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HM Courts & Tribunals Service

Residential Property
TRIBUNAL SERVICE

LONDON RENT ASSESSMENT PANEL

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON A REQUEST TO DISMISS AN APPLICATION UNDER SECTION 27A OF THE LANDLORD AND TENANT ACT AS AN ABUSE OF PROCESS

Case Reference:	LON/00AP/LSC/2011/0298
Premises:	419A Archway Road, London N6 4HT
Applicant:	Maureen Ennison
Respondent:	419 Archway Road Freehold Company Limited
Date of hearing:	23 May 2012
Appearance for applicant:	The applicant in person
Appearance for respondent:	Andrew Whelan
Tribunal:	Margaret Wilson Dallas Banfield FRICS
Date of decision:	25 May 2012

Introduction

1. This decision is made in respect of a request by the landlord, 419 Archway Road Freehold Company Limited, under regulation 11 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 ("the Procedure Regulations") to dismiss an application made by a leaseholder, Maureen Ennison, under section 27A of the Landlord and Tenant Act 1985 ("the Act") as frivolous, vexatious, or an abuse of the process of the tribunal by virtue of the tribunal's powers set out in regulation 11 of the Procedure Regulations. This provides:

> *(1) Subject to paragraph (2), where –*
>
> *(a) it appears to a tribunal that an application is frivolous or vexatious or otherwise an abuse of process of the tribunal; or*
>
> *(b) the respondent to an application makes a request to the tribunal to dismiss an application as frivolous or vexatious or otherwise an abuse of the process of the tribunal,*
>
> *the tribunal may dismiss the application, in whole or in part.*
>
> *(2) Before dismissing an application under paragraph (1) the tribunal shall give notice to the applicant in accordance with paragraph (3).*
>
> *(3) Any notice under paragraph (2) shall state –*
>
> *(a) that the tribunal is minded to dismiss the application;*
>
> *(b) the grounds on which it is minded to dismiss the application;*
>
> *(c) the date (being not less than 21 days after the date when the notice was sent) before which the applicant may request to appear before and be heard by the tribunal on the question whether the application should be dismissed.*
>
> *(4) An application may not be dismissed unless –*
>
> *(a) the applicant makes no request to the tribunal before the date mentioned in paragraph (3)(c); or*

(b) where the applicant makes such a request, the tribunal has heard the applicant and the respondent, or such of them as attend the hearing, on the question of the dismissal of the application.

Background

2. 419 Archway Road is a Victorian building which has been converted into five flats. At one time the freehold owner of the building was Lensmister Ltd but the freehold title is now and has at all material times been vested in the present landlord, 419 Archway Road Freehold Company Ltd. Half the shares in the landlord company are owned by Andrew Whelan and half by a Mr and Mrs Renna. Flat A is subject to a long lease which was, until it was forfeited, held by Ms Ennison. By virtue of the lease Ms Ennison was liable to pay service charges to the landlord in accordance with clause 2(19), the service charges recoverable as rent.

3. Flat A is subject to a mortgage in favour of the Bank of Scotland plc which, on 29 January 2007, obtained an order against Ms Ennison for possession of Flat A on the ground that mortgage repayments had not been made.

4. By a decision dated 28 December 2008 made on the application of Ms Ennison and another leaseholder under section 27A of the Act a tribunal determined, so far as is relevant, that 419 Archway Road Freehold Company Limited was entitled to manage the building and to enforce payment of service charges and that Ms Ennison was liable to pay forthwith an interim payment of service charges in respect of the year 2008/2009.

5. By a decision dated 16 March 2010 made on the application of Ms Ennison under section 27A of the Act a tribunal determined that she was liable to pay the final amount demanded by way of service charges in respect of the year 2008/2009 and the interim service charges demanded for the years 2009/2010

and 2010/2011. Ms Ennison applied for but was refused permission to appeal to the Upper Tribunal both by the tribunal and by the Upper Tribunal.

6. Ms Ennison did not pay the amounts which she had been found liable to pay by virtue of the tribunal's decision dated 16 March 2010 and on 24 August 2010 the landlord commenced proceedings against her in the Clerkenwell and Shoreditch County Court for forfeiture of her lease, mesne profits and other relief. On 20 October 2010 the Bank of Scotland plc was joined as second defendant to the claim. The proceedings were adjourned on a number of occasions.

7. On 20 April 2011, while the landlord's county court proceedings were awaiting a final hearing, Ms Ennison issued an application to the tribunal ("the present application") under section 27A of the Act to determine her liability to pay service charges which included charges for major works carried out to 419 Archway Road in 2010 and the final service charges for the years 2009/2010 and 2010/2011.

8. Ms Ennison issued a number of claims against the landlord in the county court. On 15 June 2011 a district judge dismissed three such claims as totally without merit and ordered that no further claims were to be made by Ms Ennison without permission of a district judge.

9. By an email to the tribunal dated 17 May 2011 Mr Whelan, acting on behalf of the landlord, requested the tribunal under regulation 11(1)(b) of the Procedure Regulations to dismiss the present application as an abuse of the tribunal's process. At a pre-trial review of the present application held on 25 May 2011 the application was adjourned to await the outcome of the county court proceedings.

9. The hearing of the landlord's claim for possession of Flat A commenced before His Honour Judge John Mitchell at the Clerkenwell and Shoreditch County Court on 19 October 2011 and continued on 20 October, Ms Ennison being then represented by counsel. The hearing continued on 18 and 19 January 2012 by which date Ms Ennison was no longer legally represented, although she had the benefit of her former counsel's skeleton argument. The landlord and the Bank of

Scotland were both represented throughout by counsel and HHJ John Mitchell recorded in his judgment that both counsel ensured that the points which Ms Ennison sought to make were fully considered.

10. On 19 March 2012 HHJ John Mitchell ordered that Ms Ennison give possession of Flat A on 17 April 2012. He said in his judgment that the tribunal had on 16 March 2010 determined that Ms Ennison was liable to pay the amounts claimed by the landlord, and that, the charges not having been paid in full, the landlord was entitled to exercise its right of forfeiture, he gave judgment in favour of the landlord for the sums found owing by the tribunal, less moneys paid, with interest and mesne profits and ordered Ms Ennison to pay costs on an indemnity basis.

11. Ms Ennison sought permission to appeal to the Court of Appeal from the judgment of HHJ John Mitchell but on 17 May 2012 Lewison LJ refused permission to appeal on paper and refused a stay of execution of the enforcement of the landlord's warrant for possession. Ms Ennison has asked for an oral hearing which, we were informed, was due to take place on 24 May, the day following the hearing before us.

The request to dismiss the application

12. Notice under regulation 11(2) of the Procedure Regulations was given to Ms Ennison by the tribunal on or about 25 April 2012. Ms Ennison asked for an oral hearing, as was her right, which took place on 23 May 2012. She appeared in person and the landlord was represented by Mr Whelan.

13. Ms Ennison submitted that the landlord had no right to claim service charges from her by virtue of the lease because the lease was a contract between her and Lensminster Ltd which was dissolved in 1990. She submitted that the final service charges for the years 2009/2010 and 2010/2011 had never been determined to be payable, that the major works carried out by the landlord in 2010 had not been properly completed, and that the landlord, in breach of its

obligations under the lease, had not provided her with service charge accounts for the years 2009/2010 and 2010/2011. She submitted that the final service charges which she was liable to pay required be determined so that the correct amount which ought to be paid to the landlord should be paid. She said that Lewison LJ was incorrect to say that she could apply to the court under section 138 of the County Courts Act 1994 because she had already made such an application. She said that she did not have the means to pay the debt to the landlord other than out of the proceeds of sale of Flat A.

14. Mr Whelan said that all the matters raised by Ms Ennison had been very fully considered by HHJ John Mitchell and/or by the tribunal and that the present application served no useful purpose and were no more than playing for time. He said that the landlord had not demanded any service charges of Ms Ennison other than the interim charges which the tribunal had determined on 16 March 2010 to be payable.. He said that bailiffs had been instructed to enforce the order for possession on 30 May 2012 but that, as Lewison LJ said when he refused permission to appeal, it remained open to Ms Ennison to apply to the court for suspension of the order. He said that the interim amounts demanded by way of service charges for the years 2009/2010 and 2010/2011 and determined as reasonable and payable by the tribunal in its decision dated 16 March 2010 were less than the actual service charges and that he personally had paid the shortfall in the landlord's costs caused by Ms Ennison's failure to pay the amounts demanded of her.

Decision

15. We are satisfied that the present application should be dismissed as an abuse of the process of the tribunal. All the matters which Ms Ennison raised before us have been exhaustively considered by HHJ John Mitchell. It is true that no determination has been made of the actual service charges for the years 2009/2010 and 2010/2011, but, by virtue of the lease of Flat A, the landlord is entitled to demand interim charges, and the tenant is obliged to pay them. Such charges were properly demanded, have been found to be payable, and have not

been paid. On that basis it has been determined by a court that Ms Ennison's lease is forfeit and that the landlord is entitled to possession. It is not for this tribunal to interfere with that process and we are satisfied that no purpose is served by the present application.

16. In the event that the lease of Flat A ceased for whatever reason to be forfeit and the landlord demanded further service charges from Ms Ennison it would be open to her to challenge them in a fresh application. In that event she could issue a fresh application in respect of newly demanded service charges and the tribunal would consider it. As things stand, however, we have no doubt that the present application is an abuse of process and ought not to proceed.

CHAIRMAN.....Margaret Wilson.....

DATE: 25 May 2012