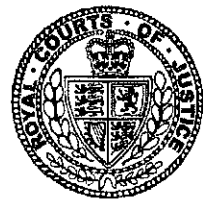

Neutral Citation Number: [2010] EWCA Civ 1224

Case Nos: B5/2009/1655; B5/2009/2163

IN THE HIGH COURT OF JUSTICE
COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM CROYDON and MANCHESTER COUNTY COURTS
His Honour Judge Ellis; District Judge Stonier
Case Nos: 8PB59368; 8AL03329

Royal Courts of Justice
Strand, London, WC2A 2LL
Date: 11/11/2010

Before :
LORD JUSTICE THORPE
LORD JUSTICE SEDLEY
and
LORD JUSTICE RIMER

- -

Between :

CHRISTELLE TIENSIA	**Appellant**
- and -	
VISION ENTERPRISES LIMITED (t/a UNIVERSAL ESTATES)	**Respondent**
And Between :	
HONEYSUCKLE PROPERTIES	**Appellant**
- and –	
(1) JAMES DAVID FLETCHER **(2) FRANK ALEXANDER McGRORY** **(3) MATTHEW ANTHONY WHITWORTH**	**Respondents**

- -

James Bowen (instructed by **Nicolas J.B. Goss**, of the **Wandsworth & Merton Law Centre**) for the **Appellant, Christelle Tiensia**
Matthew Hutchings (instructed by **Brian McKenna & Co**) for the **Respondent, Vision Enterprises Limited**

Jonathan Manning (instructed by **Bury & Walkers LLP**) for the **Appellant, Honeysuckle Properties**
The Respondents, James Fletcher, Frank McGrory and Matthew Whitworth, appeared in person

Hearing date: 7 May 2010

- -

Approved Judgment

Lord Justice Rimer :

Introduction

1. These two appeals were heard together and raise the same issue, one of general importance concerning tenancy deposit schemes established under the Housing Act 2004. Putting it generally, section 213 imposes various obligations upon a landlord who receives a tenancy deposit, including: (i) to comply with the 'initial requirements' of an authorised scheme in relation to the deposit (which means taking steps to protect the deposit), and (ii) to do so within 14 days of its receipt; (iii) to give to the tenant prescribed information relating to such protection, and (iv) to do so within the same 14-day period. Section 214 requires the court in certain events to impose sanctions upon a landlord who has been or is in breach of his section 213 obligations, one sanction being an order requiring the landlord to pay the tenant a sum equal to three times the amount of the deposit.

2. The issue is as to the circumstances in which such sanctions must be imposed. Again put generally, the tenants' argument is that if the landlord fails to perform his section 213 obligations within the 14-day period, he will automatically be beyond redemption and will have no answer to a claim to impose the section 214 sanctions upon him. The landlord's argument is that section 214 deliberately avoids any focus on the 14-day requirements but instead focuses exclusively upon whether – by the time of the hearing of the tenant's application for the imposition of the sanctions – the landlord is still in breach of his obligations (i) and (iii) summarised in [1] above. If he is, the court must impose the sanctions. If he is not, it cannot do so.

3. In one of the appeals, *Christelle Tiensia v. Vision Enterprises Limited (t/a Universal Estates),* Universal, the respondent landlord, brought a claim against Ms Tiensia, the appellant, for possession and arrears of rent in Croydon County Court, a claim which was met by her section 214 counterclaim. Her counterclaim succeeded before Deputy District Judge Clarke on 23 February 2009, who (inter alia) ordered Universal to pay to Ms Tiensia's solicitors £7,200 (a sum equal to three times her deposit), but Universal's appeal was allowed by His Honour Judge Ellis on 17 June 2009. Lloyd LJ gave Ms Tiensia permission to appeal to this court on the basis that it was arguable that Judge Ellis was wrong and that the point was of sufficient general importance to justify a second appeal. Ms Tiensia was represented before us by James Bowen; and Universal by Matthew Hutchings. Both also appeared before Judge Ellis, although neither before Judge Clarke.

4. In the other appeal, *Honeysuckle Properties v. Fletcher and Others*, Honeysuckle (the trading name of Melissa Moore, the appellant landlord) brought a claim in Manchester County Court against its three tenants for unpaid rent, a claim that was met by the tenants' section 214 counterclaim. The claim and counterclaim were heard by District Judge Stonier on 30 January 2009 who found in favour of the tenants on their counterclaim and ordered Honeysuckle to pay them £3,408, an amount including a sum equal to three times that of their deposit. His Honour Judge Holman gave Honeysuckle permission to appeal and transferred the appeal to this court bearing in mind the importance of the issue that it raised. Jonathan Manning represented Honeysuckle before us and the respondent tenants (James Fletcher, Frank McGrory and Matthew Whitworth) appeared in person, Mr McGrory being their spokesman.

The legislation

5. Chapter 4 in Part 6 of the Housing Act 2004 is headed 'Tenancy Deposit Schemes'. It came into force on 6 April 2007. It set up tenancy deposit schemes to safeguard tenancy deposits paid in connection with assured shorthold tenancies, provided for the imposition of sanctions for failure to comply with the requirements of such schemes and set up structures to facilitate the resolution of disputes in connection with such deposits. The schemes are either custodial ones, in which the deposit is paid by the landlord into a designated account and held by the scheme administrator until it falls to be paid (either wholly or in part) back to the landlord or tenant; or insurance-based, in which (in short) the landlord keeps the deposit but its return is protected by insurance cover maintained by the scheme administrator. In both cases before us the deposit was protected by an insurance-based scheme.

6. I will set out the material provisions of sections 212 to 215, although the arguments focused primarily upon sections 213 and 214.

> **'212. Tenancy deposit schemes**
>
> (1) The appropriate national authority must make arrangements for securing that one or more deposit schemes are available for the purpose of safeguarding tenancy deposits paid in connection with shorthold tenancies.
>
> (2) For the purposes of this Chapter a "tenancy deposit scheme" is a scheme which –
>
> (a) is made for the purpose of safeguarding tenancy deposits paid in connection with shorthold tenancies and facilitating the resolution of disputes arising in connection with such deposits, and
>
> (b) complies with the requirements of Schedule 10.
>
> (3) Arrangements under subsection (1) must be arrangements made with any body or person under which the body or person ("the scheme administrator") undertakes to establish and maintain a tenancy deposit scheme of a description specified in the arrangements.
>
> (4) The appropriate national authority may –
>
> (a) give financial assistance to the scheme administrator;
>
> (b) make payments to the scheme administrator (otherwise than as financial assistance) in pursuance of arrangements under subsection (1).
>
> (5) The appropriate national authority may, in such manner and on such terms as it thinks fit, guarantee the discharge of any financial obligation incurred by the scheme administrator in connection with the arrangements under subsection (1).
>
> (6) Arrangements under subsection (1) must require the scheme administrator to give the appropriate national authority, in such manner and at such times as it may specify, such information and facilities for obtaining information as it may specify.

(7) The appropriate national authority may make regulations conferring or imposing –

(a) on scheme administrators, or

(b) on scheme administrators of any description specified in the regulations,

such powers or duties in connection with arrangements under subsection (1) as are so specified. ....'

Section 212(8) defines a 'shorthold tenancy' as an assured shorthold tenancy within the meaning of Chapter 2 of Part I of the Housing Act 1988; a 'tenancy deposit' as any money intended to be held (by the landlord or otherwise) as security for (a) the performance of any obligations of the tenant, or (b) the discharge of any liability of his arising under or in connection with the tenancy; and 'custodial scheme' and 'insurance scheme' as having the meaning given by paragraph 1(2) and (3) of Schedule 10.

'213. Requirements relating to tenancy deposits

(1) Any tenancy deposit paid to a person in connection with a shorthold tenancy must, as from the time when it is received, be dealt with in accordance with an authorised scheme.

(2) No person may require the payment of a tenancy deposit in connection with a shorthold tenancy which is not to be subject to the requirement in subsection (1).

(3) Where a landlord receives a tenancy deposit in connection with a shorthold tenancy, the initial requirements of an authorised scheme must be complied with by the landlord in relation to the deposit within the period of 14 days beginning with the date on which it is received.

(4) For the purposes of this section "the initial requirements" of an authorised scheme are such requirements imposed by the scheme as fall to be complied with by a landlord on receiving such a tenancy deposit.

(5) A landlord who has received such a tenancy deposit must give the tenant and any relevant person such information relating to –

(a) the authorised scheme applying to the deposit,

(b) compliance by the landlord with the initial requirements of the scheme in relation to the deposit, and

(c) the operation of provisions of this Chapter in relation to the deposit,

as may be prescribed.

(6) The information required by subsection (5) must be given to the tenant and any relevant person –

(a) in the prescribed form or in a form substantially to the same effect, and

(b) within the period of 14 days beginning with the date on which the deposit is received by the landlord. …

(9) The provisions of this section apply despite any agreement to the contrary.

(10) In this section –

"prescribed" means prescribed by an order made by the appropriate national authority. …

214. Proceedings relating to tenancy deposits

(1) Where a tenancy deposit has been paid in connection with a shorthold tenancy, the tenant or any relevant person (as defined by section 213(10)) may make an application to a county court on the grounds –

(a) that the initial requirements of an authorised scheme (see section 213(4)) have not, or section 213(6)(a) has not, been complied with in relation to the deposit; or

(b) that he has been notified by the landlord that a particular authorised scheme applies to the deposit but has been unable to obtain confirmation from the scheme administrator that the deposit is being held in accordance with the scheme

(2) Subsections (3) and (4) apply if on such an application the court –

(a) is satisfied that those requirements have not, or section 213(6)(a) has not, been complied with in relation to the deposit, or

(b) is not satisfied that the deposit is being held in accordance with an authorised scheme, as the case may be.

(3) The court must, as it thinks fit, either –

(a) order the person who appears to the court to be holding the deposit to repay it to the applicant, or

(b) order that person to pay the deposit into the designated account held by the scheme administrator under an authorised custodial scheme,

within the period of 14 days beginning with the date of the making of the order.

(4) The court must also order the landlord to pay to the applicant a sum of money equal to three times the amount of the deposit within the period of 14 days beginning with the date of the making of the order.

(5) Where any deposit given in accordance with a shorthold tenancy could not be lawfully required as a result of section 213(7), the property in question is

recoverable from the person holding it by the person by whom it was given as a deposit.

(6) In subsection (5) "deposit" has the meaning given by section 213(8).

215. Sanctions for non-compliance

(1) If a tenancy deposit has been paid in connection with a shorthold tenancy, no section 21 notice may be given in relation to the tenancy at a time when –

(a) the deposit is not being held in accordance with an authorised scheme, or

(b) the initial requirements of such a scheme (see section 213(4)) have not been complied with in relation to the deposit.

(2) If section 213(6) is not complied with in relation to a deposit given in connection with a shorthold tenancy, no section 21 notice may be given in relation to the tenancy until such time as section 213(6)(a) is complied with.

(3) If any deposit given in connection with a shorthold tenancy could not be lawfully required as a result of section 213(7), no section 21 notice may be given in relation to the tenancy until such time as the property in question is returned to the person by whom it was given as a deposit.

(4) In subsection (3) "deposit" has the meaning given by section 213(8).

(5) In this section a "section 21 notice" means a notice under section 21(1)(b) or (4)(a) of the Housing Act 1988 (recovery of possession on termination of shorthold tenancy).'

I need say no more than that a section 21 notice, as defined in section 215(5), is a notice the service of which is a pre-condition of the obtaining of a mandatory possession order on or after the coming to an end of an assured shorthold tenancy.

The facts of each case and the decisions below

A. Tiensia v. Vision Enterprises Limited (t/a Universal Estates)

7. On 17 May 2008 the respondent, Universal, let a dwelling at 1 Rosedene Avenue, Croydon to the appellant, Ms Tiensia, under an assured shorthold tenancy within Part I of Chapter II of the Housing Act 1988. It was for a fixed term of six months starting on 19 May 2008 at a monthly rent of £1,200 payable on the 19th of each month, the first payment falling due on 19 May. Ms Tiensia moved in on 19 May 2008 and paid a total deposit of £2,400 in four instalments between 24 April and 4 June 2008. Page 1 of the tenancy agreement included the following statement under the heading 'Deposits':

'If the landlord takes a deposit, the landlord must, within 14 days from the date of payment, give the tenant and any person who has paid the deposit on the tenant's behalf, certain written information about the way the deposit is protected. See the Housing Act 2004 s. 213(5) and The Housing (Tenancy Deposits) (Prescribed

> Information) Order 2007 S1 2007/797. The landlord may not require a deposit which consists of property other than money.'

Although section 213(6)(a) requires the section 213(5) information to be given to the tenant 'in the prescribed form or in a form substantially to the same effect,' no form has been prescribed. The 2007 Order simply prescribes what information is to be given.

8. Ms Tiensia soon fell into arrears with her rent. This led to Universal's notice to her dated 20 June 2008 under section 8 of the Housing Act 1988 informing her that it intended to apply for an order for possession, a letter before claim and, on 5 August 2008, the issue of a possession claim in Croydon County Court based on and related to rent arrears then totalling £2,400 (reliance was placed on grounds 8, 10 and 11 of Schedule 2 to the Housing Act).

9. The claim came before the court on 19 September 2008, when it was adjourned upon Ms Tiensia stating her wish both to defend and counterclaim, the latter being apparently intended to be based on a complaint about the shower in the property. Ms Tiensia was still £2,400 in arrears with her rent.

10. It is common ground that Universal had not, by the end of September 2008, complied with its obligations under section 213(3) of the 2004 Act: it had neither complied with the 'initial requirements' of an authorised scheme within the 14-day period nor at all. On 2 October 2008, however, it produced a deposit protection certificate confirming that Ms Tiensia's deposit of £2,400 was protected by an insurance-based deposit protection scheme operated by Tenancy Deposit Solutions Limited ('TDS'), a scheme which - quite apart from the 14-day requirement imposed by section 213(3) - itself required the landlord 'within 14 days of receiving a deposit ... [to] protect the deposit with the scheme ....' The certificate inaccurately recorded the deposit as having been collected from Ms Tiensia on 19 May 2008 and described the period of protection as running from '2 October 2008 until the date the deposit is unprotected plus 90 days'. It was signed at some point (which is in dispute) by both Universal and Ms Tiensia. There is, however, no dispute that by 2 October 2008 Universal had, albeit late, complied with the 'initial requirements' of an authorised scheme.

11. As necessarily follows, it is also common ground that at no point before October 2008 had Universal provided Ms Tiensia with the information required by section 213(5), let alone within the 14-day period prescribed by section 213(6)(b). Whilst I understand it to be accepted that Universal has now provided Ms Tiensia with that information, there is a dispute as to whether it had done so by the time of the hearing before Judge Clarke, to which I shall come. Universal claims it did so on 2 October 2008, when it says Ms Tiensia signed the certificate and was provided with the leaflet about the TDS scheme (which 'IMPORTANT INSTRUCTIONS' on the certificate say must be passed to the tenant). By contrast, I understand Ms Tiensia to assert that it was not until about 13 October 2008 that she saw, was asked to and did sign the certificate and also to put in issue whether she had been provided with all the required information by the date of the Clarke hearing. We are not concerned to resolve that factual dispute.

12. On 3 October 2008 Ms Tiensia served a Defence and Counterclaim, which she amended on 3 December 2008. It admitted arrears of rent then due of £1,400 but

claimed to set off the damages she claimed for an alleged breach of covenant by Universal in relation to the shower and also the liquidated sums for which she counterclaimed. The counterclaim asserted that Universal had breached its tenancy deposit obligations under section 213. It asserted that Universal had failed to comply with the 'initial requirements' of an authorised deposit scheme by 20 June 2008 and had not done so until 2 October 2008 (section 213(5)). (I am not clear why 20 rather than 18 June - 14 days from the last deposit instalment - was regarded as the relevant date but nothing turns on it). It asserted that Universal had not provided her with the information required by section 213(5) either within 14 days of the receipt of the deposit or at all. It counterclaimed for (i) a repayment of the £2,400 deposit within 14 days (section 214(3)(a)); and (ii) a payment of £7,200, also within 14 days, being three times the amount of the deposit (section 214(4)).

13. Ms Tiensia's summary judgment application for those two payments was heard by Judge Clarke on 23 February 2009. It succeeded. Judge Clarke ordered Universal to pay (i) £2,400 into the designated account of an authorised custodial scheme (section 214(3)(b)); and (ii) £7,200 to Ms Tiensia's solicitors (section 214(4)). Her judgment reflects that the argument before her apparently turned on whether, as a matter of the interpretation of section 213, it is possible for a landlord to comply with its requirements under that section after the expiry of the prescribed period of 14 days. Her conclusion was that it is not. The Act, she said, seemed to be in unambiguous terms requiring compliance by the landlord within 14 days and 'contains no express power to waive, vary, or mitigate the consequence of that failure.' Late performance by the landlord did not therefore provide any basis for a judicial discretion to excuse him from the sanctions imposed by section 214.

14. On 17 June 2009 Universal's application for permission to appeal against Judge Clarke's order (on notice to Ms Tiensia and with the appeal to follow if permission were given) came before His Honour Judge Ellis. He gave permission to appeal, allowed the appeal and set aside Judge Clarke's order. He was invited to treat the issue before him as a preliminary issue raising a question of law as to when and in what circumstances the mandatory section 214 sanctions bite.

15. Judge Ellis, in an impressive extempore judgment, made polite criticisms of the drafting of the statutory provisions, whose interpretation he did not find easy, and said he regarded the arguments as finely balanced. It was common ground that Universal had not met either the 14-day time limit imposed by section 213(3) for compliance with the 'initial requirements' or the 14-day time limit imposed by section 213(6)(b) for providing the tenant with the information required by section 213(5). The question was whether either breach triggered the entitlement to the sanctions mandatorily imposed by section 214(3) and (4).

16. Judge Ellis held that neither breach did so. He explained that section 214(1)(a) was specific in providing that the tenant's entitlement to apply to the court arose in a case in which 'the initial requirements of an authorised scheme (see section 213(4)) have not, or section 213(6)(a) has not, been complied with in relation to the deposit;' and section 214(2)(a) likewise specifically provided that the sanctions in section 214(3) and (4) could only be imposed in a case in which the court 'is satisfied those requirements have not, or section 213(6)(a) has not, been complied with in relation to the deposit ....' (The alternative provisions in sections 214(1)(b) and (2)(b) are not relevant to this case). What the legislation had *not* done was to provide for a right of

application to the court, or the imposition of sanctions upon the landlord, on proof that the landlord had failed to comply with the 'initial requirements' *within 14 days* or had failed to perform the section 213(6)(a) obligation *within 14 days*. The focus of section 214 was not therefore on whether the landlord had failed to comply with the 14-day obligations but on whether or not he was in continuing breach of his obligations to comply with the 'initial requirements' and to provide the tenant with the required information as to such compliance. This interpretation was supported by the language of section 214(2)(a), which used the phrases 'have not' and 'has not', a tense showing that the focus of relevant interest was whether or not the landlord was in breach by the time of the hearing (or possibly by that of the issue of the tenant's application, although in the post-judgment discussion Judge Ellis said that he regarded the hearing date as the relevant one). Had the intention been to punish the landlord for a failure to comply with his obligations within the 14-day period, then, said the judge, the phrases 'were not' and 'was not' would more probably have been used.

17. This construction was said to receive support from section 215(1)(b), as to which Judge Ellis made the point that it cannot have been the intention of section 215 to bar forever the service of a section 21 notice if the landlord had committed a 14-day breach; the more rational interpretation was that the landlord is simply so barred until he has remedied his section 213(4) default. Finally, Judge Ellis made the policy point that the tenant's construction would be potentially harsh upon landlords: if for good reason they were unable to comply within the 14-day time limits, they would still be faced with the section 214(3) and (4) sanctions.

18. Universal has since recovered possession of the property from Ms Tiensia, although the money issues raised by the proceedings remain alive.

B. Honeysuckle Properties v. James David Fletcher and Others

19. Honeysuckle (the appellant: it is the trading name of Miss Moore) granted an assured shorthold tenancy to Messrs Fletcher, McGrory and Whitworth (the respondents) on 19 October 2007 of Flat 42, Thomas Telford Basin, Manchester. The term was six months commencing on 26 October 2007. The rent was £995 monthly, payable on the first of the month. As required by the tenancy agreement, the tenants paid Honeysuckle a deposit of £1,100.

20. In August 2008 Honeysuckle issued proceedings against the tenants for unpaid rent and other money. That led, on 23 September 2008, to their counterclaim, including a claim for three times the deposit under section 214(4) on the basis that Honeysuckle had neither complied with the 'initial requirements' under section 213(3) nor (as followed) provided them with the section 213(5) information. Both assertions were correct as matters of fact. Miss Moore claims to have believed – in fact, mistakenly – that she had protected the deposit in October 2007. Having discovered that she had not, she registered the deposit under the tenancy deposit scheme operated by TDS (the same one as in the other appeal) on 27 September 2008; and on 29 September 2008 she despatched the deposit protection certificate, including the prescribed information, to the tenants, who admit its receipt.

21. The claim and counterclaim came before District Judge Stonier on 30 January 2009, by when the 'initial requirements' and the giving of the required information had been complied with. Miss Moore and the tenants all appeared in person. Judge Stonier

allowed the tenants' application for three times the deposit, or £3,300, under section 214(4), which she held Honeysuckle was bound to pay. Her reasoning was short, namely that:

> 'The Act clearly provides that if the provisions with regard to the tenancy deposit are not complied with the court must order a sum equivalent to the three times the deposit and that must be my order in respect of the tenants. There is no way around that provision. It is mandatory and the legislation was designed to protect tenants in these circumstances.'

She engaged in no close consideration of the language of the statutory provisions. She did not explain why, given the mandatory nature of section 214(3), she did not also make an order under that sub-section.

The appeals

22. We had arguments advancing the tenants' case from Mr Bowen for Ms Tiensia, the appellant tenant in the *Tiensia* appeal, and Mr McGrory for the respondent tenants in the *Honeysuckle* appeal. We had arguments advancing the landlords' case from Mr Hutchings in the *Tiensia* appeal and Mr Manning in the *Honeysuckle* appeal. We reserved our judgments and, in the course of preparing them, considered it necessary to request the parties to provide further written submissions on one particular issue. I would express my gratitude for those further submissions. As a result of that further exercise, the promulgation of these judgments has taken longer than the court would otherwise have wished.

23. Mr Bowen pointed out that the effect of section 213(2) is that no deposit may be required by a landlord if it is not to be dealt with in accordance with an authorised scheme. Having taken such a deposit, the landlord has 14 days within which to comply with the requirements of the scheme (section 213(3)) *and* to give the tenant the information about such compliance (section 213(5) and (6)). He submitted that section 214(1)(a) ought to be read as referring not just to whether 'the initial requirements' have been complied with. The more natural sense of its language is, he said, that its reference to 'the initial requirements' means 'such requirements imposed by the scheme as fall to be complied with by a landlord on receiving such a tenancy deposit', which includes the section 213(3) 14-day obligation. He submitted that the omission of section 214(1)(a) to refer to section 213(3) (which alone refers to the 14-day period) should not deter the court from this expansive interpretation.

24. Judge Ellis was, he said, also wrong to be influenced by the policy consideration that a landlord who is a day late in complying with the 14-day time limits would or could face the harsh consequences of the section 214 sanctions. The merits will necessarily vary from case to case and the answer to the question before the court must turn on what the statute requires. The scheme of section 213 is plainly that compliance with it is required within 14 days and the interpretation favoured by Judge Ellis – namely that a landlord can avoid the section 214 sanctions provided he complies with the section 213(3) and (5) requirements by the time of the hearing (or, presumably, any adjourned hearing) - effectively robs section 214 of all practical effect. That is because the cost of compliance is relatively modest and no landlord is ordinarily going to decline to bear it – and so incur disproportionate financial penalties - when faced with a section 214 claim.

25. A point to which Mr Bowen drew attention in his original written argument but did not, as I understood it, either emphasise or develop during his oral submissions was that to which I adverted in [10] above, namely that the TDS scheme *itself* required the landlord 'within 14 days of receiving a deposit … [to] protect the deposit with the scheme ….' Landlords (such as Universal) who used that scheme were therefore subject not just to the 14-day time limit for compliance imposed by section 213(3), they were also subject to the same time limit for compliance imposed by the scheme itself. The point upon which the court sought further assistance from the parties was whether compliance with such a time limit imposed by the scheme can *itself* be regarded as part of the 'initial requirements' of the scheme. If so, the court invited submissions on whether the failure to comply with such a scheme time limit would amount to a failure to comply with the scheme's 'initial requirements' for the purposes of that part of section 214(1)(a) referring to section 213(4). If the answer is yes, then it may not help the landlords to demonstrate that, upon the true interpretation of section 214, the legislation does not seek to penalise a landlord who fails to comply with the *statutory* time limit imposed by section 213(3). In short, the court invited assistance on the relationship between a *scheme* 14-day requirement and the *statutory* 14-day requirement imposed by section 213(3). I will call this argument 'the scheme time limit point'.

26. Mr Bowen's further submission on this point was that when, as here, the scheme itself imposes a 14-day time limit for compliance, compliance with such a requirement is itself part of the scheme's 'initial requirements' within the meaning of section 213(4). The consequence of any failure to comply with such time limit is therefore that, upon the expiry of that time limit, there will be no answer to the tenant's claim under section 214 that the section 213(4) 'initial requirements' of the scheme have not been met, with the further consequence that the tenant will have an unchallengeable right to the mandatory relief prescribed by section 214(3). In particular, late compliance will provide the landlord with no defence to such a claim. It makes no difference, he submitted, whether the scheme time limit is, like the statutory time limit, a 14-day one, or whether it is longer or shorter: compliance with it is what the landlord has agreed and such compliance is part of the scheme's 'initial requirements'. Mr Bowen submitted that, insofar as Tugendhat J decided in *Draycott and another v. Hannells Letting Ltd (t/a Hannells Letting Agents)* [2010] 3 All ER 411 that a scheme time limit such as that in the TDS scheme is not part of the scheme's 'initial requirements', the decision was wrong.

27. By way of an alternative argument to his two main arguments, Mr Bowen submitted, even if the failure to comply with the section 213 'initial requirements' within the 14-day period (whether that imposed by section 213(3) or the scheme itself) does *not* automatically trigger the mandatory section 214 sanctions, it cannot be the case that the landlord can then have until the *hearing* to comply with the 'initial requirements' and so avoid the sanctions. A more rational interpretation of the legislation, which would give it real practical effect, is that the landlord's cut-off time for compliance with the 'initial requirements' and notification obligations can be no later than the date of the issue of tenant's claim or counterclaim under section 214. If, therefore, at the date of the issue of either such claim, the landlord has still not complied, subsequent compliance will not enable him to avoid the section 214 sanctions.

28. Mr McGrory supported Mr Bowen's argument and, in the course of his succinct and clear representations, helpfully referred us to extracts from the TDS website. In response to the court's request for further submissions on the scheme time limit point, he too emphasised that a landlord using a scheme such as the TDS scheme has to comply with its 'initial requirements' not just within the time limit imposed by section 213(3) but also within the same time limit imposed by the scheme itself. He said that compliance with the latter was in the nature of a contractual obligation between the landlord and the scheme and that it follows that a failure to comply with a scheme time limit will be a failure to comply with its 'initial requirements'. The consequence will be that, upon the expiry of that time limit, the landlord will have no answer to a section 214 claim for relief under section 214(3).

29. For Universal, Mr Hutchings supported Judge Ellis's decision, essentially for the reasons the judge gave. Focusing first on the interpretation of sections 213 and 214, he emphasised that the right under section 214 to apply for the imposition of its sanctions was specifically linked by section 214(1)(a) to an omission either to comply with the 'initial requirements' of a scheme or to provide the tenant with the required information as to such compliance. What, however, such right was - apparently deliberately - *not* linked to was an omission so to comply within the 14-day period prescribed by section 213(3). He said this interpretation was consistent with the sense of section 215(1)(b). That too could not have intended that any non-compliance within 14 days would raise a permanent bar on a section 21 notice: its sense was plainly that such a bar would only apply during such time as there had been no compliance at all. He said that the mandatory obligations of section 214(3) – repay the deposit or protect it by an order for its payment into a custodial scheme – also made no sense (or at any rate the latter alternative did not) if, by the date of the hearing, the landlord had *already* protected the deposit in accordance with his statutory obligations. He emphasised the penal nature of the tenants' argument and submitted that there could be no justification for it. The purpose of the legislation is to achieve the due protection of the tenant's deposit and so long as it becomes duly protected – if necessary, as the result of proceedings brought by the tenant – the aim of the legislation will be achieved. He recognised that a landlord who leaves it until the eleventh hour to comply will be likely to be visited with a costs order in favour of the tenant. In support of his submission as to the purpose of the legislation, Mr Hutchings referred us to *UK Housing Alliance (North West) Ltd v. Francis* [2010] EWCA Civ 117 in which (in a judgment with which Lord Neuberger of Abbotsbury MR and Smith LJ agreed), Longmore LJ said, at [7]:

> 'Chapter 4 of Part 6 of the 2004 Act was intended to deal (inter alia) with the notorious abuse of landlords requiring deposits from prospective tenants but not keeping the sums paid in any separate account or refusing to repay such sums at the end of the tenancy ….'

30. Mr Hutchings also submitted that the landlord will have until the date of the hearing of the tenant's application within which to comply with his section 213 'initial requirements' and notification obligations so as to avoid the imposition of the section 214 sanctions. If, as Mr Bowen had argued in the alternative, the cut off point is the date of the tenant's application (meaning presumably the issue of his application), the landlord will no longer have any incentive to achieve the protection for the deposit

intended by the legislation: he will at that point have no choice but to submit to the hit imposed by the section 214 sanctions.

31. In response to the court's request for submissions on the scheme time limit point, Mr Hutchings pointed out (I consider correctly) that this point did not form part of Ms Tiensia's grounds of appeal. He also pointed out that the terms of the scheme had not been put before Judge Clarke and that no respondent's notice was before Judge Ellis contending that the particular terms of the scheme provided an alternative basis for summary judgment. He nevertheless dealt with the point on its merits. His submission was that a time limit imposed by the scheme itself is outside the definition of 'the initial requirements' in section 213(4). The only time limit for compliance with such requirements is that imposed by section 213(3). He submitted that if he is correct in his submission that section 214 was deliberately drafted so as to exclude a liability for a sanction for an omission to comply with the statutory time limit, it is improbable that the legislation could have intended that a breach of a time limit imposed by the scheme could itself trigger a liability to such a sanction.

32. Mr Hutchings developed this submission by pointing out that there is no statutory requirement that a tenancy deposit scheme must itself impose a 14-day – or any – time limit within which the deposit must be protected. By contrast, the section 213(3) time limit applies statutorily to all schemes. Moreover, the basis of the scheme time limit argument is anyway artificial. A landlord has a choice between scheme providers; and, until he has protected the deposit with a particular scheme, he is neither committed to any particular scheme nor to any particular scheme time limit. Universal received the deposit in June 2008 and only protected it with the TDS scheme in October 2008. On what basis, he asked, can it be said that, before it so protected the deposit, it was subject to a 14-day time limit imposed by the scheme? Mr Hutchings also pointed out that as TDS was content to accept the deposit late, there is an argument available to Universal that TDS thereby waived any need for it to comply with the 14-day period. If it did so waive such need, how can it be said that Universal was in breach of such time limit so as to trigger a liability to the section 214 sanctions? If, however, the scheme time limit point leads to a result that a failure to comply with it puts the landlord in irredeemable breach, the landlord is not only faced with an unanswerable claim to have such sanctions imposed upon him, he will be forever barred from serving a section 21 notice in relation to the tenancy: that is because the interpretation of section 215(1)(b) must be the same as the relevant part of section 214(1)(a). That too is said to be an improbable legislative intention.

33. Mr Manning, for Honeysuckle, supported Mr Hutchings' submissions and also made clear his like submission that the cut off point for compliance by the landlord is the date of the hearing, not a date immediately prior to the tenant's section 214 application. He said the language of the legislation provided no support for any date prior to the hearing date. The principal purpose of the section 214 is to ensure that deposits are protected, and provided they are protected by the date of the hearing, why should the section 214 sanctions be imposed? He recognised that the tenant may, in the event of post-application compliance, recover less than his full costs but submitted that that is not a reason for interpreting the legislation differently.

34. As for the scheme time limit point, Mr Manning submitted that the natural interpretation of section 213(3) and (4) is that the reference in them to 'the initial requirements' of a scheme cannot include a reference to any time limit for securing

the deposit imposed by the scheme itself, since the legislation itself specifies the time within which the deposit must be secured. The meaning of 'the initial requirements' within those sub-sections is therefore necessarily confined to *what* you have to do in order to protect the deposit, and does not extend to *when* you have to do it. That interpretation was supported by the decision in *Draycott*, which Mr Manning submitted was correctly decided. In addition, if a scheme time limit is an 'initial requirement' the result would be that a scheme could select a time limit different from the 14-day period specified in section 213(3), which would have the potential to produce odd consequences. If, for example, the scheme limit was 7 days, section 213(3) would in theory still only require compliance within the longer period of 14 days; conversely, if the scheme limit was 28 days, section 213(3) would require compliance within the shorter period of 14 days. Either consequence would, submitted Mr Manning, be nonsensical. Mr Manning developed the potential for absurdity by further examples.

Discussion and conclusion

35. In my judgment Mr Hutchings and Mr Manning are correct in their submission that the natural interpretation of the phrase 'the initial requirements' as used in section 213(3) and (4) is that it does not include any requirement imposed by a particular scheme as to the time within which the landlord must secure the deposit. The quoted phrase must mean the same in both sub-sections and since section 213(3) itself imposes a time limit within which 'the initial requirements' must be complied with, it is necessarily implicit in the sub-section that it cannot be recognising that one such requirement is the (perhaps different) time limit for securing the deposit that may be imposed by a particular scheme. If it were otherwise, there would be the potential for unacceptable uncertainty and confusion as to the relationship between the section 213(3) time limit and the scheme time limit. The natural interpretation of section 213(3) and (4) is in my judgment that its reference to 'the initial requirements' of a scheme is only be to those requirements for protecting a deposit other than any time limit for doing so that may be imposed by the scheme. Tugendhat J in *Draycott* (at [2010] 3 All ER 411, paragraph [29]), was also of the view that a scheme time limit is not one of 'the initial requirements' within the meaning of the definition in section 213(4). I respectfully agree with him. The real issue in dispute in this case turns on the arguments that were originally advanced to us. I turn to those arguments

36. In my judgment Judge Ellis was correct to hold that the pre-condition of a tenant's application to the court under section 214 is not a failure by the landlord to comply with the 'initial requirements' or the notification thereof to the tenant within the 14-day period specified in section 213. It is the failure to comply with either of those obligations at all. It follows in my judgment that if, therefore, the landlord is late in complying with his dual section 213 obligations, but he nevertheless duly does so before any section 214 proceedings are brought by the tenant, the tenant will have no cause of action under section 214 and any claim he brings under it will fall to be dismissed. I consider that both Judge Clarke and Judge Stonier, neither of whom applied any apparent consideration to the precise terms of the legislation they were concerned to apply, interpreted it wrongly. My fuller reasons are these.

37. Section 214(1)(a) entitles the tenant to apply to the court in a case in which 'the initial requirements of an authorised scheme (see section 213(4))) have not, or section 213(6)(a) has not, been complied with in relation to the deposit; ...'. In the case of

both alternatives the focus is, apparently deliberately, not on whether there was compliance within the 14-day period but on whether there has been compliance at all. Had the *time* for compliance been in section 214's sights, the 'initial requirements' reference would have been to section 213(3) rather than to 213(4); and the notification reference would have been either to section 213(6)(b), or else to section 213(6) as a whole, rather than simply to section 213(6)(a). Exactly the same points can be made in relation to the language of section 214(2)(a) in which the reference to 'those requirements' is plainly a reference back to the first limb of section 214(1)(a); and in which there is a repeat reference to section 213(6)(a).

38. Moreover, as Mr Hutchings rightly pointed out, the tense of the language in section 214(1)(a) and 214(2)(a) is consistent only with an inquiry as whether the 'initial requirements' and notification obligations have been performed at all, and not with whether there were performed within a particular period that is now past. That is the natural sense of 'have not' and 'has not' in both sub-paragraphs. There can plainly be no right to make any application to the court under section 214 *before* the 14-day period for compliance has expired, and so if the crucial trigger to the section 214 cause of action was the landlord's non-compliance within such 14-day period, the more natural choice of language for the draftsman to have used in section 214(1)(a) and 214(2)(a) would have been 'were not' and 'was not' respectively.

39. I also agree with Mr Hutchings that this interpretation finds support in section 215. Once again, section 215(1)(b) focuses exclusively on section 213(4), not on section 213(3), and so avoids any focus on the 14-day period within which compliance is required. Its plain sense is that, so long as the initial requirements have not been complied with (including after the expiration of the 14-day period), there will be a bar on the service of a section 21 notice. It is impossible to interpret section 215(1)(b) as intending to impose a permanent such bar in the event of a failure to comply with the 14-day requirement. Like points can also be made in relation to section 215(2), which opens by referring to section 213(6) generally (thus including a reference to an omission to comply with the 14-day requirement imposed by section 213(6)(b)), but then goes out of its way to make clear that the giving of a section 21 notice is only barred for so long as section 213(6)(a) is not complied with.

40. That interpretation of the legislation means that late, but nevertheless due, compliance by the landlord with his dual obligations under section 213(3) and (6) will furnish him with a complete defence to any claim by the tenant under section 214. Such interpretation appears to me to be not only firmly supported by what I would regard as the carefully chosen statutory language, it is also a properly precise, or strict, one to apply to legislation such as section 214 that is manifestly penal in intent. Moreover, it is an interpretation that is consistent with the purpose of the legislation. That purpose is to achieve the due protection of deposits paid by tenants, ideally within the 14-day period but, if not, then later. It cannot be its purpose to punish landlords who may for example, for innocent reasons, be just a day late in securing such protection.

41. The other question raised by the arguments is whether (as Judge Ellis held and Mr Hutchings and Mr Manning submitted) the landlord has until the *hearing* of the tenant's section 214 application to comply with his section 213 'initial requirements' and notification requirements. If he has until then to remedy any prior section 213 default, and does so, it must follow that the tenant's section 214 application will fail although no-one suggested that in such a case the tenant would not ordinarily be

entitled to recover from the landlord the costs of his claim. The contrary case, advanced by Mr Bowen, was that the cut off point for section 213 compliance is not the *hearing* date but the issue of the tenant's section 214 claim or counterclaim. The theory is presumably that at that point the tenant's cause of action under section 214 has accrued and cannot be defeated by the landlord's subsequent compliance with his section 213 obligations by the time of the hearing. It would, it is said, be unjust if the claim could be so defeated and the tenant then left with at most a right to a probably less than full indemnity for his costs from the landlord.

42. I agree with Judge Ellis, Mr Hutchings and Mr Manning that the date of the hearing is the relevant date and do not accept Mr Bowen's contrary argument. First, there is in my view nothing in the legislation that points to any date earlier than the date of the hearing date. On the contrary, the use of the present tense –'is satisfied' - in section 214(2)(a) appears to me to support the case for the hearing date; and, consistently with that (albeit in relation to the different breach with which it is concerned), I consider that section 214(2)(b) shows unambiguously that the relevant date for its own purposes *is* the hearing date. If that is the relevant date for section 214(2)(b) purposes, it would be odd if it were not also the relevant one for section 214(2)(a) purposes.

43. Secondly, the 2004 Act was enacted at a time when the culture of the conduct of civil litigation had become one under which in ordinary circumstances a claimant should endeavour to avoid the need for litigation by applying any applicable pre-action protocol or otherwise by writing a letter before claim. A tenant ought therefore to write such a letter before making a section 214 claim and so give the landlord the opportunity to remedy his shortcoming and avoid proceedings. The landlord would, I should imagine, ordinarily be ready, willing and anxious to do so (he may, like Honeysuckle, have mistakenly believed that he had already duly protected the deposit) so as to bring to an immediate end the possibility of a section 214 claim and the visiting on him of a painful penalty. Although, however, the tenant *ought* to write a letter before claim, and his omission to do so may present him with a costs risk if he does not, if Mr Bowen's argument is right the prospect of a section 214(4) order in his favour may be sufficiently attractive to encourage him instead to ambush the landlord with an unheralded claim and run such costs risk as there may be – a risk that he may regard as making the game well worth the candle. Of course if (as in both the cases under appeal) the claim is made by a counterclaim in the landlord's action, there will ordinarily be no occasion for the tenant to write a letter before claim. I recognise that section 214 claims are in practice probably more commonly going to be made by counterclaim than by claim, but it appears to me helpful to consider the alternative position that I have. I note that *Draycott* was a tenant's claim, not a counterclaim.

44. These considerations do in my view also tend away from an interpretation of the legislation to the effect that the cut off date for compliance is the issue date of the tenant's claim or counterclaim. As I have said, the objective of the legislation is not the punishment of landlords but the achieving of proper protection of tenants' deposits. The legislation should not be interpreted in a sense that implicitly encourages the ambushing of landlords by tenants who have grounds for believing that the landlords have not complied with their section 213 obligations. It should be interpreted in a way that avoids litigation. Litigation will or should be avoided if, following a letter before claim, the landlord promptly puts his house in order. If the

landlord declines or fails to do so, then of course it is open to the tenant to pursue his section 214 claim. If the landlord later (before the hearing) repents and remedies his defaults, the claim will still fail, although the tenant will ordinarily recover his costs. He may not recover his full costs, but there is nothing unusual about a claimant not doing so. The tenant will bring his claim knowing of that risk.

45. The only remaining point I should deal with is Mr Bowen's point that the interpretation of the legislation that I favour will have the practical consequence of robbing section 214 of virtually all its force. That is because it will be an unusual landlord who will not, faced with a section 214 claim, ensure that by the time of the hearing he has fulfilled his outstanding obligations under section 213, with the consequence that in practice section 214 will be likely only to bite in the most exceptional and unusual cases. I recognise all of that. Equally, however, it can also be said that in that overwhelming majority of cases the net result will be that the legislation will have achieved its primary objective, that of the due protection of the tenant's deposit. What more can reasonably be asked of it?

46. I comment that in the *Draycott* case the deposit was protected late and the section 213(5) information was necessarily also provided late. The tenant's section 214 claim was only commenced subsequently. Tugendhat J held that in those circumstances the court could not be satisfied under section 214(2)(a) and so could not make an order under section 214(3) and (4). I respectfully agree with his decision. He did not, however, also have to decide, as we have had to, whether the landlord will have until the *hearing* to put his house so in order as to avoid the making of an order under those subsections.

47. I would dismiss the appeal in the *Tiensia* case and allow the appeal in the *Honeysuckle* case.

Lord Justice Sedley :

48. As Rimer LJ notes, this legislation was passed to deal with a widespread abuse in a situation of housing scarcity - the retention by lessors of deposits, commonly of a month's rent, at the termination of the tenancy. It makes compulsory provision for safeguarding tenants' money and backs the scheme up by penalising defaulting landlords in triple damages. This much is plain.

49. If the meaning of the statute is, however, that a landlord is not culpably in default if, months or maybe years after the expiry of the fortnight given by law for compliance, he or she eventually complies with the initial requirements, then the scheme is a dead letter. The extent to which it is drained of effect is emphasised by Rimer LJ's conclusion (which I agree follows from his reading of the legislation) that the landlord's opportunity for penitence extends not only to the date of issue of the tenant's claim or (more probably) counterclaim but to the eve of judgment. If this is right, no tenant could ever sensibly be advised to sue or counterclaim for the penalty.

50. This is one result which the court has to face up to. The other is said to be the imposition of a penalty by less than clear words, an outcome against which the courts always lean heavily. But I do not think that we are in that situation here because neither side's reading of the statute is non-penal. They differ only, albeit crucially, as to when and in what circumstances the landlord becomes liable to the penalty. The

fact that, on the tenants' reading, the penalty falls on the inadvertent and the unlucky equally with the devious and the dishonest is morally questionable but perfectly explicable: Parliament has decided that recovery is to be in the tenant's hands, that it is to depend on the simple question of compliance or non-compliance, and that strict liability for non-compliance will catch the devious and encourage the others. That is a matter for legislators, not for us.

51. What is a matter for us is the converse: that to sanction compliance at any time up to the moment of judgment is to eviscerate the legislative scheme. Not only the innocent defaulter but the scheming one can evade the penalty with ease. The only lessor likely to be taken to judgment is one who has appropriated the money and is no longer worth powder and shot (since otherwise he would have paid at the eleventh hour into a scheme).

52. There is, however, a further sanction for non-compliance. Section 215(1) prohibits the giving of notice to recover possession on termination of a shorthold tenancy where the deposit is not being held in accordance with an authorised scheme or the initial requirements of a scheme have not been complied with. Although the first of these conditions might be met by a late payment into the scheme, the second could not be, at least on the tenants' construction, once the initial fortnight had gone by. It would seem to follow that, if the tenants' argument is right, the defaulting lessor, whether culpable or inadvertent, is debarred indefinitely from recovering possession. Even in a statutory scheme designed to concentrate minds on the protection of tenants' deposits, this appears a remarkable result, akin to a forfeiture. It is a result avoided by the construction of s.213 preferred by the majority of the court, but that in itself is not enough. One has to see what meaning s.213 is properly capable of bearing.

53. The two critical subsections of s.213, (3) and (4), are set out in Rimer LJ's judgment. S.213(4) defines the initial requirements as requirements imposed by an authorised scheme which fall to be complied with by the landlord on receiving a tenancy deposit. This, if I may say so with respect to the drafter, is thoroughly unhelpful. Until the deposit is handed over by the tenant, no obligation exists to pay it into any scheme: see s.213(1). On receipt of it the landlord has to select a scheme in which to secure the deposit. It is only at that point that the initial requirements, which will always be those of a particular scheme, can be known. So the subsection has to mean that the initial requirements of a scheme are those which become operative not on receiving the deposit but on entry into the scheme: for example (see Sch 10) the payment of the full amount of the deposit into a custodial scheme account or the necessary undertakings on entry into an insurance scheme.

54. If this is so, then the provision of s.213(3) that the initial requirements are to be complied with within 14 days from the receipt of the deposit is not the vacuous provision on which the landlords' counsel rely. It now has some purchase. The 14 days, I accept, cannot logically be derived from the scheme itself, since it is only on entry into it that its terms become operative. But they can and in my judgment do constitute a statutory time limit for the obligatory entry into one authorised scheme or another. It would certainly have been clearer if s. 213(3) had said "Where a landlord has received a deposit he must secure it in an authorised scheme within 14 days of receiving it". But that, however elliptically expressed, is what s.213(3) means.

55. I do not, with great respect, consider that the indicia in s.214 on which Rimer LJ relies for his contrary conclusion are significant. It may be, as he suggests, that the intended purpose would be more correctly expressed by the use in s.214(1)(a) of a different tense - "the initial requirements were not complied with" – to signify a past rather than an ongoing failure to comply. But any lay person reading this text (and legislation like this is or ought to be written for lay people) would understand well enough what was intended: that a landlord who did not put a deposit into safekeeping within 14 days of receiving it was from then on at risk of having, among other things, to pay three times the deposit as a penalty. They would not read it as meaning that the 14 days could be safely ignored because the landlord could always escape a penalty by safeguarding the deposit if and when the tenant sued. The reason would not be that they saw and forgave the draftsman's grammatical solecism; it would be that "the initial requirements have not been complied with" is a comprehensible, if not an ideal or strictly correct, way of describing a past failure to do something. Indeed the drafter might legitimately have replied that, once the 14 days have elapsed, there *will* be an irremediable failure which will therefore be ongoing at the date of any future claim, justifying the use of the perfect tense. Such an understanding would also give some effect to the word by which Parliament has chosen to describe this and the associated requirements: "initial".

56. Rimer LJ, in reading this provision, gives weight to the submission that the parenthetic reference in s.214(1)(a) is not to s. 213(3) but to s.213(4) – in other words to the definition of "initial requirements" rather than to the 14-day requirement itself. He takes the same approach to a similar parenthesis in s. 215(1)(b). I regret to say that I cannot agree. The only purpose of the parenthesis seems to me to be to help readers to get their bearings by reminding them where the definition of "initial requirements" is to be found. The differential use of "initial requirements" in subsections (3) and (4) respectively is open to stylistic criticism, but nothing turns on it in these appeals. For reasons I gave earlier, the distinction between the two subsections for the purposes of construing s.214(1)(a) and s.215(1)(b) is in my respectful view a distinction without a difference.

57. The same applies, in my respectful opinion, to Rimer LJ's reasoning in relation to s.213(6). I do not consider that the provisions which refer back to the requirement in s.213(6) for prescribed notices to be given within 14 days of receipt of the deposit either add anything to or subtract anything from the interpretation of s.214(1)(a). The two elements of the scheme no doubt stand or fall together, but that is all.

Conclusions

58. For the reasons I have given there is nothing legally (as contrasted with morally) objectionable in the strict liability to a penalty, and no way of avoiding a penal construction of the legislation. There is, however, something approaching overkill in the additional prohibition in s.215 on the recovery of possession. We are left with an intractable dilemma: to drain the legislative scheme of all effect by reducing the remedy for non-compliance to near-impotence, or to give what in my judgment was without doubt the intended meaning to the prescribed 14-day limit, with irreversible economic and proprietary consequences for landlords who fail, even if only through misfortune, to meet it.

59. We have not been shown and have not asked for the parliamentary proceedings, but I find it impossible to believe that legislators thought they were voting for the first of these outcomes. I find it almost as difficult to believe that they appreciated that the effect of what they *were* voting for was as drastic as it appears to be. In many cases turning on the meaning of a statute the absurdity or oppressiveness of one reading can legitimately steer the court to a less apparent but more equitable interpretation. But where, as here, it steers the court to an interpretation which is every bit as unacceptable, the canons of construction fall silent.

60. Left alone, therefore, with this hostile text, it seems to me that the tenants' reading is the more proximate to the language and configuration of the statute. Accordingly for my part, and without much confidence that the enactment actually makes the provision that Parliament meant to make, I would dismiss the appeal in the *Honeysuckle Properties* case and allow it in the *Tiensia* case.

Lord Justice Thorpe :

61. I have had the advantage of reading the draft judgments of Rimer LJ and Sedley LJ on this particularly difficult point of construction. At the conclusion of the oral argument I was persuaded that the language of the statute compelled the conclusion expressed by Rimer LJ. I regret that conclusion since, as Sedley LJ persuasively explains, it means that landlords are not disciplined as Parliament must surely have intended. Nevertheless I concur with the outcome proposed by my Lord, Rimer LJ.