

LEASEHOLD VALUATION TRIBUNAL
FOR THE LONDON RENT ASSESSMENT PANEL

LON/00AG/LBC/2009/0002

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Commonhold & Leasehold Reform Act 2002 Section 168

Property: Flats 14 and 41 Romney Court, 139/141 Haverstock Hill,
London NW3 4RX

Applicant: Haverstock Grove Residents Association Limited
(Freeholder)

Respondents: Mr A. Shapiro (Flat 14)
Mr J. R. A. MacDonald (Flat 41) (Leaseholders)

Paper Determination: 24th February 2009

Members of the Tribunal:

Mr L. W. G. Robson LLB(Hons) (Chairman)

Ms M. Krisko BSc(Est Man) BA FRICS

Preliminary Matters

1. This case relates to two joined applications made under section 168 of the Commonhold and Leasehold Reform Act 2002, for a determination that the Respondents are in breach of covenants in their leases dated 18th July 1963 and 2nd August 1963 relating to the alleged non payment of ground rent and service charges.
2. The applications were both made on 20th January 2009. The Applicant was advised in writing on 22nd January 2009 by Tribunal staff that the Tribunal did not have jurisdiction to determine the matters complained of under Section 168(4). Application forms under Section 27a of the Landlord & Tenant 1985 were provided, and its applications were returned, together with a copy of the Tribunal's guidance leaflet No 3. The Applicant resubmitted its applications under Section 168 on 27th January 2009, insisting on a determination under Section 168. Directions were therefore given for a jurisdiction hearing on 29th January 2009.
3. None of the parties asked for an oral hearing, and the case was dealt with on the papers.


Determination

4. At the paper determination on 24th February 2009, the Tribunal considered the written submissions and bundles of documents. The Applicant submitted substantially similar bundles in both cases. The Respondents made no submissions, and have taken no active part in the application.
5. The Applicant provided for each case a written application setting out the various matters suggested in the Tribunal guidance note sent to its solicitors on 26th January 2009, together with “Particulars of Claim” set out in the manner more usually seen in the County Court, a copy of the relevant lease, and copies of the correspondence with the Tribunal. The Application alleged that the Respondents had failed to pay their ground rent and service charges pursuant to the Sixth Schedule to the leases. The first Respondent was stated to owe £1,979.34, and the second Respondent was stated to owe £1,635.75, both described in slightly more detail in a statement of arrears attached. The Applicant’s legal costs for the applications were also set out. The Applicant submitted that the matters complained were breaches of covenant, and that all costs fees expenses incurred in the applications were properly chargeable to the service charge of the building.

Decision

6. The Tribunal noted the guidance set out in its Guidance note 3, which makes it substantially clear that applications relating to service charges (unlike other covenants requiring service of a Section 146 notice) cannot be made unless a Leasehold Valuation Tribunal has made a determination under Section 27a relating to those charges. The Applicant made no submissions at all on this point. Parliament set out in Section 27A the method by which the parties can obtain a final determination of service and administrative charges. Without a determination under Section 27A, a landlord cannot obtain an enforceable judgement from a Court that the sum claimed is owed. There appears no power for a Leasehold Valuation Tribunal to bypass the procedure required under Section 27A. Unlike some courts, the tribunal is a creature of statute, and has no inherent jurisdiction. Without statutory intervention to the contrary, the Tribunal must follow the procedure laid down in Section 27A.
7. The Tribunal is similarly unable to decide questions relating to claims for rent, as no provision gives it power to do so. Non payment of rent is not a matter which requires the service of a notice under Section 146 of the Law of Property Act 1925, and accordingly cannot be the subject of a Section 168 determination. Again the Tribunal has no jurisdiction. Claims for non-payment of rent must be made to a Court.
8. Accordingly the Tribunal decided that it had no jurisdiction to make the determination applied for in respect of service charges, as no application under Section 27A had been made or determined. The Tribunal further decided that it had no jurisdiction to make a determination relating to non-payment of rent, as that was not a matter which required the service of a notice under either Section 146 of the Law of Property Act 1925, and thus Section 168 of the Commonhold & Leasehold Reform Act did not apply.

9. Subsequent to the determination, but prior to its publication, the Applicant applied by letter dated 3rd March 2009 to withdraw the application n relating to Flat 41. No consent from the second Respondent was received, and no useful purpose seemed to be served in granting the application. The Tribunal accordingly refused the application.

Signed: 
Chairman

Date: 9th March 2009