



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

Case Reference : CHI/24UL/PHC/2019/0003

Property : Pitch 14 Martin's Park, Sandy Lane, Cove,
Hampshire GU14 9JZ

Applicant : Michael Charles Martin & Cynthia Fay
Martin

Representative : Tozers LLP

Respondent : Mr Mark James

Representative :

Type of Application : Determination of a question arising under
the Mobile Homes Act 1983

Tribunal Member(s) : Judge D. R. Whitney
N. Robinson FRICS

Date of Determination : 24th May 2019

DETERMINATION

Background

1. The Applicants, Mr and Mrs Martin are the owners of a Park Home site Martin's Park, Sandy Lane, Cove, Hampshire ("the Park").
2. The Respondent, Mr Mark James is the owner and occupier of a mobile home ("the Mobile Home") sited on Pitch 14 of the Park. The Respondent occupies pursuant to an agreement ("the Agreement") made pursuant to the Mobile Homes Act 1983 (as amended) ("the Act"). The Agreement was assigned to the Respondent on 30th October 2014.
3. The Application is dated 18th February 2019 and directions were first issued on 14th March 2019 and varied by way of order dated 22nd March 2019.
4. The Applicant has complied with the directions and supplied a hearing bundle. References in [] are to pages within the hearing bundle. The Respondent has taken no part in the proceedings.

The Law

5. The Application is for a determination of a question arising under the Act and in particular Chapter 2 of Part 1 of Schedule 1 of the Act [82-98]. In particular reference was made to clause 4 [83] and clause 21 [93].
6. The tribunal also relied upon Section 231A of the Housing Act 2004 which sets out the tribunal's powers to determine if there is a breach of an Agreement and to issue consequential directions.

Inspection

7. The tribunal inspected the pitch on the morning immediately prior to the hearing. The inspection was attended by Mr and Mrs Martin, their solicitor Ms. A. Musson and the panel. Mr James was not in attendance. The tribunal were informed he had told the Applicants on the day prior to the hearing that he would not be attending. The tribunal did knock on the door to his Mobile Home prior to the inspection but there was no answer.
8. The tribunal's general impression of the pitch and Mobile Home was that it was unkempt and tired in appearance. The

garden area surrounding the Mobile Home was not maintained.

9. The Mobile home was to the rear of the Park and backed on to a local school. It was accessed from a roadway. To the right hand side looking from the roadway were steps leading to a decking area which allowed access to the two doors into the Mobile Home. The tribunal observed a hole in the decking. The steps leading up to the same appeared to be in disrepair. The railings to the decking were not secure and appeared to be in a dangerous condition.
10. The tribunal observed that the roof of the Mobile Home, particularly to the rear, appeared to be covered in moss and debris from trees overhanging from the school. The guttering surrounding the Mobile Home appeared to be coming away from the home and the tribunal noted that towards the right hand rear the hopper did not appear to be properly connected to the guttering.
11. On the left hand side of the Mobile Home a panel at the base had been removed. The tribunal was able to see underneath the mobile home. The tribunal observed two pipes which came from within the Mobile Home and appeared to be some form of overflow. There was a steady stream of water leaking from one of these pipes underneath the Mobile Home. The ground below was wet.

HEARING

12. The hearing was attended by those who attended the inspection. Ms Mousson presented the case on behalf of the Applicants.
13. Ms Mousson explained that over the past week the parties had been in discussions but no agreement had been reached. Mr James was aware that her clients intended to proceed with the application today and he had told them the day before that he would not be attending.
14. Ms Mousson had provided the tribunal with a skeleton argument which the tribunal had received and read in advance of the hearing.
15. Ms Mosson explained her client was seeking a declaration as to various breaches of the implied terms of the Agreement and directions consequential upon the same. She relied upon clause 21 of Chapter 2 of Part 1 of Schedule 1 of the Act. This set out the implied obligations upon the occupier. In particular the requirement to pay the pitch fee, to pay for services and to maintain the Mobile Home and the pitch.

16. The Applicant contended that the Respondent was in breach of these implied obligations and sought a declaration as to the same.
17. Ms Mousson referred to clause 4 Chapter 2 of Part 1 of Schedule 1 of the Act which allows the site owner to seek to terminate the agreement if there are breaches of the Agreement. She advised that her client was not seeking termination but wished for the breaches to be remedied.
18. Ms Mousson referred the tribunal to Section 231A of the Housing Act 2004 and in particular Section 231A(4) which establishes the tribunal's powers to make directions.
19. Mr Martin had provided a witness statement [8-13] and he confirmed his full name and address. Mr Martin confirmed that together with his wife he was the site owner and the contents of his statement were true.
20. His statement dealt with the water leak from the Respondent's mobile home, the Respondents failure to pay pitch fees and water charges and the disrepair to the decking.
21. Mr Martin gave further evidence orally that in respect of the water bill for the period June to December 2018 that this was significantly more than earlier bills. He had calculated it exceeded the previous bill for the same period by about £2500-3000. Normally the bill would be apportioned equally between all of the owners of homes on the Park as the mobile homes were not individually metered. He had chosen not to do so, given he was aware the increase was due to the water leak. He and his wife had paid the increased costs and not passed this on to other home owners at the Park. The increased cost of provision of water was continuing due to the continuing water leak at the Mobile Home.
22. Mr Martin confirmed that no payments had been made by the Respondent since the date of the application or his witness statement. An invoice dated May 2019 showing the amount owing totalling £1,266.93 was handed to the tribunal. The tribunal were advised that a further invoice was due to be issued which would be payable by 7th June 2019 including water charges and pitch fees which would bring the arrears at that point to £1,515.10.
23. Ms Mousson requested that the tribunal determine the breaches as set out in the application and witness statement of Mr Martin. Further that the tribunal would make various directions. She referred the tribunal to her firms letter of 9th January 2019 [32-34] and also the notice of breach given by

letter dated 6th February 2019 [35-37]. She contended the Respondent had ample opportunity to remedy the breaches complained of and was aware of these proceedings.

24. She sought a direction that the Respondent should pay the pitch fees and the water charges. Further that within 7 days he should repair the water leak from the Mobile Home.
25. In respect of the decking her clients were concerned over health and safety and the risk posed by the hole in the same and the general poor state of repair. Again she asked for a declaration that this would be dealt with urgently.
26. She accepted that the application had not specifically referred to other matters but sought a direction that the pitch and the Mobile Home would be maintained and put in good repair.

DETERMINATION

27. The tribunal relied upon its own inspection, the evidence of Mr Martin and the hearing bundle. It noted Mr James was aware of the hearing but had decided to not attend. He had not made any contact with the tribunal.
28. The tribunal was satisfied on the evidence that the pitch fee and charges for water usage had not been paid. As at the date of the hearing there were arrears totalling £1,266.93. The tribunal was satisfied that a failure to pay these sums was a breach of clause 21 (a) (pitch fees) and 21 (b) (water charges).
29. Turning to the leak the tribunal had itself witnessed the leak. The leak was a constant stream of water from a pipe emitting from the Mobile Home. The tribunal was satisfied that such leak was evidence that the Mobile Home was not being properly maintained and so amounted to a breach of clause 21 (c) being the implied term to keep the mobile home in a sound state of repair.
30. The tribunal had for itself witnessed the decking. The decking had a large hole which plainly constituted a hazard. The railings to the decking were also themselves loose and in poor repair and represented a hazard. The tribunal was satisfied on the face of the evidence that this amounted to a breach of clause 21 (d) which requires the Mobile Home owner to maintain the exterior of the mobile home and the pitch generally.
31. The tribunal did note that the pitch generally was in an unkempt and untidy state. It also is satisfied that the

guttering is in a poor state of repair. However this did not form part of the original application or within the papers supplied to Mr James in advance of the hearing. The tribunal determined that it was not appropriate to make any declarations in respect of these matters but the Respondent should note the tribunal's observations in this regard.

32. At the conclusion of the hearing the tribunal adjourned to deliberate. Having done so it informed the Applicants and their representative orally of their decision given their genuine concerns, particularly over the water leak.

33. The Tribunal finds on the evidence presented that the Respondent is in breach of the implied terms of his Agreement and declares as follows:

- **The Respondent is in breach of clause 21 (a) of Chapter 2 of Part 1 of Schedule 1 of the Act in that he has failed to pay pitch fees due and owing to the Applicants;**
- **The Respondent is in breach of clause 21 (b) of Chapter 2 of Part 1 of Schedule 1 of the Act in that he has failed to pay water charges demanded of him;**
- **The Respondent is in breach of clause 21 (c) of Chapter 2 of Part 1 of Schedule 1 of the Act in that his Mobile Home is not in a sound state of repair by reason of the water leak coming from the same;**
- **The Respondent is in breach of clause 21 (d) of Chapter 2 of Part 1 of Schedule 1 of the Act by reason of the disrepair of the steps and decking allowing access to the Mobile Home;**

34. Further the tribunal directs the Respondent that he must comply with the following directions made pursuant to the tribunal's powers contained within section 231A(4) of the Housing Act 2004:

- **The Respondent will within 7 days pay or cause to be paid to the Applicants all pitch fees and water charges due and owing by him which at the date of the hearing amounted to £1,266.93;**
- **The Respondent will ensure all future payments of pitch fees and water charges are paid promptly;**
- **The Respondent will within 7 days repair or cause to be repaired the water leak from his**

Mobile Home and produce evidence of such repair to the Applicants;

- **The Respondent will within 7 days undertake or cause to be undertaken emergency repairs to the decking to repair the hole and stabilise the railings so that the whole structure is safe and secure;**
- **The Respondent will within two months put the decking into repair or remove the same. In so doing the Respondent will ensure that he makes good any damage caused and removes from the pitch any waste created so that the same is left in a safe and tidy condition;**

All time limits will run from the date of service of this determination which is deemed to be received by the Respondent on the second working day after the same has been posted by the Tribunal.

Judge D. R. Whitney

RIGHTS OF APPEAL

1. 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.
2. 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.
3. 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.
4. 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

