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CAM/00MD/LSC/2013/0110



**First-tier Tribunal
Property Chamber
(Residential Property)**

Case reference : CAM/00MD/LSC/2013/0110

Property : 12A Salt Mansions,
Bath Road,
Slough,
Berkshire,
SL1 3XN

Applicant : Freeholders (GHMPB) Limited

Respondent : Miss Caron Marie Blain

Date of Transfer : 1st August 2013
(received 4th September 2013)

Type of Application : A determination of the
reasonableness and payability
of service charges pursuant to
section 27A of the Landlord and
Tenant Act 1985 (“the 1985 Act”)

Date of Decision : 9th January 2014

Tribunal : Judge J. Oxlade
H. Bowers MRICS

DECISION

For the following reasons, the case is transferred to Slough County Court

REASONS

Background

1. On 5th March 2013 Mint Lettings and Management Limited (“the Managing Agents”) issued proceedings against Carol Blain (“the Defendant”), for a money judgement of £5613.07.

2. The Particulars of Claim said that the Defendant was the lessee of 12a Salt Hill Mansions, Bath Road, Slough, SL1 3XN ("the premises") with liabilities under the lease to pay service charges, which she had failed to do, and so £5195.23 was outstanding. There were additional sums for Court fees, administration and interest charges.

3. On 19th March 2013 the Defendant entered a defence, disputing the entire sum claimed. She said that

"This claim has gone through Slough Court twice and both times I turned up to defend myself and the other party did not. The judge could do nothing other than return the papers. This charge is for removal of rubbish which they state my tenants left at the back of the premises. My tenants at the time deny leaving this rubbish. The costs for removal are extortionate and they have also tried to get a similar amount from other flat owners".

4. Further, she said that there had been "no service rendered by this company" (presumably referring to Mint Lettings) but without providing any detail to the assertion and without making any substantive challenge to the service charges demanded. In addition she said that her name had been mis-spelt and is Caron Blain (not Carol Blain).

5. By 29th April 2013 the Managing Agents had appreciated that they should have issued proceedings with the freeholder as claimant ("the Applicant" in these proceedings), and so sought an Order for substitution so that the Claimants were Freeholders GHMPB Limited; this the Court ordered on 1st August 2013 and the Defendant's name was also amended.

6. On 15th May 2013 the County Court also ordered that if the Defendant alleged that the claim should be struck out because it duplicated a previous claim or claims, she must not less than 14 days before listing the claim for hearing, file and serve on the Claimant the documents on which she relies. The Court file does not show that this service took place, or thereafter that this was a live issue before the County Court.

7. On 1st August the County Court ordered that the "case be transferred" to the First Tier Tribunal pursuant to section 176A of the Commonhold and Leasehold Reform Act 2002, which provides that

"(1) Where in any proceedings before a court there falls for determination a question which the First-tier Tribunal or the Upper Tribunal would have jurisdiction to determine under an enactment specified in subsection (2) on an appeal or application to the Tribunal, the court—

(a) may by order transfer to a First-tier tribunal so much of the proceedings as relate to the determination of that question...

"(2) The enactments specified for the purposes of subsection (1) are –

.....

(c) the Landlord and Tenant Act 1985.”

Directions

8. On 7th October 2013 the Tribunal issued Directions. In the recital of the Order the Tribunal said that it noted that the limited issue raised in the defence to the service charges appeared to relate to the costs of removal of rubbish. Accordingly the case of *John Lennon v Ground Rents (Regisport) Limited* [2011] UKUT 330 applied, which made it clear that when a case is transferred from the County Court then the Tribunal can only hear the dispute as framed by what is in dispute in the pleadings filed at the County Court.

9. Accordingly, the Tribunal said that unless either party issued a section 27A application to widen the dispute it would be limited to the dispute over the costs of rubbish removal. The Defendant did not dispute that this was the gravamen of the complaint. Specific directions were made for the filing of evidence confined to the issue of rubbish removal.

10. The Applicant asked for the case to be determined on the papers and so Directions were made to this end; the Defendant did not seek an oral hearing.

Parties Respective Cases

Applicant

11. In accordance with the Directions made, the Applicant filed a bundle of documents in which the Applicant's position was that of the sums claimed in these proceedings none related to rubbish removal. At page 31 there was filed an invoice itemising outgoings and arrears, and indeed there is no mention of rubbish removal.

12. The Applicant made the point that it had changed Managing Agents, and they did not have available any of the correspondence which related to the past service charges years which made up the bulk of the judgement sum, as historic service charge arrears. At pages 7 and 8 of the bundle on behalf of the Applicant, Mint Letting said that it was not aware of any correspondence between the Defendant and the past managing agent relating to rubbish removal, nor in relation to other flats – which would imply that any invoice for rubbish removal fell outwith the service charges and so invoiced separately.

13. Accordingly, the Applicant's position is that the Defendant was being pursued for service charge monies owed and not for any contribution relating to removal of rubbish. Accordingly, the Applicant was not in a position to comply with the Directions. By letter dated 25th October 2013 the Applicant said that the Defendant should be put to strict proof that the sums demanded were in relation to rubbish.

Defendant

14. In reply by letter dated 26th October the Defendant said she was not sure if she needed to respond, as the Applicant had not complied with Directions. She said that she could not defend herself without a breakdown from the Applicant, and in the absence of this she could not file a response. She added

that new agents were appointed in 2012 and referred to various items and various costings, saying that they needed to be explained.

Findings


15. It is clear from the case law referred to above, that on a transfer from the County Court, the Tribunal cannot assume jurisdiction over all matters in dispute between the parties, but only those issues raised by the parties on the pleadings (claim and defence/counterclaim) or where a separate section 27A application is raised.

16. In this case the Applicant's position on the pleadings is that it is entitled to recover service charges from the Defendant, who on the pleadings defends the claim solely on the basis that rubbish charges were unreasonable.

17. The Applicant disputes that any part of its claim relates to such rubbish removal and the Defendant has not specified the basis for her belief that the costs relate to this item. She is on notice that this is the Applicant's position, yet she has not produced any documents showing that what is demanded in these proceedings relates to rubbish removal; this should have been relatively easy to do, as it is she who says that there is an association between these charges and rubbish removal.

18. The position is unsatisfactory, because there has been a change of managing agents, and so whilst the assertions of the managing agents may be less than categorical, the Defendant has been put on notice that this is their position - and she has not put this right.

19. In the circumstances, the appropriate course is to transfer the case back to the County Court; in doing so the Tribunal makes it clear that it is not satisfied that the question of rubbish removal has any impact on the service charge amounts in dispute in this litigation, nor on the recovery of service charges demanded in these proceedings. Neither does it have power to confirm that otherwise the service charges are reasonable and payable in accordance with section 27A, for the reasons given above.

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Joanne Oxlade

**Judge of the First-tier Tribunal Property Chamber
(Residential Property)**

9th January 2014