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

Case Reference : CAM/00ME/LSC/2013/0044

Property : Flats 2, 3, 4 and 5,
39-40 Thames Street, Windsor
Berkshire, SL4 1PR

Applicant : BH (Thames Street) Limited

Represented by Laytons
Solicitors

Respondent : Victoria Charalambous

Represented by Mayfield Law
Solicitors

Date of Application : 3rd June 2013

Type of Application : Application under Regulation 11 of
the Leasehold Valuation Tribunal
(England) Regulations 2003 for a
dismissal of an application made
under section 27A of the Landlord
and Tenant Act 1985 ("the 1985 Act")

Tribunal : Judge J. Oxlade
N. Martindale FRICS

**Date of Paper
Hearing** : 2nd July 2013

DECISION

For the following reasons the First Tier Tribunal dismisses the Respondent's application made pursuant to section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act") bearing case number CAM/00ME/LSC/2013/0044.

REASONS FOR DECISION

Background

1. The Applicant is the freeholder of the premises, and the Respondent is the lessee.
2. In 2012 the Applicant issued proceedings in the County Court, in respect of unpaid service charges, which were defended by the Respondent. The County Court made an Order for transfer of the proceedings to the Leasehold Valuation Tribunal ("LVT").
3. The proceedings were listed for hearing before the LVT on 19th March 2013, and in light of the limited jurisdiction of the Tribunal on transfer of proceedings from the County Court, the Respondent issued an application pursuant to section 27A of the 1985 Act on the morning of the hearing, which considerably widened the issues between the parties. The Applicant declined to concede that the Tribunal's jurisdiction should be widened at such a late stage in light of the multitude of issues raised by the Respondent, and accordingly the Respondent applied to adjourn the proceedings.
4. Despite the lateness of the application the Tribunal acceded to the application to adjourn on the basis that it was in the interests of justice for all matters to be considered and determined on the same day by the same Tribunal. The Tribunal advised the parties that fresh Directions would be made and that there should be no repeated of the Respondent's tardiness in progressing matters.
5. The Tribunal made Directions on 16th April 2013 in respect of both matters, which by paragraph 1 required the Applicant by 4pm on 10th May 2013 to respond to the Respondent's case as contained in the application, the defence to the County Court proceedings and the Respondent's skeleton argument filed. Paragraph (2) of the Order required that "the Respondent must by 4pm on 24th May 2013 serve on the Applicant a response to the document filed under (1) herein, to set out the outstanding issues between the parties".
6. On 3rd June 2013 the Applicant's Solicitor wrote to the Tribunal to say that the Respondent had not complied with paragraph (2) of the Directions Order of 16th April 2013, and notwithstanding the Applicant's Solicitor sending a chasing letter on 24th May 2013, there was not compliance with Direction (2); indeed no response had been received at all from the Respondent's Solicitor. The Applicant's Solicitor suggested an extension of time until 4pm on 7th June or that the application under section 27A be dismissed.

7. On 6th June 2013 the Tribunal caused a letter to be sent to the Respondent's Solicitors explaining the above history, that the Tribunal had power to dismiss the application, that the Tribunal was minded to dismiss the application "on the basis that the Respondent applied to adjourn other proceedings so that all matters could be dealt with at the same time, but now failed to comply with Directions to progress the matter". However, the Tribunal would not do so if there was compliance by an extended deadline of 4pm 7th June 2013

8. On 12th June 2013 the Applicant's Solicitor notified the Tribunal that compliance had not taken place with this extended deadline. Further, the Respondent had not complied with an obligation to serve on the Applicant by 4pm on 7th June all the documents in support of her case.

9. On 21st June 2013 the Tribunal received from the Respondent a document entitled "Respondent's Statement of Case and Witness statement". At paragraph 3 of that statement the Respondent concedes non-compliance with paragraph (2) of the Order.

10. The reasons given by the Respondent are that her Solicitor was on annual leave at the time for a fortnight and that she was unable to comply with the deadline because she had exams at the time and was overwhelmed with family, work, and exam pressure. The Respondent said that she intended no disrespect to the Tribunal and said that there was no prejudice as there was sufficient time to read and considered the document now provided prior to the hearing listed on 12th July 2013.

11. The Applicant responded by letter dated 25th June 2013, pointing out that it had received the statement that day (as it does not accept service by fax or email) and that the status of the document dated 21st June is uncertain. It appears to be a hybrid document, both statement of case and witness statement, though more akin to a skeleton argument. Criticism was made as it did not follow the numbering in the Applicant's document (which had been done to try to consolidate the multitude of issues), is confusing, and does not assist the Applicant in understanding exactly what is the Respondent's case. Materially, the document raised new issues referring to a claim for damages for breach of covenant and disrepair by way of set-off in paragraph 17 of the document, which new allegations go beyond the scope of the section 27A application.

12. The Applicant disputes the Respondent's assertion that no prejudice has been caused, because the document which has been served does not respond to the Applicant's statement of case as it is supposed to, and raises a new and unparticularised allegation, and so the Applicant is prejudiced.

13. On 1st July the Respondent's Solicitors wrote to the Tribunal to take issue with the Applicant's view of matters and to say that it had received late the Applicant's document in accordance with Direction 1 – though did not suggest that this materially affected the Respondent's ability to comply with the time limit. The Respondent says that the issues remain exactly the same as previously

set out in the section 27A application. Further, that the issue for the Tribunal on the application to dismiss is whether or not the Applicant suffered prejudice,

which the Respondent denied. In short, the Respondent says that there was a technical breach. In any event, all issues should be determined at the hearing listed on 12th July, as the most efficient way of dealing with the matters.

Jurisdiction

14. Regulation 11 of the Leasehold Valuation Tribunal (England) Regulations 2003 provides that:

(1) Subject to paragraph (2), where -

(a) it appears to a tribunal that an application is frivolous or vexatious or otherwise an abuse of process of the tribunal, or

(b) the Respondent to an application makes a request to the Tribunal to dismiss an application as frivolous or vexatious or otherwise an abuse of process of the tribunal,

the Tribunal may dismiss the application in whole, or in part”.

Discussion

15. The Tribunal finds - as conceded by the Respondent - that there has been a failure to comply with paragraph (2) of the Order of 16th April 2013. Firstly, the document served was served over a calendar month late. Secondly, the document served fails to meet the point of the Direction, which was to enable the Tribunal to look at that one document to find a list of issues. However, this document just re-asserts the Respondent's position and appears to be one document serving three purposes.

16. The Tribunal finds that the failure to comply causes prejudice to the Applicant. There is delay in knowing what might be conceded or not conceded, and it fails to clarify what the Respondent's final position is on her own application. Materially, it raises a further issue in respect of set-off as damages for breach of covenant. The points made by the Applicant in its letter of 25th June 2013 are all well-made, and the Tribunal is satisfied that the Applicant has suffered prejudice in preparation of its case as a direct result of non-compliance. If, as the Respondent asserts, nothing has changed it is unclear why such a document took so long in the making.

17. The Respondent has explained why the statement was late, but the Tribunal does not find the reasons given to be reasonable: had the Respondent had difficulties with complying with a timetable then an application for an extension could have been sought before the deadline was passed, or indeed afterwards. To file a document over a month late, and after disclosure of documents and witness statements should have been filed, has clear implications for preparation for a hearing which had been listed for 12th July 2013, and which date was notified to the parties quite some time ago.

18. The Tribunal therefore exercises its discretion to dismiss the application, taking into account the significance of the breach, the absence of proper excuse, the history of the lateness of the application itself being made on the morning of

the hearing, at which hearing the Tribunal said that it expected both parties to comply with the timetable.

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First –Tier Tribunal Judge Oxlade

2nd July 2013