



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

Case Reference : LON/00AE/LSC/2015/0050

Property : 19 Willow Tree Court,
Crawford Avenue,
Wembley
Middlesex HA0 2RB

Applicant : Holding & Management (Solitaire)
Ltd

Representative : JB Leitch solicitors

Respondent : Mr I Aslam

Representative : K & L Business & Legal

Type of Application : Liability to pay service charges &
administration charges

Tribunal Member : Judge J E Guest

**Date of telephone case
management hearing** : 19/02/2015
10 Alfred Place, London WC1E 7LR

Date of decision : 19/02/2015

CASE MANAGEMENT DECISION

Decision

The tribunal directs that this application be transferred back to Sheffield County Court.

Background

1. The matter that was transferred to the tribunal related to a County Court claim issued on 28/05/2014 for the sum of £4,413.72. This was a claim for service charges, ground rent, administrative charges, interest and fees brought by a landlord, Holding & Management (Solitaire) Limited, against its tenant, Mr I Aslam.
2. Mr Aslam's solicitor completed a defence form on 25/06/2014 in which the sum was disputed on the grounds that the landlord had failed to comply with its obligations under the lease to clean and maintain the communal areas, raised an issue about a parking space, in addition to other matters.
3. The landlord's solicitors served/filed a reply to the defence form and also made an application to strike out the defence. The reply to defence, dated 01/08/2014, annexed a breakdown of arrears, which indicated that the landlord's claim included a claim for service charges for the period from 01/10/2010 to 31/09/2014 and two administration charges of £60.00 and £70.00 respectively.
4. The strike out application was heard by District Judge Babbington on 15/09/2014 when both parties were given permission to amend their respective pleadings – the landlord was required to provide detailed breakdowns of the sums claimed and the tenant was required to state why the sums were in dispute. DJ Babbington also directed that the County Court would thereafter give consideration to a referral to this tribunal.
5. Although it appears, at least to me, that the parties failed to properly particularise their respective statements of case, the matter was nevertheless transferred to the tribunal by order of Deputy District Judge Uppal sitting at Sheffield County Court on 14/01/2015.
6. Pursuant to paragraph 3 of Schedule 13 of the Leasehold Reform Act 2002, the tribunal is required to determine the matter that has been transferred.

Case management telephone hearing

7. Having been seized of the matter, the tribunal arranged a case management hearing by telephone, which was listed for 19/02/2015. The parties were duly notified on 29/01/2015.
8. On 10/02/2015, the Claimant's solicitors wrote to the tribunal to request that the tribunal substitute the name of the applicant from Holding & Management (Solitaire) Limited to Ellis and Co Block Management RTM Willow Tree Court RTM Company Limited ("*the RTM*"). On 12/02/2015, the tenant's solicitor indicated that the defence would need to be re-amended in the event that the application for substitution was granted.

9. The landlord was represented at the case management telephone hearing by counsel, Mr M Feldman. The tenant was represented by his solicitor, Mr D Ward. Despite being represented, the tenant made various interjections during the course of the telephone hearing.
10. Mr Feldman told the tribunal that a mistake had been made when proceedings were issued and that the tribunal should, therefore, substitute the applicant's name for the RTM under Rule 10 of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2008 in order to correct this error. Mr Feldman had no instructions as to when the RTM had been appointed. It was unclear on what basis the solicitors for the landlord were acting for both the landlord and the RTM.
11. Mr David, who took instructions during the course of the telephone hearing, informed the tribunal that the RTM had been formed in approximately March 2011. Mr David submitted that the tenant had no dispute with the RTM so that the service charges in dispute related to the period prior to the RTM's appointment, i.e. the service charges for the period from October 2010 to March 2011. As the claim related to service charges for the period from October 2010 to September 2014, Mr Feldman then submitted that the RTM should be added as a party to the proceedings before the tribunal. Mr David objected to this on the basis that it would change the subject matter of the dispute.
12. I informed the parties that the tribunal's jurisdiction was limited to considering the matter that had been transferred from the county court and that the tribunal had no power to allow any amendment of the county court pleadings. I indicated that the addition of a new party significantly altered the subject matter of the dispute and I warned that the matter may have to be referred back to the county court to enable the parties to make the appropriate applications. Mr Feldman argued that the tenant had disputed all the service charges and that the matter could remain within the tribunal's jurisdiction irrespective of the addition of the RTM as a party. Mr David contended that the tenant's response to the claim would have been different if the claim had been brought by the correct parties.

Reasons for the tribunal's decision

13. I had regard to the Upper Tribunal decisions of *John Lennon v Ground Rents (Regisport) Limited* [2011] UKUT 330 and *Staunton v Kaye and Taylor* [2010] UKUT 270. Both decisions make clear that the tribunal can only determine matters that could have been determined by the court and the court's remit is, in turn, limited to the pleadings.
14. The landlord now wishes (some 9 months after the county court proceedings were issued) to correct an error made when the claim was started. The landlord initially contended that the RTM should be substituted as the applicant and then, during the course of the case management hearing, suggested that the RTM be added as a party. The

landlord must have been aware of the existence of the RTM when proceedings were issued against the tenant and that it had no basis upon which to recover service charges following the RTM's appointment. I would comment that the conduct of this litigation is a cause of concern to me.

15. The addition of a party goes beyond the mere correction of an error but, in my view, alters the nature of this claim. I accept that the tenant's response to the county court proceedings may well have been different if the RTM had been named as a party. The tenant made it very apparent during the telephone hearing that his argument is only with the landlord.
16. Given that the subject matter of the dispute would be altered by the substitution of the RTM as a party, I do not consider that it just or fair to merely add the RTM as a party in the proceedings before this tribunal without giving the tenant an opportunity to re-amend his defence. As only the county court can allow a further amendment, there is no option but for this matter to be remitted back.
17. Rule 6 sets out the tribunal's case management powers and this includes the provision at R.6(3) to,
 - (n) *transfer proceedings to another court or tribunal if that other court or tribunal has jurisdiction in relation to the proceedings and*
 - (i) *because of a change of circumstances since the proceedings were started, the Tribunal no longer has jurisdiction in relation to the proceedings; or*
 - (ii) *the Tribunal considers that the other court or tribunal is a more appropriate forum for the determination of the case.*
18. Given the facts of this matter, this application falls squarely under (ii) above for the reasons stated above. The need to substitute an additional party may also give rise to a change of circumstances such as to fall under (i) above.

Decision

19. For the above reasons, this matter must, accordingly be transferred to the County Court.

Signed: Judge J E Guest

Dated: 19/02/2015