

10/1/14



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : **LON/00/AN/LSC/2014/0472**

Property : **Flats 4,5,6,7, at 75-77 Moore Park
Road London SW6 2HH**

Applicant : **Greentree Estates and Investments
Ltd**

Representative : **Mr J Millard, solicitor's agent**

Respondent : **Ms C D'Amone (Flat 4)
Ms V Ashe (Flat 5)
NJ and SL Loxton (Flat 6)
R Brehaut and M Kamani (Flat 7)**

Representative : **Mr Bryant on behalf of Ms Ashe**

Type of Application : **S27A Landlord and Tenant Act 1985**

Tribunal Members : **Mrs F J Silverman Dip Fr LLM
Mr I D Holdhurst FRICS**

**Date and venue of
Hearing** : **10 Alfred Place, London WC1E 7LR**

Date of Decision : **5 November 2014**

DECISION

This application is struck out under Rule 9 (2) of the Tribunal Rules of Procedure 2013 because the Tribunal has no jurisdiction to entertain it.

REASONS

1 By an application dated 11 August 2014 the Applicant Landlord filed an application under s27A Landlord and Tenant Act 1985 in which it asked the Tribunal 'to solely determine that the charges for the works can be recovered as part of the service charge defined within each lease. For clarity, it does not relate to the amount and or reasonableness of the charges'.

2 Directions were issued by the Tribunal on 13 October 2014 in which a notice of strike out under Rule 9 (2) was issued on the basis that the Tribunal had no jurisdiction to deal with the matter. On 5 November 2014 the Tribunal heard the parties' submissions relating to the strike out warning.

3 At the hearing on 5 November 2014 the Applicant was represented by Mr J Millard and Mr Bryant represented Ms Ashe. None of the other Respondents were present or represented.

4 Following the Directions hearing the Applicant had submitted to the Tribunal two estimates for the works which it was proposed to undertake. The Tribunal was not however asked to adjudicate on the reasonableness of those estimates and no application was made to amend the application itself to include this issue.

5 The Applicant asserted that the Tribunal had power under s 27A Landlord and Tenant Act 1985 to deal with the question posed by the landlord in its application. The wording of the section is appended below.

6 . The Tribunal considered the submissions made on behalf of the Applicant but was unable to reconcile its own interpretation of s27A with that proposed by the Applicant. The question being posed by the Applicant was clear and succinct: the Tribunal was being asked whether the works which were proposed fell within the scope of the landlord's responsibilities in each lease and were thus recoverable as service charge. This would involve a detailed examination of each lease (as they may not all be identical) and an assumption that the works proposed in the estimates will actually be carried out exactly as specified in the estimates. The Tribunal does not consider that this is the purpose of s27A and neither is it feasible for a Tribunal to carry out such an analysis since an estimate for works is merely a guide to those works and the actual work done may, for many reasons, differ from the initial specifications.

7 The Applicant stressed the need for certainty on the Applicant's part and that the works were urgent. They had not however asked the Tribunal to grant a s20ZA dispensation. The fact that a s20 notice had been served on the tenants in July 2013 and had not been proceeded with somewhat detracted from the Applicant's arguments relating to urgency.

8 Mr Bryant, on behalf of Ms Ashe said that they had already paid £70,000 for extensive repairs including those relating to water ingress now and that the work had been unsatisfactory. The current proposed works were partly to remediate work which had already been done. The Tribunal explained to Mr Bryant that the question before it at the present hearing was merely that of whether or not to strike out the Applicant's application. He

would have an opportunity to challenge the cost and standard of the works after they had been completed.

9 Having considered the submissions of both parties the Tribunal concludes that the question being posed by the Applicant falls outwith the wording and interpretation of s27A Landlord and Tenant Act 1985.

10 That being so, the Tribunal has no jurisdiction to entertain the claim and the application is therefore struck out under Rule 9(2) of the Tribunal rules of Procedure 2013.

11 The Law

Rule 9(2)(a)

The Tribunal must strike out the whole or a part of the proceedings or case if the Tribunal

a) does not Have jurisdiction in relation to the proceedings or that part of them.

Section 27A Landlord and Tenant Act 1985

- (1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to -
 - (a) the person by whom it is payable,
 - (b) the person to whom it is payable,
 - (c) the amount which is payable,
 - (d) the date at or by which it is payable, and
 - (e) the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
 - (a) the person by whom it would be payable,
 - (b) the person to whom it would be payable,
 - (c) the amount which would be payable,
 - (d) the date at or by which it would be payable, and
 - (e) the manner in which it would be payable.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which -
 - (a) has been agreed or admitted by the tenant,

- (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
 - (c) has been the subject of determination by a court, or
 - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Judge F J Silverman as Chairman
Date 5 November 2014

Note:
Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking