



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

Case Reference : CHI/18UK/HTA/2019/0002

Property : Forest Park Lodges (Phase 1)

Applicant : Forest Park (Phase 1) Leaseholders Association

Representative : Mr Philip Naylor (Secretary)

Respondent : Mr Elsayed Mohamed Aly and Mrs Diane Aly

Representative :

Type of Application : Recognition of Tenants' Association

Tribunal Member(s) : Judge D. Agnew

Date and Venue of Hearing : Paper determination

Date of Decision : 14th May 2019

DECISION

Decisions of the Tribunal

1. The Tribunal determines that it will grant a certificate recognising the Applicant as a tenants' association under section 29 of the Landlord and Tenant Act 1985 (as amended) ("the Act"). The reasons for the decision are set out below.

The Application

2. This is the second application for recognition of Forest Park (Phase 1) Leaseholders Association as a tenants' association under section 29 of the Act. A previous application was refused by me in December 2018 as I was not satisfied with the constitution of the Association. My concerns with the constitution have been addressed and a new constitution has been adopted by the applicant. The question of recognition therefore comes to be determined afresh.
3. Directions were issued on 5th March 2019 providing amongst other things for the Tribunal to deal with the application by way of a paper determination under Rule 31 of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 unless either party objected within 28 days. Neither party did object.

The Applicant's case

4. Forest Park (Phase 1) comprises 17 detached leasehold holiday houses or lodges. The planning permission allows for year round occupation but not more than six months consecutively nor more than a total of ten months a year. The leases are for a term of 999 years from 1st January 2003. The lessees claim that they are qualifying tenants for the purpose of section 29 to the Act. The lessees of all 17 leasehold houses at Forest Park (Phase 1) are members of the Association.

The Respondent's case

5. The Respondent has a number of objections to the recognition of the Applicant as a tenants' association under the Act. In summary they are as follows.
6. The first reason given is that the Respondents say that the lessees are no longer qualifying tenants because the last service charge demand was made on the basis of a Retail Prices Index formula. Consequently, they say, the lessees do not come within the definition of "qualifying tenants" and are thus not able to apply for a certificate of recognition as a tenants' association under the Act.
7. The second reason given is that some of the lessees are not paying their service charges and therefore they have "lost the right" to form an RTA (Recognised Tenants' Association). Indeed, County Court proceedings have been taken against some lessees.

8. Thirdly, the Respondent says that a previous Tribunal ruled that until the landlord produces a certificate complying with the Fourth Schedule to the lease or agreed accounts for that year's service charges he may only demand the amount charged in the previous year increased by RPI.
9. Fourthly, the Respondent says that there has been a total breakdown in the relationship between the leaseholders and the freeholders and, therefore, the current RTA application should not be granted. The decision in the case of *Roslyn Mansions Tenants Association v Winstonworth Limited [2015] UKUT 0011 (LC)* and my previous decision in this case at paragraph 37 are cited in support of this proposition.
10. Finally, the Respondents object that some of the documentation produced in support of the application has been redacted and that the names of the committee members have not been disclosed.

The relevant law

11. Section 29 of the Act provides that:-
 - “(1) A recognised tenants’ association is an association of qualifying tenants (whether with or without other tenants) which is recognised for the purposes of the provisions of this Act relating to service charges either-
 - (a) by notice in writing given by the landlord to the secretary of the association, or
 - (b) by a certificate-
 - (i) in relation to dwellings in England, of the First-tier Tribunal.
12. By section 29(4) of the Act:
 - “...for the purposes of this section a number of tenants are qualifying tenants if each of them may be required under the terms of his lease to contribute to the same costs by the payment of a service charge”.
- 12, “service charge” is defined in section 18 to the Act as:-
 - “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”.

Discussion and Decision

13. The first point the Tribunal addresses is whether the lessees are qualifying tenants under the Act. The Respondent has submitted a service charge demand which does indeed show that part of the

demand has been based on the RPI formula. If that was the only charge then this would be regarded as a fixed as opposed to a variable charge. However, the Tribunal notes that certain items have been charged for separately and in addition to the RPI formula. They are costs for the supply of gas, electricity and water and for the emptying, cleaning and sealing of septic tanks. These are service charge items as they are the landlord's provision of a service and they will vary according to cost. These are therefore variable service charges and the lessees are therefore service charge payers within the meaning of section 18 of the Act.

14. Further, when the terms of the lease are considered closely, the landlord does not simply have the option to charge an RPI increase or a service charge based on costs which may vary. In paragraph (ii) of the habendum of the lease (that is, that part following the words "To Hold...") the lessee is required to pay "by way of further or additional rent a service chargepayable equally in advance on 1st January in each year such charge **being the greater of** (my emphasis) either:-
 - (a) The sum of TWO HUNDRED AND FIFTY POUNDS multiplied by the index of retail pricesor
 - (b) A sum which shall be one twentieth of the sum calculated in accordance with the Fourth Schedule hereto and payable in accordance therewith".
15. Thus, the landlord does not have a complete choice as to whether to charge in accordance with the RPI formula or on the conventional service charge expenditure basis. He must first of all ascertain which produces the higher figure and if the service charge costs total more than the RPI increase then he is obliged to charge that higher amount. That amount will be based on actual costs which may vary. Thus, the service charge "may vary" in accordance with cost and it therefore means that the service charge does come within the definition in section 18 which refers to a charge which **may** (my emphasis) vary according to the relevant costs.
16. I therefore disagree with the Respondents' first ground for denying the recognition of the Applicant Association.
17. There is no regulation or other legal authority which says that simply because leaseholders are not paying their service charge that the tenants' association should not be recognised. I therefore reject the Respondents' second ground of opposition.
18. With regard to the third ground of opposition the landlord cannot escape quantifying the service charges in accordance with the Fourth Schedule by simply applying the RPI formula because until the quantification and certification under Schedule 4 has taken place the parties will not know whether or not that quantification exceeds the RPI increase. I therefore reject this ground of opposition.

19. The fourth ground of opposition is curious because in citing the Rosslyn Mansions case and paragraph 37 of my previous decision the Respondents are arguing against themselves. The fact that the relationship between landlord and lessees has broken down is a point in favour of recognition being granted and not the opposite.
20. Finally, the redactions to the documents submitted are not critical to the decision I have to make as to whether this tenants' association should be recognised under the Act. The names of the committee members will change from time to time. The new constitution has not been redacted in any way.
21. I am content that the new constitution properly reflects the position that it is the service charge payers who should be entitled to vote and therefore direct the Association and that my concerns with the original constitution have been adequately addressed.
22. In reaching my decision I have taken account of the matters set out in regulations 3 and 4 of the Tenants Associations (Provisions Relating to Recognition and Provision of Information) (England) Regulations SI2018/1043. I am therefore content for a certificate of recognition as a tenants' association under section 29 of the Act should be granted and this will accompany this decision.

Dated the 14th May 2019

Judge D. Agnew.

RIGHTS OF APPEAL

- (a) A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
- (b) The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
- (c) If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
- (d) The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking

