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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AJ/LVL/2016/0007**
Property	:	**4 Southall Court, Lady Margaret Road, Southall, Midx UB1 2RQ**
Applicant tenant	:	**Mr R Guraya**
Representative	:	**In person**
Respondent landlord	:	**Golden Glory Estates Ltd**
Representative	:	**Mr Peter Ward, director**
Type of Application	:	**Lease Variation**
Tribunal Members	:	**Tribunal Judge Jack, Professional Member Gowman BSc MCIEH**
Date and venue of determination	:	**18th July 2016 at 10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**18th July 2016**

DECISION

Background and procedural

1. By an application received on 27th May 2016, the applicant tenant sought a variation of his lease. The application did not state under what section of the Landlord and Tenant Act 1985 the application was being made. However, the nature of the application is such that it can only have been made under section 35. This is because the tenant applied for remission of fees. If an application had been made under section 37 (the only section which could have applicability), the tenants of the other 47 flats in the block would have needed to be added.

2. The grounds of the claim were

   (1) The respondent suddenly withdrew all the refuse paladins on the morning of 13th August 2015, locked them up in the new refuse bin-store and declared that the leases did not allow the use of refuse paladins.

   (2) Similarly the respondent stopped the leaseholders using the parking space. 48 parking spaces are purpose built, one for each flat, and are as old as the building itself. The reason behind enforcement was financial gain.

   (3) The respondent does not allow the use of satellite dishes nor the installation of aerials.

3. On 21st June 2016 the Tribunal gave directions for the Tribunal to determine the question of jurisdiction. In addition, since the management of the estate has passed to the Southall Court (Lady Margaret Road) RTM Co Ltd directions were given for the RMT company to be served with notice of the proceedings. On 12th July 2016 the RMT company wrote to the Tribunal asking to be joined as a party, but submitted that "if the application does not fit under section 35 then it will be arranged accordingly under section 37 of the Landlord and Tenant Act 1987."

4. On 11th July 2016, in a letter received by the Tribunal the following day, the tenant applied to withdraw his application. He said: "If the Tribunal allows me to make a full application under section 37, I will do that."

5. The Tribunal's directions of 21st June 2016 provided for a determination of the question of jurisdiction on paper, but allowed any party to ask that there be a hearing. No party has made such a request.

Discussion

6. The first question is whether the Tribunal should consent to the withdrawal of the application as requested by the tenant, or should determine the jurisdictional question. The Tribunal's consent is required: see Tribunal Procedure (First-tier Tribunal) (Property

Chamber) Rules 2013 rule 22(3). In order to determine this issue, however, the Tribunal needs to consider the RTM company's application, which in turn depends on the answer to the jurisdictional question.

7. We thus consider the second question, whether the Tribunal has jurisdiction. The tenant relies solely on section 35(2)(d) of the Landlord and Tenant Act 1987. Section 35, so far as material, provides:

> "(1) Any party to a long lease of a flat may make an application to [the First-tier Tribunal] for an order varying the lease in such manner as is specified in the application.
>
> (2) The grounds on which any such application may be made are that the lease fails to make satisfactory provision with respect to one or more of the following matters, namely—
>
> > ...(d) the provision or maintenance of any services which are reasonably necessary to ensure that occupiers of the flat enjoy a reasonable standard of accommodation (whether they are services connected with any such installations or not, and whether they are services provided for the benefit of those occupiers or services provided for the benefit of the occupiers of a number of flats including that flat)..."

8. The provision of paladins for rubbish in our judgment is a "provision of services" by the landlord. It would be a question of fact whether the provision of paladins, rather some other form of waste collection, was reasonably necessary. However, the tenant's complaint seems to be that there are not currently adequate facilities provided by the landlord for waste collection. Provision of such services is in our judgment necessary to ensure a "reasonable standard of accommodation" for the tenants in general and this tenant in particular. Accordingly the Tribunal has jurisdiction in respect of this complaint by the tenant.

9. The provision of free parking is in our judgment different. An easement of parking is an interest in land (see *Gale on Easements* (19th Ed) at para 3-150); it is not a provision of services by the landlord. Whether the tenant has an easement of parking depends of whether free parking was an apparent easement attaching to Flat 4 on 15th December 1978, when the lease was granted. As the Court of Appeal said in *Wheeldon v Burrows* (1879) 12 Ch D 31 at 49:

> "[O]n the grant by the owner of a tenement of part of that tenement as it is then used and enjoyed, there will pass to the grantee all those continuous and apparent easements (by which, of course, I mean quasi-easements), or, in other words, all those easements which are necessary to the reasonable enjoyment of the property granted, and which have been and are at the time of the grant used by the owners of the entirety for the benefit of the part granted."

See also *Hill v Gillman* (2000) 80 P&CR 108.

10. In our judgment, the Tribunal has no jurisdiction under section 35 to vary the terms of the lease to grant a parking space. However, the point may well be academic in the light of *Wheeldon v Burrows*.

11. The prohibition on satellite dishes is not a "service", so in our judgment there is no jurisdiction to entertain this part of the tenant's application.

12. We revert to the first question, whether to permit the tenant to withdraw his application. We note that the RTM company intends to get the 75 per cent support of tenants necessary to permit an application to be made under section 37, which is in different terms to (and wider) than section 35. This seems likely to be a better route to resolving the disputes between the landlord and the body of tenants, which has already caused a disproportionate number of applications to this Tribunal and its predecessor and to the County Court. Accordingly we permit the tenant to withdraw his application.

DECISION

The Tribunal permits the tenant to withdraw his application.

Name: Adrian Jack **Date:** 18th July 2016