



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

**Case Reference** : **CAM/38UE/PHC/2013/0013**

**Property** : **11, Bargus Close, The Causeway, Steventon  
OX13 6SU**

**Applicant** : **Mrs Jeanette Maria Drakeley**

**Respondent** : **Mrs Wendy Evans**

**Date of Application** : **21<sup>st</sup> October 2013**

**Date of Hearing** : **12<sup>th</sup> February 2014**

**Type of Application** : **Application by Site Owner of a Park Home  
site for a determination as to the applicant's  
entitlement to terminate the agreement  
(Section 4 and paragraph 4 of Chapter 2  
part 1 Schedule 1, Mobile Homes Act 1983  
(as amended))**

**Tribunal** : **Judge JR Morris  
Mrs HC Bowers MSc (Econ) MRICS**

---

**DECISION**

---

© CROWN COPYRIGHT 2014

**Decision**

The Tribunal is satisfied that the Respondent has breached a term of the agreement and, after service of a notice to remedy the breach, has not complied with the notice within a reasonable time; The Tribunal also considers it reasonable for the agreement to be terminated.

**Reasons**

**Application**

1. The Application is for an order by a Tribunal terminating an agreement under Paragraph 4 of Chapter 2 of Schedule 1 to the Mobile Homes Act 1983.

## The Law

2. Paragraph 4 of Chapter 2 of Schedule 1 to the Mobile Homes Act 1983 which states that:  
*The owner shall be entitled to terminate the agreement forthwith if, on the application of the owner, the court—*
  - (a) *is satisfied that the occupier has breached a term of the agreement and, after service of a notice to remedy the breach, has not complied with the notice within a reasonable time; and*
  - (b) *considers it reasonable for the agreement to be terminated.*
3. Section 4 of the 1963 Act states:
  - (3) *In relation to a protected site in England, the court has jurisdiction—*
    - (a) *to determine any question arising by virtue of paragraph 4, 5 or 5A(2)(b) of Chapter 2, or paragraph 4, 5 or 6(1)(b) of Chapter 4, of Part 1 of Schedule 1 (termination by owner) under this Act or any agreement to which it applies; and*
    - (b) *to entertain any proceedings so arising brought under this Act or any such agreement, subject to subsections (4) to (6).*
  - (4) *Subsection (5) applies if the owner and occupier have entered into an arbitration agreement before the question mentioned in subsection (3)(a) arises and the agreement applies to that question.*
  - (5) *A tribunal has jurisdiction to determine the question and entertain any proceedings arising instead of the court.*
  - (6) *Subsection (5) applies irrespective of anything contained in the arbitration agreement mentioned in subsection (4).*
4. Therefore if there is a pre-existing arbitration agreement the Tribunal may make an order enabling the Owner to terminate the agreement.
5. Paragraph 12 of Part IV of the Agreement states:
  - a) *If there shall be any dispute between the parties during the currency of this Agreement touching any clause matter or thing whatsoever herein contained or the operation of construction hereof or any matter or thing in any way connected with this Agreement or the rights duties or liabilities for either party or in connection with the Agreement then in every such case the dispute or difference may be determined by a single Arbitrator appointed by agreement between the parties in accordance with the Arbitration Act 1950 (or any statutory modification or re-enactment thereof for the time being in force) or in default of agreement shall be determined by the Court acting as Arbitrator.*
6. In summary, the alleged breach set out in the Application was that the Respondent is said to have not paid the pitch fee for the months of June to

September 2013 contrary to paragraph 4(a) of Part IV of the Agreement or for electricity used contrary to paragraph 4(b) of Part IV of the Agreement.

### **The Hearing**

7. A Hearing was held on 12<sup>th</sup> February 2014 which was attended by the Applicant who is the Site Owner of Bargus Close accompanied by Mr A Halling (Observer) and the Respondent who is the Occupier of the Property, 11 Bargus Close.
8. Evidence agreed between the parties was received that the Respondent entered an Agreement on 20<sup>th</sup> July 2012. Under Clause 1(a) of the Assignment of the agreement the Respondent agreed to pay the pitch fee which was at that date £124.98 per month payable on the first day of each month.
9. In oral evidence the Applicant stated that following her receipt of the ground rent for May 2013 the Respondent had made no further payments. In addition following part payment of the electricity account in May 2013 the Respondent had made no further payments.
10. The Applicant referred to paragraph 4 of Chapter 2 of Schedule 1 to the Mobile Homes Act 1983 stating that the occupier had breached a term of the agreement by failing to pay the pitch fee and electricity charge and, after service of a notice to remedy the breach, had not complied with the notice within a reasonable time.
11. In support of her case she had adduced the following evidence:
  - a) Letter dated 18<sup>th</sup> July 2013 from Applicant to Respondent informing the Respondent that she had not paid the pitch fee for June and July 2013.
  - b) Letter dated 8<sup>th</sup> August 2013 from Applicant to Respondent informing the Respondent that she had not paid the pitch fee for June, July and August (£124.98 per month) and the outstanding amount from the electricity account for May 2013 of £23.57. She added that she had spoken to Mr Stephen Hassell of the Independent Advisory Service for Park Home Owners and Residents and offered to arrange a payment plan for the Respondent.
  - c) Letter dated 14<sup>th</sup> August 2013 from the Respondent to the Applicant informing the Applicant that she would pay all monies owed as soon as possible.
  - d) Letter dated 21<sup>st</sup> August 2013 from Applicant to Respondent offering to arrange a payment plan.
  - e) Letter dated 11<sup>th</sup> September 2013 from Applicant to Respondent informing the Respondent that she had not paid the pitch fee for June, July, August, September or October (£124.98 per month) or the outstanding amount from the electricity account for May 2013 of £23.57 or the electricity account for 6<sup>th</sup> October 2013 of £84.58. A further offer to arrange a

payment plan was made. (A copy of electricity account was provided). The letter also informed the Respondent that the Applicant would apply to the Tribunal for an order terminating the Agreement.

- f) Pitch Fee Review Form informing the Respondent of an increase in pitch fee from £124.98 to £128.12 in line with the RPI percentage increase of 2.5% as from 1<sup>st</sup> January 2014.
  - g) Letter dated 28<sup>th</sup> December 2013 from Applicant to Respondent informing the Respondent that she had not paid the pitch fee for June to December 2013 (£124.98 per month) or the outstanding amount from the electricity account for May 2013 of £23.57 or the electricity accounts for 6<sup>th</sup> October 2013 of £84.58 and December of £106.18.
- 12. The Applicant also referred to other issues relating to the Respondent and that complaints had been made by other Occupiers with regard to the Respondent to her and to the Council and she feared she might not have her Site Licence renewed.
  - 13. The Tribunal informed the Applicant that the Tribunal could only consider the issue she had raised in her Application which was that she sought a termination of the Agreement because the Respondent had not paid the pitch fee or electricity accounts.
  - 14. The Respondent admitted the amounts outstanding but said that she now had the offer of a job and would be able to enter a payment plan. She offered to pay the Applicant £280.00 per fortnight on the 1<sup>st</sup> and 14<sup>th</sup> of each month beginning on the 3<sup>rd</sup> March 2014, it being the Monday and the first working day nearest the 1<sup>st</sup> March.
  - 15. The Tribunal calculated that this would pay the arrears including interest in approximately 12 months whilst also paying the current pitch fee and electricity charges.
  - 16. The Applicant expressed doubts about this arrangement.

### **Tribunal Findings**

- 17. The Tribunal found that the Respondent on her own admission was in breach of the Agreement and that she had received notice of the breach and failed to remedy the breach within a reasonable time and therefore met the requirement of paragraph 4(a) of Chapter 2 of Schedule 1 to the Mobile Homes Act 1983.
- 18. The Tribunal then considered whether under paragraph 4(b) of Chapter 2 of Schedule 1 to the Mobile Homes Act 1983 it was reasonable to terminate the Agreement.
- 19. The Tribunal was of the opinion that if the Respondent entered into and complied with a payment plan it would not be reasonable to terminate the Agreement.

20. The amount outstanding at the date of the Hearing was £1,345.43. These arrears would be paid together with the current pitch fee and electricity charge if the Respondent were to enter a payment plan as she had proposed for £280.00 per fortnight payable on the 1<sup>st</sup> and 14<sup>th</sup> of each month.

### **Adjournment and Directions**

21. The Tribunal therefore adjourned the matter until the **10<sup>th</sup> March 2014** for the Respondent to make arrangements for a Direct Debit in favour of the Applicant for £280.00 payable on the 1<sup>st</sup> and 14<sup>th</sup> of each month or as near thereto as business practice allows. The Tribunal issues the Directions Order as set out below to ensure compliance with the payment plan with regard to both the execution of a Direct Debit and payment of the first instalment.
22. It was said that if the Directions Order is complied with the Tribunal will make a Decision that it is not reasonable to terminate the Agreement. If it is not complied with it will make a Decision that it is reasonable to terminate the Agreement.
23. The Tribunal informed the Applicant that the enforcement of an order terminating the agreement would be made through the County Court and the Court would not enforce an order unless it was clear the Tribunal had ensured that the Respondent had had a reasonable opportunity of paying the outstanding sums.
24. The Tribunal informed the parties that if the Respondent complied with the Directions but subsequently failed to comply with the payment plan the Applicant could again apply to a tribunal and having been given this opportunity that tribunal might consider it reasonable to terminate the Agreement.
25. In addition with regard to the other matters referred to by the Applicant with regard to the Respondent it was open to the Applicant to make a separate application for a determination.
26. The Respondent was, under the Directions Order, required to serve on the Applicant and file with the Tribunal documentation signed by the Respondent's Bank that a Direct Debit for the sum of £280 payable on the 1<sup>st</sup> and 14<sup>th</sup> of each month to the Applicant by 5.00 p.m. on 21<sup>st</sup> February 2014.
27. This Direction was complied with.
28. The Applicant was, under the Directions Order, required to serve on the Applicant and file with the Tribunal confirmation that the first payment has or has not been received 5.00 p.m. on 7<sup>th</sup> March 2014.
29. On 1<sup>st</sup> March 2014 the Applicant informed the Tribunal by letter that she had received a telephone call from a person describing themselves as a relative of the Respondent offering a cheque for the outstanding ground rent and

electricity bills and for the Respondent to set up a standing order to cover the future ground rent each month.

30. The Applicant said she had replied by saying that the Respondent had been directed by the Tribunal to make payments under a payment plan.
31. On 10<sup>th</sup> March 2014 the Applicant informed the Tribunal by letter that she had not received any payments from the Respondent.

### **Decision**

32. The Tribunal firstly found that although the Respondent had complied with the Direction to provide documentation showing that a direct debit had been set up, on the basis of the letter dated 10<sup>th</sup> March 2014 from the Applicant, the Respondent had not complied with the Direction to pay in accordance with that Direct Debit. The Tribunal therefore found that the Respondent continued to be in breach.
33. Secondly the Tribunal considered whether it was reasonable to terminate the agreement. In particular the Tribunal took account of the actions of the Applicant as described in her letter dated 1<sup>st</sup> March 2014. The Tribunal considered whether the offer to pay the outstanding amount was genuine and whether the Applicant acted reasonably in requiring the Respondent to comply with the payment plan as set out in the Directions Order.
34. The Tribunal found that notwithstanding the refusal of the Applicant to accept the apparent offer by the relative to pay the outstanding ground rent and electricity cost in favour of the payment plan two options remained open to the Respondent. First, she could still send a cheque drawn upon her or another bank account for the full amount outstanding to prove the genuineness of the offer made over the telephone. Second, the Respondent could comply with her offer to pay the Applicant £280.00 per fortnight on the 1<sup>st</sup> and 14<sup>th</sup> of each month beginning on the 3<sup>rd</sup> March 2014, it being the Monday and the first working day nearest the 1<sup>st</sup> March 2014.
35. As the Respondent had taken neither of these options the Tribunal found that the Applicant's scepticism in refusing to accept the apparent offer by the relative to pay the outstanding ground rent and electricity cost was justified. The Tribunal also found it unlikely the Respondent was in a position to comply with the agreed plan.
36. Therefore the Tribunal is satisfied that the Respondent has breached a term of the agreement and, after service of a notice to remedy the breach, has not complied with the notice within a reasonable time. The Tribunal also considers it reasonable for the agreement to be terminated.