I need*

(your help) Xx". There is no reference to delegated authority, Mr. Brown nor to the "*promise*" she says was made by her to get him a new flat on his return to the UK. This does not sit well with the Claimant's evidence in court that he was "*incredibly upset*" when he found out that someone else was occupying his flat and he does not dispute the authenticity of the above emails.

81. We now know that a fraudulent email was sent to the Contact Centre on 29th April 2020 purporting to be from the Claimant using FS20192020@outlook.com asking for his partner to be added to the account as a household member and for a Delegation of Authority form to be posted. This would, of course, have gone to the Flat. Ms. Bartlett agreed that the advisor dealing with this at the Contact Centre had made a mistake by not going through the usual checks and that this had not been picked up in the routine control checks.

82. It is accepted that the Claimant did not request a Delegated Authority for Mr. Brown and did not ask for him to be added to the account as a household member. It is also indisputable that this went through the CRM system and was not picked up until the Claimant emailed in July/August 2020. Ms. Bartlett was then asked whether she agreed that the Defendant should not be maintaining that the Claimant was a fraudulent party. At first she agreed, but then she said that she was only agreeing that it should have been picked up by Kelly, who was the one who processed it, and not that she was accepting that he was in on a fraud. It was clear that her first answer was a genuine misunderstanding of the question.

83. On 15th April 2020, the Claimant incorporated a company called The Provenly Company Limited ("Provenly)". He is the director and company secretary. The original registered address of Provenly was the Flat but his was changed to 7B Burton Road, London, NW6 7LL on 25th June 2020 and this was changed to 71-75 Skelton

Street, London WC2H 9JQ on 30th November 2020. It was only changed to the address of the Flat on 16th December 2021 after this dispute arose. The relevance of Provenly relates to the disputed emails and is referred to later.

84. On 25th June 2020 a payment of £400 was made by Cyril Brown into the Claimant's Wise Bank account Sort Code: 23-14-70 Account No: 87944157. The Defendant's allege that this was in payment for the washing machine that the Claimant agreed to sell to Mr. Brown. The Claimant refers to this in his witness statement and appears to accept that he received the payment. He states that this must have been part of the Defendant's conspiracy and they arranged the payment "*so that they could explain the theft of my belongings and all the false narratives they'd constructed*". He was asked in cross-examination whether Ms. Miller and Mr. Mr. Brown had bought the washing machine from him and said no. About an hour later he said that it was Mr. Connolly and Mr. Brown who organised it. When it was put to him that the payment went into his personal account he said that it had gone into Provenly's account. He tried to check the Provenly account on his phone and had ample time before the end of the trial to find the entry but was unable to do so. This was just made up as the questions came.

85. The Claimant returned to the UK on 11th April 2022 having been out of the country for two years and three months. If his tenancy had not been ended then he would have been in arrears of £16,312.05.

The emails and expert evidence

86. Two experts have been instructed for the purpose of this trial, a cyber expert and a valuation expert. These were as single joint experts and they were not required to attend to give oral evidence. At this stage I will not refer to the valuation expert whose evidence relates to quantum.

87. The cyber expert was Mr. David Woodgate-Martin. He was asked to give his opinion on (a) whether 12 emails which the Defendant said had been sent by the Claimant or had been sent to him between 27th January 2020 and 11th March 2020 and formed the basis of the defence that the Claimant had surrendered the Tenancy, were forgeries as alleged by him; (2) a determination of whether WhatsApp messages between the Claimant and Ms. Miller had been deleted either by the Claimant or by Ms. Miller or anybody else. (3) a retrieval of any WhatsApp messages between the Claimant and Paola Lacorte by searching those individual's devices. The instructions were signed by both parties.
88. The expert produced two reports dated 27th September 2023 ("the WhatsApp report") for which he examined two phones: and Huawai Mate 20 and an iPhone 13 Pro Max; and dated 8th November 2023 ("the email report") for which he examined a MacBook Air Laptop, a Huawai Mate Pro 20 and 12 disputed emails.
89. In the WhatsApp report the expert was unable to identify any WhatsApp messages on the devices with Ms. Miller or any of the numbers connected with her. He found her telephone contact but this had been put on the device on 18th September 2023. He found WhatsApp messages with Paola Lacorte but nothing prior to his return to the UK in April 2022. The Claimant said that Ms. Miller must have deleted all the WhatApps between them and also those she had with Ms. Lacorte.
90. The expert was asked Part 35 questions about deletion of WhatsApp messages by the sender and the recipient. He said that while it was theoretically possible for the sender to delete messages using the "*Delete for Everyone*" function this would only be possible for about two days after the message was sent. It was possible for the receiver to delete the WhatApps at any time although the message will be retained on the sender's device. Neither the Claimant nor Ms. Lacorte has said that they have

deleted their WhatsApps with Ms. Miller. If Ms. Miller deleted hers it is highly unlikely that she would have used the "*Delete for Everyone*" function and if it is even less likely that she would have done so to cover her tracks. The Claimant says that most of his communications with her were by WhatsApp and there would be no reason for Ms. Miller to disguise these from him. They only became relevant on disclosure for the purposes of this trial and it would have taken an extraordinary level of foresight and sophistication for her to have anticipated that.

91. The 12 emails which the expert was asked to report on were:

    Email 1 - 27/01/20 02:41
    Email 2 - 13/02/20 22:58
    Email 3 - 14/02/20 10:31
    Email 4 – 25/02/20 07:53
    Email 5 – 25/02/20 09.25
    Email 6 – 25/02/20 22:20
    Email 7 – 26/02/20 09:25
    Email 8 – 26/02/20 09:32
    Email 9 – 28/02/20 01:13
    Email 10 – 11/03/20 13:20
    Email 11 – 11/03/20 19:54
    Email 12 – 12/03/20 22:11

92. The expert reported that three of these emails "*raised concern*": Email 1 because it used the provenly.co domain before its creation (11/04/21); Email 10 because the subject line had been manipulated because the "*RE*" was incorrect for automated replies and because the IP address was identified as 217.158.31.157, and inconsistent with the other cmail and countermail emails; and email 3 had internal sending and receipt of messages within the same domain "*williamsutton.org.uk*" which he assumed meant that it was sent within the Clarion network.

93. The expert went on to explain that emails 1, 3, 4, 5, 6, 7, 9, 11 and 12 all derived from Sweden. The Claimant obviously made much of this but in fact the expert explained that these emails were all from the countermail or cmail accounts, the latter being a secondary domain of countermail. Countermail is a secure system which is designed

to provide security and privacy and not to provide the sender's true address. He said that this raises a suspicion "*due to the services provided*" but is not an indicator that the emails are fraudulent. I interpret this as stating that someone who uses this type of domain (in this case the Claimant) might do so because they wanted to be anonymous and not therefore relevant to the issue of tampering by the Defendant or its employees.

94. The second point the expert makes is that filippe.scalora@provenly.co was referenced within the CRM system as being the sender in two of the disputed emails sent at a time when the domain had not yet been created. This is explained by Ms. Bartlett as arising on the CRM system when an email address is updated and the screen shots of emails will then show the new address. The expert was supplied with the original versions of the emails all of which contain the countermail or cmail addresses.

95. At the trial the Claimant challenged the authenticity of all emails which came from the Defendant's system and which they said had been sent by an account used by him. In her opening, Ms. Martins said that the only emails which are genuine are those sent on the Filippe.scalora@ptrust.co account and the user@ptrust.com. In her final submissions, Ms. Martins wove an elaborate argument based on the supposition that it was possible to amend the emails stored on the system. She said that if you look at the emails written to Ms. Miller there is a "*real possibility that they were not written by the Claimant*". She said that you could amend the emails by cutting and pasting and then forwarding them.

96. Her submission was founded on the expert's comments on email 1 that the data behind the email trail as provided to him by the Claimant does not include the CRM reference. She therefore submitted that this meant that all the emails were "*doubtful*" because the data set needs to be consistent with the data trail. If it is not it has been

amended by someone. This, she said, means that all the emails should have been examined by the expert.

97. There are three problems with this submission: Firstly, the parties agreed with emails should be examined by the expert and he has done as they requested. There was no further examination and by the trial it was far too late for that. Secondly, I accept the evidence from the Defendant's witnesses that Ms. Miller could not have made the changes that it would be necessary for the Claimant to establish had been made as she did not have access the system sufficient to enable her to make amendments; and Thirdly, as I will explain later, the "*possibility*" that someone with access to the Defendant's system would amend the emails which form part of the chain linking with the crucial emails would require the court to find that there was a deceit of extraordinary sophistication.

98. I will leave aside the first reason because the expert has given his view about the 12 emails. That should be an end of the matter.

99. In relation to the second reason the Defendant called evidence from Vanessa Bartlett, a Contact Centre Manager since 2017. She made a witness statement in which she explained the process for dealing with customer (tenant) web enquiries and emails. I found her to be a clear and helpful witness who gave factual evidence and direct responses whether or not they were in the Defendant's interest. She was clearly an honest witness.

100. The important evidence from Ms. Bartlett was that she said that Ms. Miller would not have had access to customer service emails and could not make it seem like the email was going through the audit trail when it was in fact being sent by her. She also confirmed that she had access to her own Mimecast and that she assumed that

Ms. Miller would have access to her own. She would not be able to alter it but could only view emails. She could not edit it.

101. Although Ms. Martins submitted that Ms. Bartlett's evidence should be discounted because she was dealing with a different area, I am satisfied that her knowledge of the system from her own work in the customer investigation team meant that she understood the above aspects of the system and can give this evidence. Furthermore, her evidence was that she has investigated the system to establish why the Provenly address appears on emails prior to the incorporation of Provenly.

102. On 15th April 2020, the Claimant incorporated a company called The Provenly Company Limited ("Provenly)". It is common ground that some screen shots of emails pre-dating show the Provenly address. Ms. Bartlett says that this was because when the Claimant updated his email address to Provenly the system automatically updated all the address for emails from him to the same address. The original emails, she says, bear their original addresses. While the expert suggests that the updating of past emails should not be possible he acknowledges that he has not been asked to inspect the CRM system and cannot therefore comment.

103. The Defendant also relied on the evidence of Ms. Lewis who contacted Microsoft and asked why an update of a customer's address on the CRM system would result in a simultaneous update of historic emails. Microsoft responded that this was normal so that the email thread matched. Ms. Lewis also said that the original email address appeared on the email master system (Mimecast). She was able to demonstrate that an email that the Claimant accepts was genuine on the ptrust account dated 3rd Marcb 2022 had also been changed to Provenly.

104. If the emails were tampered with it is very difficult to see how that could have happened without the involvement of someone employed by the Defendant other

than Ms. Miller. There is no evidence of this and I accept Ms. Bartlett's and Ms. Lewis's evidence.

105. One of the reasons the Claimant is making this point is that he says he did not have access to his countermail account while in Australia. He says that he did not have his laptop which he left in the Flat and could not access his account from abroad. The expert rejects the suggestion that he could not access the countermail account from abroad as it was a web service.

106. The third reason is the inherent improbability of the vast majority of the emails on the countermail and cmail accounts being concocted or altered. If you exclude the key emails, which the expert was asked to consider, you are left with emails which appear on a chain of which the crucial emails form part. If these were falsified in order to create evidence of an intention on the part of the Claimant to surrender his tenancy it would be very surprising if Ms. Miller (or Mr. Connolly) would have the extraordinary imagination or sophistication to falsify emails of a completely routine and banal nature. I have referred to some of them in dealing with the chronology above. Most of them relate to communications which the Claimant accepts took place at the time of the emails – for example the return of the keys, letting Ms. Lacorte into the Flat and the arrangements with John Lewis about the flooring.

107. Even if I had been satisfied that it would have been possible in theory for Ms. Miller or Mr. Connolly to tamper with the emails I would not have found that they had because, on the Claimant's case and evidence, they have created emails which he says he never sent but I can see no reason why a fraudster would want to create them in order to advance this fraud. The reason that the Claimant has disputed

that he sent them is that he knows that unless he does it damages his case that the important emails are forgeries because they form part of the chain.

108. I do not believe the Claimant when he says that he left his laptop in the Flat. When Ms. Lacorte was let into the Flat to collect the Claimant's property in June 2020 she made a list of items and sent it to the Claimant. The laptop was not on the list and the Claimant made no mention of the missing laptop (although he mentioned a missing part of the coffee machine). In January 2020, while in India, the Claimant lost an iphone that he had purchased at the airport on 31st December 2019. He made an insurance claim and exhibited the documents he had sent to the insurers on 24th January 2020. These included a print out of his flight ticket from the UK which he had printed out. He says he did this before he left the UK but I am satisfied that this was printed in India and that he was able to do this because he had his laptop. The printout shows a time: 11.22 on 24th January 2020.

Conclusion

109. My decision on the facts is that all the emails on the countermail and cmail accounts (including those which on the screen shots show the Provenly address) are genuine and were sent by the Claimant (ie emails 1 to 12). Email 10 is one of several dealing with the return of the keys and fits in with the chain, containing no damaging evidence against the Claimant. Email 3 was noted by the expert as an anomaly requiring further investigation but this does not help the Claimant's case.

110. I also reject the Claimant's claim that the other emails between him and Ms. Miller and the Defendant are not genuine, save that it was common ground that the email on the 20192020@outlook.com account is a forgery.

111. I also find that on 12th February 2020 the Claimant sent an email to the Defendant giving notice of an intention to surrender the Tenancy with effect from 30th

March 2020. He confirmed that email in an email to Ms. Miller dated the 25th February 2020. He cancelled his direct debit payments of rent and had already moved almost all his property from the Flat into storage before he left for India.

112. The Claimant has therefore given one month's written notice to terminate the tenancy on 30th March 2020 under clause 8(1)(a) of the Tenancy. This is supported by the Claimant's actions and communications both before and after 31st December 2019. Before that he had taken most of his furniture from the Flat. He had notified the Defendant of his intention to give up the Tenancy. He had stopped paying rent and had returned the keys. There was an issue about the number of keys. There was documentary evidence that Banhams provided three sets of keys but the Claimant always said there were two and a third for a decorator. He took two sets to India and says he returned one set to Ms. Miller and left the other in Australia. I am satisfied that he returned both sets of keys that he had with him in Australia (what happened to the third set is a mystery but may have remained with the decorator). I do not believe he would have left one set with his mother in Australia. On his case he would have needed it on his return to the UK. The Claimant had also asked for his post to be forwarded, arranged for a friend to go to the Flat with Ms. Miller to collect his remaining belongings and requested a landlord's reference for a tenancy in Australia.

113. I conclude that even if there had not been a valid notice to terminate the Claimant is estopped from contending that the tenancy continues.

114. I am therefore satisfied that the Claimant was no longer a tenant of the Flat after 30th March 2020 and that his claims for unlawful eviction and breach of the covenant for quiet enjoyment fail and the claim is dismissed.

115. I will list a short further hearing by cvp to deal with costs and any other outstanding matters.