

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

**LON/00BJ/LSC/0286**

In the matter of      section 27A  
Landlord and Tenant Act 1985

BETWEEN:

THE MAYOR AND BURGESSES OF THE  
LONDON BOROUGH OF WANDSWORTH

Applicant / Landlord

and

VARIOUS LEASEHOLDERS OF  
100 HIGH-RISE RESIDENTIAL BLOCKS  
IN THE LONDON BOROUGH OF WANDSWORTH

Respondent / Leaseholders

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**SKELETON ARGUMENT ON BEHALF OF PATRICK KEANE**

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DRAFTED BY HANNAH LENNOX  
4 NOVEMBER 2019

1. This skeleton argument is produced on behalf of Patrick Keane of 53 Lindsay Court, Battersea High Street, London, SW11 3HZ (the “Respondent”) in relation to the Respondent’s application to strike-out the Applicant’s application dated 26 July 2018.
2. The Respondent’s application to strike-out is made on the following grounds:
  - i. The Tribunal does not have jurisdiction to determine the application because the Applicant has failed to provide a “specified description” as required by section 27A(3) Landlord and Tenant Act 1985;
  - ii. The Applicant has no reasonable prospect of succeeding in their application; and
  - iii. The application is an abuse of the Tribunal process.

## Issues

3. The Respondent is concerned by the documentation in this case.
  - i. The Bundle which the Council have prepared for the Hearing of Strike-Out Applications is deficient. It does not contain a copy of:
    - a) the application which the Tribunal is asked to strike-out;
    - b) the Applicant's Case Summary; nor
    - c) all of the Directions that have been issued in this case, particularly those dated 21 March 2019 on which the Respondent relies.
  - ii. The documents have not all properly been uploaded to the Council's website. Please see Tab 19 of the Hearing Bundle.
  - iii. The Applicant has never provided a full copy of the relevant lease(s), they have simply set out partial extracts on which they rely. This is compounded by the fact that the quotes which they provide are materially different from the clauses contained in the Respondent's lease.
4. The following issues arise:
  - i. Has the Applicant provided a sufficient "specified description" for the purposes of section 27A(3) Landlord and Tenant Act 1985? ("Jurisdiction Issue")
  - ii. Does the Applicant have a reasonable prospect of succeeding in their application? ("Prospects Issue")
  - iii. Is the Applicant's application an abuse of the Tribunal process? ("Process Issue")
  - iv. Should the Tribunal exercise its discretion to strike-out the application? ("Discretion Issue")

## Facts

5. Between 1982 and 2018 the Applicant granted 2,367 long leases in a variety of forms for flats across 100 tower blocks which are over 10 storeys in height. The Council believes 1,313 of these properties are owner occupied. The remainder

are classified as investment properties. However this makes no material difference to the application.

6. Following the fire at Grenfell Tower the Applicant's Housing & Regeneration Overview and Scrutiny Committee (HROSC) considered proposals to improve fire safety in the tower blocks the Applicant owns. The Council received a number of objections from leaseholders and resolved to seek an indication from the Tribunal as to their rights under the various leases to carry out the work and recover the cost from the leaseholders through a service charge.
7. Applicant made an application dated 26 July 2018. The Applicant indicated in their application that the matter was urgent but has since conceded that it awaits the outcome of the Grenfell Inquiry before deciding whether to proceed with the installation.
8. In October 2019 the Grenfell Tower Inquiry provided a Phase 1 Report which highlighted that sprinkler systems are likely to be discussed in the Phase 2 Report. We attach copies of the relevant section of the Report which was published since our reply was given. No specific timeline has been provided for Phase 2.

## **The Law**

9. Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013/1169 Rule 9
10. Section 27A(3) Landlord and Tenant Act 1985

## **Submissions**

### Jurisdiction Issue

11. The Tribunal must strike-out an application where it "does not have jurisdiction in relation to the proceedings or case or that part of them" (Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013/1169 Rule 9(2)(a))

12. The Applicant has applied for a determination under section 27A(3) of the Landlord and Tenant Act 1985. Section 27A(3) states “an application may... be made... for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to - ...”
13. The application and subsequent documents produced by the Applicant has failed to provide a “specified description” of the sprinkler system(s) which they seek a determination regarding.
14. A properly specified description under section 27A(3) would provide a description that would allow the Respondent to understand how the system is to be installed in his block and in his property.
15. The Respondent refers the Tribunal to the cases of
- i. *LB Southwark v Lessees of Southwark* [2011] UKUT 438 (LC) and
  - ii. *RB Kensington & Chelsea v Lessees of 1-124 Pond House* [2015] UKUT 395 (LC).

The applications in each of these cases related to section 27A(3) Landlord and Tenant Act 1985. In both cases the Upper Tribunal found it could not determine whether a service charge would be payable.

#### Prospects Issue

16. The Tribunal may strike-out an application where there is no reasonable prospect of the Applicant succeeding in their application (Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013/1169 Rule 9(3)(e)).
17. In Directions issued 5 November 2018 the Tribunal asked the Applicant to set out its case in relation to the following purposes:

- i. To decide whether or not there is an obligation or right for the council to carry out the specified works in each flat;
- ii. To decide whether or not there is a right of access to each flat for the purpose of undertaking the specified work; and
- iii. To decide whether or not there is a right to claim a proportion of the cost of the works as a service charge payable by each lessee.

18. The Applicant asserts that through three variously drafted leases they have all of the rights listed above. The Applicant provides selective quotes of leases in their Case Summary and Statement of Case. However, the Respondent's lease is materially different from any of the three lease categories described. The Respondent's lease is provided at Tab 17 of the Hearing Bundle.

19. The Applicant's case relies on its obligation in relation to ensuring the maintenance, administration or security of the Block to provide the right for it to carry out the works.

20. This clause does not provide the Applicant with the obligation or right to install water sprinklers in the Respondent's flat. Water sprinklers are a fire safety measure. They cannot be interpreted as necessary to ensure the efficiency of any of the following:

- i. Maintenance;
- ii. Administration; or
- iii. Security.

21. It cannot be reasonably argued that the installation of sprinklers was reasonably within the contemplation of the parties when they included a provision for "maintenance administration or security" in the lease.

22. At paragraph 34-35 of the Applicant's Statement of Case the Applicant addresses an inaccuracy in the replication of the terms of paragraph 5 of the fifth schedule of

Type 2A leases. The additional words provided are not contained in the Respondent's lease and therefore cannot be relied upon by the Applicant in regards to the Respondent's property.

23. Additionally or alternatively, the provisions of the lease do not provide for the works to be carried out within the leasehold premises.

24. The installation of water sprinklers is an improvement. The lease does not provide the right for the Applicant to make improvements.

25. Even if the lease is sufficiently elastic so as to allow for the installation of the water sprinklers in each flat, it does not provide a right of access to the flats for the purpose of undertaking the installation.

26. Even if the lease is so broad as to allow for the installation of sprinklers and access to the flats for such installation, the lease cannot be construed as providing the right for the Applicant to claim a proportion of the cost of the works as a service charge payable by the Respondent.

27. Under the Applicant's own argument on the interpretation of a lease, the Tribunal should give effect to the intention of the parties (paragraph 19 Applicant's Statement of Case, citing *Arnold v Britton*<sup>1</sup>). That the leaseholder would be charged for the installation of sprinklers could not reasonably be argued to have been within the contemplation of the parties when the lease was formed.

#### Process Issue

28. The Tribunal may strike-out an application where it is an abuse of the Tribunal process (Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013/1169 Rule 9(3)(d)).

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<sup>1</sup> [2015] UKSC 36.

29. The application is an abuse of the Tribunal process because the Applicant has not resolved to install the sprinklers, but instead to await the outcome of the Grenfell Public Inquiry.
30. Paragraph 96 of the Applicant's Statement of Case sets out the Applicant's aims in making the application – aims which are not properly the function of a Tribunal. The Applicant in deciding to make its application stated "leaseholders would be encouraged to submit their views to the Tribunal. This would determine if and how the programme is implemented, would allow time for further innovations in such systems to be progressed and considered and would enable clarification on potential contributions to the cost of such works from the HRA and General Fund to be obtained".
31. The Tribunal acknowledged in its Decision of 21 March 2019 that "any decision to proceed with the works is dependent upon the findings from the Grenfell Inquiry". (Paragraph 2)
32. In October 2019 the Grenfell Tower Inquiry provided a Phase 1 Report which highlighted that sprinkler systems are likely to be discussed in the Phase 2 Report. The Inquiry has not given any timeline for the publication of the Phase 2 Report but does highlight that approximately 200,000 documents are relevant, witness statements will be required of core participants and expert witnesses are instructed at this stage.

#### Discretion Issue

33. The Respondent considers it is appropriate for the Tribunal to exercise its discretion to strike-out the application as a proportionate response to the anticipated costs and resources involved in a full hearing given that the Applicant has no reasonable prospect of success and/or that the application is an abuse of the Tribunal process.

## **Conclusion**

34. The Respondent considers that the Tribunal ought to strike-out the application because it does not have jurisdiction to determine the matter.

35. In the alternative, the Respondent considers the Tribunal ought to strike-out the application in accordance with Rule 9(3) because the Applicant has no reasonable prospect of succeeding in their application and/or the application is an abuse of the Tribunal process.

Hannah Lennox  
Trainee Solicitor  
BPP University Pro Bono Centre Legal Advice Clinic

4 November 2019