

9483



**FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : CHI/18UG/LAC/2013/0014

Property : 5 Bovisand Park Bovisand Lane Down
Thomas Plymouth PL9 OAE

Applicant : Desmond John Glover

Respondent : Bovisand Park Limited

Type of Application : Administration charges
Schedule 11 Commonhold and
Leasehold Reform Act 2002 (the Act)

Tribunal Members : Judge Cindy A Rai

Date of Decision : 6 January 2014

DECISION

1. The Applicant is not liable to pay the invoice dated 21 August 2013.
2. The Tribunal has no jurisdiction to order the Respondent to repaint the Property in its original colour. The reasons for its decision are set out below.

Background

3. The Applicant sent an undated letter to the Tribunal accompanied by an application form dated 19 September 2013 and supplementary documents.
4. In it he said that the application was very simple. He had been sent a bill for the repainting of his chalet by his Landlord. Having taken advice from the Leasehold Advisory service he does not believe that he is obliged, under his lease, to pay the sum demanded. He produced a copy of his lease of the Property and a concurrent lease of the adjacent land upon which an extension to the chalet had been constructed.
5. Directions were issued by the Tribunal dated 15 October 2013 which notified the parties that the Tribunal proposed to determine the application without a hearing and on the basis of their written representations unless either party subsequently objected or the Tribunal itself considered that a hearing was necessary.
6. The Respondent was directed to respond to the Applicant's case and to refer to the specific clause in the lease of the Property upon which it relied to claim the charge made and to confirm if a summary of rights and obligations under paragraph 4 of Schedule 11 of the Act had accompanied its invoice.
7. A statement dated 1 November 2013 was sent to the Tribunal by the Respondent and the Applicant subsequently sent the Tribunal a further letter dated 26 November 2013.
8. Neither party requested a hearing. The Tribunal has therefore determined this application by on the basis of the parties written representations.

The Applicant's case

9. He purchased the Property, which is a chalet at Bovisand Park in 2001. He owns a leasehold interest in the Property under a lease 12 September 2000 originally made between Bovisand Park Limited, (the Respondent), and David Frank Paddon and Rosemarie Heather Paddon, (the Lease), which demised the chalet for a term of 99 years from 19 September 2000. A lease of the adjoining land was granted on 8 April 2009 by the Respondent to the Applicant for a concurrent term and on identical terms.
10. The Applicant has stated that he had repainted his chalet in a shade that was darker than its previous colour, which shade he described as pale aqua. He said that he had sought and obtained consent from South Hams Council and had advised the Respondent's committee.
11. Subsequently the Landlord advised him that the darker shade of aqua was not an authorised colour and that the chalet should be repainted. He suggested that in fact he was told to repaint it "Redwood Saladin". When

he did not do so the Respondent arranged for the chalet to be repainted cream. Subsequently it sent him an invoice for the costs.

12. He stated that there was an exchange of correspondence between them which was also referred to in the Respondent's statement. He has not produced any copies of this correspondence but he referred to it as consisting of contradictory demands with explanations and questions from him which were largely not answered.
13. The invoice he received from the Respondent, dated 21 August 2013, was for One Hundred and Twenty One pounds and 98 pence (£121.98), (the Invoice). [page 13 of the papers supplied with the Application]. He has been advised that the costs are not recoverable under the Lease and he wants the Tribunal to determine this. In addition he asked if the Tribunal can order the Respondent to restore the colour of his chalet at its cost.

The Respondent's case

14. The Respondent has stated that it has a policy with regard to the colours which the chalets can be painted. It referred to the existence of a list of approved colours but stated that other colours can only be used with board approval. The colour used by the Applicant is not an approved colour. The reference to the policy is contained in the company rules which the Applicant signed and a copy of which it produced with its statement.
15. It refers to clause 2.8 of the Lease as justification for it repainting the Applicant's chalet.
16. It confirmed that no summary of rights and obligations as referred to in paragraph 4 of Schedule 11 of the Act was sent to the Applicant with the invoice. In its view the legislation does not apply to the Applicant as he is an owner and was refusing to comply with the conditions in his lease.

The Law and the Lease

17. The Tribunal has jurisdiction under paragraph 5 of Schedule 11 of the Act to determine an application made to as to whether an administration charge is payable.
18. In paragraph 1(1) of that Schedule "administration charge" is defined as an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly for or in connection with various matters such as approvals, the provision of information and the failure to make a due payment and including, 1(1)(d), "in connection with a breach (or alleged breach) of a covenant or condition in his lease".
19. The first part of paragraph 5 (1) of Schedule 11 is set out below.
 - (1) An application may be made to a leasehold valuation tribunal for a determination whether an administration charge is payable and, if it is, as to—
 - (a) the person by whom it is payable,
 - (b) the person to whom it is payable,

- (c) the amount which is payable,
- (d) the date at or by which it is payable, and
- (e) the manner in which it is payable.

(2) Sub-paragraph (1) applies whether or not any payment has been made.

(3) The jurisdiction conferred on a leasehold valuation tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.

- 20. Paragraph 4(1) of Schedule 11 requires that the demand for the payment of an administration charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to administration charges. Under paragraph 4(3) a tenant may withhold payment of an administration charge which has been demanded from him if sub-paragraph (1) is not complied with in relation to the demand.
- 21. The jurisdiction conferred on the Leasehold Valuation Tribunal was transferred to this Tribunal on 1 July 2013 by the Transfer of Tribunal Functions Order 2013 [SI 1036].
- 22. Clause 2 of the Lease contains the Lessee's covenants. Sub clause 2.8 obliges the Lessee to permit the Lessor and its duly authorised Agent with or without workmen and others to enter upon the demised premises at all reasonable times to examine the condition of the demised premises and thereupon the Lessor may serve upon the Lessee notice in writing specifying any repairs necessary to be done and require the Lessee forthwith to execute the same and if the Lessee shall not within three weeks after the service of such notice proceed diligently with the execution of such repairs then to permit the Lessor to enter upon the demised premises and execute such repairs and the cost thereof shall be a debt due from the Lessee to the Lessor and be forthwith recoverable by action.
- 23. There is no covenant in the Lease requiring that the Lessee paint the chalet a particular colour. The Respondent has produced a copy of rules and conditions made by the Respondent in 1994 and amended in 1999. Paragraph 16 which is headed "Bungalow Colours" states "Details of decorating materials to be used on the exterior of bungalows are available from the office; these are in no way to be changed".

Reasons for the Decision

- 24. Whilst there is evidence that the Respondent maintains a policy regarding the colour of the external paintwork of the chalets within Bovisand Park, the Lease contains no reference to this requirement. However from the Applicant's evidence it appears that the policy may either originate from the rules imposed by South Hams Council when it owned the site or from the original planning conditions imposed by South Hams Council, but this has not been expanded upon or explained by either party.

25. It is apparent that South Hams Council have not owned Bovisand Park since the Lease was granted, as it was granted by the Respondent, so that any consent which the Applicant may have obtained from it with regard to the approval of the colour which he repainted his chalet is of no relevance to this determination.
26. The Applicant has suggested that he was advised that he is not in breach of his Lease and that therefore the action taken by the Respondent is incorrect and the Invoice is not payable by him.
27. Although both parties referred to an exchange of correspondence between them no copies of letters have been provided to the Tribunal. There is no evidence from the Respondent that it properly complied with the provisions of sub clause 2.8 of the Lease, if that was an appropriate provision for it to rely upon, given that the sub clause relates to disrepair of the Property not the colour of its external paintwork.
28. The Invoice is for a charge within the definition of an administration charge in the Act as it is a charge payable in connection with an alleged breach of covenant.
29. The Tribunal determines that the charge was unreasonable as it was levied in respect of an alleged breach of covenant by reference to a clause in the Lease which does not relate to the breach of which the Respondent has complained. Sub-clause 2.8 of the Lease is not a provision upon which the Respondent can rely to justify the recovery of the charge it has invoiced.
30. It was not accompanied by the requisite summary of rights and obligations required by the Act and therefore even if it was a reasonable charge, the Applicant was entitled to withhold payment in reliance on paragraph 4(3) of Schedule 11 of the Act. [See paragraph 20 above]. The Applicant is both an owner and a tenant who is entitled to protection under the Act with regard to liability to pay and reasonableness of administration charges.
31. The Tribunal has no jurisdiction to make an order requiring the Respondent to repaint the Property at its own cost.

Judge Cindy A Rai

Appeals

1. 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.

2. 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.
3. 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.
4. 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.