



HM Courts
& Tribunals
Service

S16



Residential
Property
TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL
SOUTHERN PANEL

Case Reference: CHI/00ML/LIS/2013/0122

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN
APPLICATION UNDER SECTION 168(4) OF THE COMMONHOLD AND
LEASEHOLD REFORM ACT 2003 TRANSFERRED FROM THE
BRIGHTON COUNTY COURT

Applicant: MRS SALLY MUNDAY

Respondent: 34 YORK ROAD RESIDENTS LIMITED
MISS JACQUI BELL

Property: 34 YORK ROAD, HOVE
EAST SUSSEX BN3 1DL

Date of Hearing 17th May 2013

Leasehold Valuation Tribunal

Mr D. R. Whitney LLB(Hons)
Lawyer Chair

Introduction

1. This matter is a claim transferred from the Brighton County Court by way of an Order of District Judge Gamba dated 31st January 2013.
2. The claim was issued by the Applicant under claim number 2QZ36959 on 31st October 2012. The Applicant is the leaseholder of the Basement Flat, 34 York Road, Hove, East Sussex BN3 1DL. The Respondents are the owner of the Freehold of 34 York Road, Hove, 34 York Road Residents Limited and a Director of that company Mrs Jacqui Bell. A defence was filed on 23rd November 2012 by the Respondents.
3. Allocation questionnaires were filed by both parties and the claim was listed for a Directions hearing in the Brighton County Court on 31st January 2013. It appears that all parties were represented at this hearing and the claim was transferred to the Leasehold Valuation Tribunal.
4. Directions were issued by the Leasehold Valuation Tribunal dated 27th February 2013 listing the matter for an oral Pre-Trial Review pursuant to the Leasehold Valuation Tribunals (Procedure)(England) Regulations 2003 regulation 12.
5. Directions were issued on the 4th April 2013 inviting the parties to make submissions as to whether the Tribunal has jurisdiction to determine the claim transferred by the County Court.
6. The Tribunal received submissions from the Applicant by way of letter dated 13th April 2013. Subsequently the Applicant also submitted a letter from the County Court dated 24th April 2013 indicating that the Court will not deal with the case until the Tribunal has issued a determination. The Respondent sent a letter to the Tribunal dated 8th May 2013 but made no specific representations.

THE LAW

7. In considering this application the Tribunal has to consider whether it has power to determine the matter referred by the County Court. The relevant law is contained in section 168 of the Commonhold and Leasehold Reform Act 2002.

Section 168: No forfeiture notice before determination of breach.

(1) A landlord under a long lease of a dwelling may not serve a notice under section 146(1) of the Law of Property Act 1925 (c. 20) (restriction on forfeiture) in respect of a breach by a tenant of a covenant or condition in the lease unless subsection (2) is satisfied. .

(2) This subsection is satisfied if— .

(a) it has been finally determined on an application under subsection (4) that the breach has occurred, .

(b) the tenant has admitted the breach, or .

(c) a court in any proceedings, or an arbitral tribunal in proceedings pursuant to a post-dispute arbitration agreement, has finally determined that the breach has occurred. .

(3) But a notice may not be served by virtue of subsection (2)(a) or (c) until after the end of the period of 14 days beginning with the day after that on which the final determination is made. .

(4) A landlord under a long lease of a dwelling may make an application to a leasehold valuation tribunal for a determination that a breach of a covenant or condition in the lease has occurred. .

(5) But a landlord may not make an application under subsection (4) in respect of a matter which— .

(a) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party, .

(b) has been the subject of determination by a court, or .

(c) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement

DECISION

8. The claim issued by the Applicant in the County Court is a claim for breach of covenant. The Applicant is a leaseholder of Basement Flat, 34 York Road, Hove, East Sussex BN3 1 DL ("the Property"). The Respondent is the freeholder under the Applicants leasehold interest in the Property. The claim is made by the leaseholder against her landlord. The Applicant agrees that her claim is against the freehold Company and the reference to Ms Bell is an error. She was named on the original claim form as the Director to whom all documents should be sent.

9. The Applicant submits that the matter should be transferred back to the Brighton County Court to be determined by the Court. The Applicant submits that the Tribunal do not have jurisdiction to determine her claim.

10. The Applicant in particular relies upon her letter to the Tribunal dated 3rd April 2013 in which she explains the basis of her claim. In short it is a claim for damages against the Respondent as a result of their failing in the past to properly comply with the Respondents covenants to keep the Property in repair. The Applicant alleges as a result she is entitled to claim damages to compensate her for this. The Tribunal has heard no evidence on this and makes no findings as to the substantive claim.

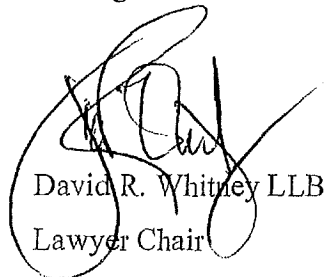
11. The Tribunal is entitled to deal with claims that have been transferred from the County Court in respect of which it would have jurisdiction if a party had made an application directly to the Tribunal. The Tribunal can only determine matters upon which it has been given jurisdiction by way of statute. The Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") did grant to the Tribunal certain powers in respect of claims for breach of covenant. The relevant law is contained in section 168 of the 2002 Act as set out in full above. Section 168(4) sets out the Tribunals jurisdiction.

12. The purpose of section 168 of the 2002 Act was to require breaches of covenant to be determined before a freeholder could take steps to forfeit a residential long leasehold interest for breach of covenant. Section 168(4) of the 2002 Act allows "A

landlord under a long lease of a dwelling” to make an application to the Leasehold Valuation Tribunal to determine if there has been a breach of covenant. Whilst section 168(4) does not explicitly state that the breach is to be by the tenant reading the section as a whole this must be the intention of Parliament. The Tribunal determines that section 168 of the 2002 Act relates purely to claims by a landlord alleging that a tenant is in breach of the covenants under their lease.

13. The Tribunal determines that it does not have jurisdiction to determine any parts of this claim referred to it by the Brighton County Court under claim number 2QZ36959. The Tribunal reaches this decision as the claim is made by a tenant, the Applicant, against her landlord, the Respondent, for a determination that the Respondent is in breach of the terms of her lease and for damages in respect of the same. Section 168(4) of the 2002 Act does not allow the Applicant, tenant, to bring such a claim to the Leasehold Valuation Tribunal. It follows from this that the Tribunal does not have jurisdiction to determine this claim.

14. The Tribunal directs that the matter be transferred back to the County Court. The Applicant has made reference to a claim for interest and costs. Given the decision of the Tribunal it is not for them to determine these matters and all matters including the question of interest and costs stand to be adjudicated on by the County Court and no findings have been made by the Tribunal.



David R. Whitney LLB(Hons)
Lawyer Chair