



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

Case Reference : **MAN/00CB/LSC/2015/0072**

Property : **Flat 2, 10 Barnston Towers
Barnston Towers Close
Wirral
CH60 2UJ**

Applicant : **Barnston Towers RTM
Company Limited**

Respondent : **Mr V Daw**

Type of Application : **Landlord and Tenant Act 1985 – s27A**

Tribunal Members : **Judge J Holbrook
Judge S Duffy**

**Date and venue of
Hearing** : **Determined without a hearing**

Date of Decision : **18 December 2015**

DECISION

DECISION

The Respondent has no liability to the Applicant for service charges in respect of the Property.

REASONS

Background

1. By order of Deputy District Judge Travers sitting at Birkenhead County Court on 2 July 2015, the Tribunal is required to make a determination as to whether service charges in respect of Flat 2, 10 Barnston Towers, Barnston Towers Close, Wirral CH60 2UJ (the Property) are payable by the Respondent to the Applicant in respect of the period from 1 October 2014 to 30 September 2015.
2. The Applicant in these proceedings is Barnston Towers RTM Company Limited. The Respondent is Mr Vincent Daw, who holds a long leasehold interest in the Property under a lease dated 9 September 1976 (the Lease) made between C Churchill and another (1) and D Crawford (2). The Applicant is not a party to the Lease but is a company established for the purpose of acquiring and exercising the right to manage premises in accordance with Chapter 1 of Part 2 of the Commonhold and Leasehold Reform Act 2002 (the 2002 Act). The premises concerned (which are known as “Barnston Towers”) include the Property.
3. A case management hearing was held in Liverpool on 13 August 2015 at which it was noted that a separate application by the Applicant was already before the Tribunal. That application (made under section 84(3) of the 2002 Act) sought a determination that the Applicant was entitled to acquire the right to manage Barnston Towers. The current proceedings were therefore stayed pending the Tribunal’s determination of the right to manage application.
4. On 22 September 2015 the Tribunal determined that the Applicant was not entitled to acquire the right to manage Barnston Towers on the relevant date. The Tribunal’s decision (issued under reference MAN/00CB/LRM/2015/0003) was sent to the parties on 9 October 2015. No application for permission to appeal has been received.
5. On 23 November 2015 the Tribunal wrote to the Applicant to ask whether, in the light of the decision in the right to manage case, it intended to continue with its claim for service charges against the Respondent. The parties were also notified that the Tribunal proposed to make a determination of the Respondent’s liability to the Applicant for service charges on the basis of the papers already before it, without holding a further oral hearing. No response to that letter was received and the Tribunal accordingly convened on the date of this decision to consider the application in the absence of the parties.

6. The Tribunal did not inspect the Property.

Law

7. Section 27A(1) of the Landlord and Tenant Act 1985 provides:

An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to-

- (a) the person by whom it is payable,*
- (b) the person to whom it is payable,*
- (c) the amount which is payable,*
- (d) the date at or by which it is payable, and*
- (e) the manner in which it is payable.*

8. The meaning of the expression "service charge" is set out in section 18(1) of the 1985 Act. It means:

... an amount payable by a tenant of a dwelling as part of or in addition to the rent-

- (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements, or insurance or the landlord's costs of management, and*
- (b) the whole or part of which varies or may vary according to the relevant costs.*

Determination

9. The Applicant is not a party to the Lease of the Property. It therefore has no contractual right to demand or receive any service charges which the Respondent may be obliged to pay to his landlord (or any other person) under the terms of the Lease.
10. The Applicant's claim is presumably based on the fact that, where it applies, section 96 of the 2002 Act has the effect of transferring management functions under a lease from a landlord to a right to manage company. However, section 96 only has this effect where the right to manage the premises concerned has actually been acquired by the right to manage company. In the present case, the Applicant has not acquired the right to manage Barnston Towers. It follows that the Respondent has no liability to the Applicant for service charges in respect of the Property.

