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FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**: CHI/29UN/LSC/2014/0114** **CHI/29UN/LSC/2014/0115**
Property	**: Flats 14 and 15 Seacourt** **Margate** **Kent** **CT9 1AF**
Applicant	**: Seacourt Kent Limited**
Representative	**: Girlings Solicitors**
Respondent	**: Ms M. L. Ocuneff**
Representative	**: Unrepresented**
Type of Application	**: Service charges** **Section 27A of the** **Landlord and Tenant Act 1985**
Tribunal Members	**: Judge R. Norman (Chairman)** **Mr. R. Athow FRICS MIRPM**
Date and venue of Hearing	**: 12th February 2015** **Margate**
Date of Decision	**: 16th February 2015**

DECISION

Decision

1. The Tribunal found that it did not have jurisdiction to deal with these applications.

2. No order is made in respect of costs or reimbursement of fees.

Background

3. The Tribunal received two separate applications (Case Numbers CHI/29UN/LSC/2014/0114 and CHI/29UN/LSC/2014/0115) from Seacourt Kent Limited ("the Applicant") for a determination under Section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act") that service charges for the years 2012 and 2013 in respect of Flats 14 and 15 Seacourt, Margate, Kent CT9 1AF were just and reasonable. In both applications the parties and the matters in dispute were the same and it was determined that the two applications be consolidated and heard together.

4. Directions were issued but nothing was received from Ms M. L. Ocuneff ("the Respondent"). The Applicant was represented by Girlings Solicitors who provided two addresses for the Respondent: the address of each flat and 41 Bowsprit Point, 167 West Ferry Road, London E14 8NT. One of the letters written to the flats was returned marked 'not at this address' and the letter to Bowsprit Point was returned marked 'moved away'.

5. A bundle of documents for the hearing was received from Girlings Solicitors.

Inspection

6. On 12th February 2015 the Tribunal inspected the outside of Seacourt and the halls, stairs and landings leading to Flats 14 and 15 and leading to Flats 5, 6, 11, 12 and 18.

7. Present at the inspection was Mr. M. Karp who stated that he was the building manager and a director of the Applicant. There was no appearance by anybody else.

8. He told us that the building contained 19 flats and consisted of 4 blocks; each block having its own separate entrance.

9. Mr. Karp pointed out the CCTV security system and the gate to the property, which he said had cost £4,000 to repair.

10. We could see that work was required to the soffits and that internal decoration was required.

Hearing

11. The hearing was attended by Mr. Kelly of counsel, instructed by Girlings Solicitors, and Mr. Karp. There was no appearance by the Respondent or by anybody on her behalf.

12. We informed those present that the letters from the Tribunal Office to the Respondent had been returned and that we were concerned that the Respondent may not be aware of these proceedings. Therefore, we asked about attempts made to contact the Respondent and pointed out that invoices which had been provided in the hearing bundle gave another address for her namely: 5 Lourel Drive, Brandon Gate, South Ockenden, Essex RM15 6XH. Mr. Karp stated that letters written to that address had not produced any response and produced an envelope with that address which had been returned. We asked if enquiries had been made of the tenants of Flats 14 and 15 and the letting agent. Mr. Karp stated that enquiries had been made of the tenants and the local letting agent but still nothing had been heard from the Respondent.

13. We were then informed that there had been proceedings in the County Court brought by the Applicant against the Respondent in respect of the service charges the subject of these applications, that the Respondent had not responded to those proceedings and that judgement in default had been obtained. Mr. Karp provided copies of two sets of papers which were similar. The set in respect of Flat 14 included a record of judgement in default in the sum of £3,966.46, a subsequent charging order, a letter dated 8th August 2014 from Girlings Solicitors to the Bank of Scotland asking for a cheque for the arrears of service charge and ground rent and a letter dated 6th August 2014 from Girlings Solicitors to the Applicant stating that judgement had been obtained and that they had written to the Bank of Scotland requesting a cheque for £3,966.46. The set of papers in respect of Flat 15 was similar to the set in respect of Flat 14 but the sum in that case was £3,903.90.

14. We were told that Girlings Solicitors had been informed that neither the Respondent nor the Respondent's mortgagee, the Bank of Scotland, would pay the sums for which judgement had been obtained but no reason had been given for that.

15. The service charges in question were in respect of 2012 and 2013 and at that time the managing agents were New Space Block Management ("New Space"). Mr. Karp stated that he had taken over the management in November or December 2013. In the hearing bundle there were statements dated 2nd April 2014 from New Space and Mr. Karp did not know why New Space were still issuing statements after he had taken over. He expressed the opinion that the administration at New Space had problems. He also stated that the Respondent was the only lessee who had not paid the service charges in question.

16. Having been informed at the hearing of the County Court proceedings, we announced that we were concerned that the Tribunal did not have

jurisdiction to deal with these applications and that we were considering Section 27A (4) of the 1985 Act.

17. Mr. Kelly explained that his instructions were that the applications had been made in good faith as a step on the way to applying for forfeiture of the leases and that Girlings Solicitors wanted the Tribunal to determine that the service charges were just and reasonable. He made the point that it was only a default judgement which had been obtained against the Respondent and therefore there had been no consideration by the Court of the merits of the case; it had been only a procedural decision. He suggested that if we had concerns about jurisdiction that we stay proceedings so that his instructing solicitors could consider the matter further.

18 Mr. Kelly applied for the Respondent to be ordered to reimburse the fees paid for the applications and for costs.

Reasons

19. We appreciated that the Respondent had not disputed any of the service charges, but we were concerned that we were being asked to determine that the service charges in question were just and reasonable and that no evidence had been produced to us on which to make such a determination. Those service charges were in respect of a period before Mr. Karp became the manager, when New Space had been the managing agents. In the hearing bundle there were statements dated 2nd April 2014 from New Space and Mr. Karp did not know why New Space were still issuing statements after he had taken over. Mr. Karp had expressed concern about the administration of New Space. There were no copies of demands made to show that they had been made in accordance with the leases and complied with the statutory requirements. There was no evidence to show that the service charges were just and reasonable.

20. We considered all the documents, the evidence provided and the submissions made. In relation to forfeiture, we noted Section 169(7) of the Commonhold and Leasehold Reform Act 2002 which provides:

"Nothing in section 168 affects the service of a notice under section 146(1) of the Law of Property Act 1925 in respect of a failure to pay-
(a) a service charge (within the meaning of section 18(1) of the 1985 Act) ...."

21. However, our principal concern was Section 27A (4) of the 1985 Act which provides:

"No application under subsection (1) or (3) may be made in respect of a matter which-.... (c) has been the subject of determination by a court..."

22. We came to the conclusion that there had been determinations by a court in respect of the service charges which were the subject of these applications. As a result, the applications before us could not be made and the Tribunal did not have jurisdiction to deal with them. It is unfortunate that when making the applications, no mention was made of the County Court

cases. In all the circumstances there should be no order for the Respondent to reimburse the fees paid or for costs.

Appeals

23. 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.

24. 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.

25. 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.

26. 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.

Judge R. Norman (Chairman)