FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**MAN/32UC/PHC/2015/0005**
Property	**:**	**17 GREENACRES PARK, SPILSBY ROAD, HORNCASTLE LN9 6NJ**
Applicants	**:**	**MR CARL WALKER and MRS CHRISTINE WALKER**
Respondent	**:**	**W & B WILLETT SALES LIMITED**
Type of Application	**:**	**Section 4C, Mobile Homes Act 1983**
Tribunal	**:**	**A M Davies, LLB** **P E Mountain, FRICS**
Date of Order	**:**	**30 June 2015**

ORDER

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1) The Applicants' pitch fee includes the cost of sewerage.

2) The Respondent shall pay the Applicants the application fee in the sum of £155.

REASONS

1. The Applicants moved into a park home at 17, Greenacres Park, Spilsby on or about 16 May 2012. The Respondent owners of the Park did not provide them with a written statement, as required by section 1 of the Mobile Homes Act 1983 (the Act).

THE LAW

2. Subsections 1(2) and (3) of the Act provide:

"(2) *Before making an agreement [to occupy a mobile home as an only or main residence], the owner of the protected site ("the owner") shall give to the proposed occupier under the agreement a written statement which –*

(a) specifies the names and addresses of the parties;

(b) includes particulars of the land on which the proposed occupier is to be entitled to station the mobile home that are sufficient to identify that land;

(c) sets out the express terms to be contained in the agreement;

(d) sets out the terms to be implied by section 2(1) below; and

(e) complies with such other requirements as may be prescribed by regulations made by the appropriate national authority.

(3) The written statement required by subsection (2) above must be given

(a) not later than 28 days before the date on which any agreement for the sale of the mobile home to the proposed occupier is made, or

(b) (if no such agreement is made before the making of the agreement to which this Act applies) not later than 28 days before the date on which the agreement to which this Act applies is made."

3. Subsection 1(5) of the Act provides that

"*If any express term –*

(a) is contained in an agreement to which this Act applies, but

(b) was not set out in a written statement given to the proposed occupier in accordance with subsections (2) to (4) above,

the term is unenforceable by the owner or any [successor or assignee].

This is subject to any order made by the appropriate judicial body under section 2(3) below."

And section 2(3) provides

"*The appropriate judicial body may, on the application of either party made within the relevant period, make an order –*

(a) varying or deleting any express term of the agreement;

(b) in the case of any express term to which section 1(6) above applies, provide for the term to have full effect or to have such effect subject to any variation specified in the order."

The relevant period for the purpose of this subsection is 6 months after the agreement entitling the occupier to occupy a park home, or 6 months after a written statement is provided by the owner, whichever is the later. This present application was made outside the relevant period.

HISTORY

4 After hearing Mr and Mrs Walker in person and Mr Feasey representing the Respondent, and having read the written statements supplied by the parties along with the relevant documents, the Tribunal has found the following facts, most of which were in any event undisputed.

5 Until 2010, the sewage at Greenacres Park was dealt with on site by way of a septic tank. The cost of providing the tank was low, and was included in the pitch fee; ie residents who came to live at the park were not invoiced separately for sewerage charges. The Park had been a holiday park for caravans, but following the addition of some residential pitches, it became necessary to provide a better method of dealing with waste. In 2010, the Respondent therefore had the Park joined to the main sewer operated by Anglian Water, and paid the capital cost of doing so.

6 On buying and moving into 17 Greenacres Park in May 2012, the Applicants requested a written statement, but the Respondent did not supply one. Eventually during the summer of 2013 the Respondent provided them with 2 forms of written statement. It seems that these forms, described as "blank" by Mrs Walker, had some insertions, in that the Respondent had provided at paragraph 7 of the form, after the words "The following services are included in the pitch fee" the type-written words "water" and "sewerage". However it is clear that these forms of written statement were largely left blank, and did not

contain the information required in order to comply with section 1(2) of the Act.

7 The Applicants heard nothing further from the Respondent and Mrs Walker eventually filled in some of the blanks in the form of written statement, adding the names and addresses of the parties and a description of the pitch. She did not complete the start date at paragraph 3: "The Agreement will begin on……." Mr and Mrs Walker also signed the form.

8 Meanwhile, during August 2012 they had been presented with a bill for their contribution towards the cost of water supplied by Anglian Water to Greenacres Park. Having not seen a written statement at that point, they had paid the water bill. When examining the form of written statement some months later, they saw that water costs had been intended to be included in the pitch fee, along with sewerage costs. However as they had already paid for water, Mrs Walker crossed out the word "water", on the basis that in practice the agreement had been varied so that water charges were payable separately from the pitch fee.

9 Still concerned that they had no written agreement signed by the Respondent, the Applicants applied to this Tribunal under subsection 1(6) of the Act, which reads:

"*If the owner has failed to give the occupier a written statement in accordance with subsections (2) to (4) above, the occupier may, at any time after the making of the agreement, apply to the appropriate judicial body for an order requiring the owner –*

(a) to give him a written statement which complies with paragraphs (a) to (e) of subsection (2) (read with any modifications necessary to reflect the fact that the agreement has been made) and

(b) *to do so not later than such date as is specified in the order.*"

While that application was being processed by the Tribunal, in or about April 2014 the Respondent met the Applicants and gave them a copy of the written statement which had been partially completed by Mrs Walker, now signed by the Respondent's representatives. There was no discussion about the terms of the agreement at this meeting.

10 Mrs Walker noticed that the Respondents had inserted 16 May 2012 as the start date in the written statement at paragraph 3. She was unclear whether the Respondent was correct to (as she saw it) backdate the document, and she telephoned the Tribunal office for advice. They asked her to send in a copy of

the signed written statement, and she went to a public library to copy it. There, she was helped by a library assistant, and although they copied each page of the written statement, Mrs Walker did not notice that the page containing paragraphs 6 and 7 had been changed by the Respondent. She told the Tribunal, and the Tribunal accepts, that she and her husband were only concerned firstly to check that the Respondent had signed the document and secondly to find out whether the date at paragraph 3 was correct.

11 Following receipt of the copy, the Tribunal wrote to the Applicants. Although the Applicants did not produce the letter, which has since been destroyed in the Tribunal office, the Tribunal finds that it informed the Applicants that if they were satisfied that they now had a written statement, they should inform the Tribunal and their application would be treated as withdrawn. In reply, Mrs Walker wrote to the Tribunal effectively accepting that she now had a signed written statement, and as a result the Tribunal's file was closed. Mrs Walker's letter was read out to, but not copied to, the Tribunal.

12 After this, in or about May 2014 the Respondent presented the Applicants with a bill for sewerage charges. The Applicants say, and the Tribunal accepts, that they then looked at the written statement again, and found that the word "sewerage" at paragraph 7 had been deleted by the Respondent, to the effect that charges for sewerage were to be paid, like water charges, in addition to the pitch fee. They wrote to the Respondent to object to this unilateral variation of the contract, and to explain why they refused to pay the sewerage charges. The Respondent eventually replied by a letter addressed to all residents of the Park dated 16 March 2015, stating

"*You were notified on the 16 September 2010 that sewerage charges were to be added to the water bill we apologise for not explaining this matter properly when we received notice from Anglian water that sewerage charges were to be added to the bill.*

We cannot be held responsible for water, sewerage and electricity bills as these are your utility bills as residents and we only pass the charges on from the suppliers as is are legal right to do so.

All residents have to pay the charges without exception.

If you are already up to date with your water, sewerage and electricity charges thank you for your cooperation……" [sic].

On receipt of this letter, the Applicants lodged the current application with the Tribunal on 26 March 2015. In view of the time they had spent waiting for a reply from the Respondent, the relevant period referred to at section 2(3) of the Act had expired.

THE APPLICANTS' CASE

13 The Applicants say that they were not aware of and did not approve the change to their contract terms which required them to pay sewerage charges in addition to their pitch fee. They claim that the enforceable express terms of their contract are those of the oral agreement they had for the first 23 months or so of their occupation of 17 Greenacres Park.

14 The Applicants admit that they have indicated to their estate agent (with whom their park home is for sale) that any buyer is likely to have to pay sewerage charges in addition to the pitch fee, but say that this does not indicate that they believe they are also liable to do so.

THE RESPONDENT'S CASE

15 Anglian Water failed to include the Park in its billing for sewerage charges until early 2014, when the Respondents received a bill for the period May to December 2013. At the hearing, the Respondent's solicitor Mr Feasey confirmed that his client was unaware that, once the park was connected to the main sewer, it would have charges to pay periodically to Anglian Water. The Respondent's written statement of case to the Tribunal also says: "*only on receipt of the bill from Anglian did the Respondent become aware that it had been and was liable for sewerage charges*."

16 Despite this assertion, the Respondent has produced a document dated in handwriting 16 September 2010, and stating:

"*This is a letter to all residents*
Sewerage charges will now be included in the water bill
This will apply to the next invoice after received from Anglian water 31-8-10." [sic]

In the circumstances the Tribunal finds that the Respondent has sought to mislead the Applicants and other residents of the Park by producing false documentation.

17 For the Respondent, Mr Feasey accepted that an amended form of written statement had been presented to the Applicants by the Respondent in or about April 2014, and that the Respondent had not told the Applicants about the change it had made to paragraph 7. He pointed out, rightly, that the Respondent had no duty to do so, and was entitled to leave the Applicants to check the document themselves.

18 The Respondent says that, particularly as they did not trust the Respondent, on the balance of probabilities the Applicants had checked through the whole of the document and had seen the deleted word "sewerage" before they confirmed to the Tribunal that they had a written statement. As indicated above, the Tribunal finds that they had not. Mr Feasey says that even if they had not, their representation to the Tribunal office that they now had a written statement was akin to acceptance of its terms, and that the Applicants must be taken to have agreed to a variation which required them to pay sewerage charges in addition to their pitch fee.

CONCLUSION

19 The Tribunal finds that the Applicant's statement to the Tribunal that they had received a signed written statement in or about April 2014 was simply a statement in those terms made for the purpose of withdrawing their application for a written statement, and did not carry with it any implication that they had checked and accepted the contents of the statement as varied by the Respondent. Further, their suggestion that any buyer of their home will probably have to pay sewerage charges in addition to the pitch fee does not amount to an admission of their own liability to do so.

20 Until they received a demand for payment, the Applicants were not aware of the Respondent's deletion of the word "sewerage" at paragraph 7 of the written statement. Having already signed the document, they did not check it and sign it again when it was returned to them by the Respondent. They did not do or say anything which amounted to acceptance of the variation to their original, oral, agreement with the Respondent that their pitch fee included sewerage charges.

21 Under section 1(5) of the Act, the express term (created by deletion) that sewerage (and water) charges were payable in addition to the pitch fee would in any event be invalid and unenforceable, because the written statement had not been supplied as required by the Act. Liability to pay water charges has been accepted by Mr and Mrs Walker; liability to pay sewerage charges has not.

22 The Tribunal finds that the Respondent has been, at best, dilatory and obstructive in its dealings with the Applicants. In the circumstances it is right to require the Respondent to reimburse the Tribunal application fee to the Applicants, in the sum of £155.