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**LONDON RENT ASSESSMENT PANEL**

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON JURISDICTION IN  
AN APPLICATION UNDER SECTION 168(4) OF THE COMMONHOLD AND  
LEASEHOLD REFORM ACT 2002**

**Case Reference:** LON/00BK/LSC/2013/0224

**Property:** Flat 40 Portsea Hall, Portsea Place, London W2 2BZ

**Applicant** Tameace Limited (Landlord)

**Represented by:** Howard Kennedy; Solicitors

**Respondent:** Mr K. F. Al Jarba and Mr M. K. Al Jarba (Leaseholders)

**Represented by:** No appearance

**Tribunal:** Mr L. W. G. Robson LLB(Hons)  
Mrs E. Flint DMS FRICS IRRV

**Determination Date:** 29<sup>th</sup> May 2013

**Date of Decision:** 30<sup>th</sup> May 2013

## **Decisions of the Tribunal**

- (1) The Tribunal determined that it had no jurisdiction to decide this case by virtue of the effect of section 81(1)(a) of the Housing Act 1996, and sections 168(4), 168(5) and 169(7) of the Commonhold and Leasehold Reform Act 2002.
- (2) This case is now referred back to the Central London County Court to determine outstanding matters.

## **The application**

1. On 30th January 2013 the Applicant applied to the Central London County Court under case number 3CL 00203 for a declaration that the Respondents were in breach of Clause 4 and Schedule 5 of the lease dated 8<sup>th</sup> February 2008 (the Lease) through failure to pay service charges. On 20<sup>th</sup> March 2013 the Court (of its own motion) ordered the case to be transferred to the Tribunal.
2. The particulars of claim did not specify under which legislation the Applicant sought a declaration, nor disclose the fact that the Applicant had obtained a final judgement (in default) of the Northampton County Court on 10<sup>th</sup> September 2012 in respect of service charges (up to 24<sup>th</sup> December 2012) totalling £8,219.60 plus interest and costs, although this matter was mentioned at the end of the witness statement of Mr J. M. Alder dated and sent to the Court on 25<sup>th</sup> February 2013
3. The Order for transfer also did not specify the legislation under which the Applicant sought its declaration.
4. The Tribunal initially treated this case as an application under Section 27A of the Landlord and Tenant Act 1985 in ignorance of the contents of the statement dated 25<sup>th</sup> February 2013, but after hearing the Applicant's representative on 25<sup>th</sup> April 2013, it issued Directions for the matter to proceed as an application under Section 168(4) of the Commonhold and Leasehold Reform Act 2002 and gave directions for a paper determination to be heard in the week commencing 27<sup>th</sup> May 2013.
5. The Respondents have taken no part in this application, nor have they challenged the judgement dated 10<sup>th</sup> September 2012.

## **Determination**

6. The Tribunal considered the evidence and submissions, but in view of the Order dated 10<sup>th</sup> September 2012 it decided that it should decide the question of jurisdiction as a preliminary point,

7. The Tribunal noted the following:

Section 81(1) of the Housing Act 1996 provides:

- (1) A landlord may not, in relation to premises let as a dwelling, exercise a right of re-entry or forfeiture for failure by a tenant to pay service charge or administration charge unless-
  - (a) it is finally determined by (or on appeal from) a leasehold valuation tribunal or by a court, or by an arbitral tribunal in proceedings pursuant to a post-dispute arbitration agreement, that the amount of the service charge or administration charge is payable by him, or
  - (b) the tenant has admitted that it is so payable.

Section 168 of the Commonhold and Leasehold Reform Act 2002 provides:

- (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 (c20) (restriction on forfeiture) in respect of a breach by the 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 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.

Section 169(7) provides:

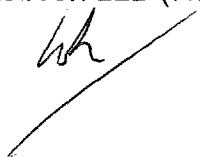
- (7) Nothing in section 168 affects the service of a notice under section 146(1) of the law of Property Act 1925 in respect of failure to pay-
  - (d) a service charge (within the meaning of section 18(1) of the 1985 Act, or
  - (e) an administration charge (within the meaning of Part 1 of Schedule 11 to this Act)

8. The Tribunal thus decided that it has no jurisdiction to consider the application made to it under the above legislation, or any other legislation, as the matter has been the subject of determination by a court, i.e. the order of the Northampton County Court made on 10<sup>th</sup> September 2012. The effect of that

order appears to be that the Applicant is entitled to issue a notice under Section 146 of the Landlord and Tenant Act 1985 immediately.

9. This case is now referred back to the Central London County Court to deal with outstanding matters.

(Signed) Mr L. W. G. Robson LLB (Hons)  
Chairman



Dated: 30<sup>th</sup> May 2013