FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**CAM/12UE/PHC/2020/0003**
Property	**:**	**Upton Park,** **Main Road,** **Huntingdon,** **Cambridgeshire,** **PE28 5YD**
Applicant	**:**	**Upton Park Residents Assoc.**
		Unrepresented
Respondent	**:**	**R.S. Hill & Sons Ltd**
		Unrepresented
Date of Application	**:**	**28th May 2020**
Type of Application	**:**	**To determine a question arising under the Mobile Homes Act 1983 ("the 1983 Act") or the agreement to which it applies**
Tribunal	**:**	**Judge J. Oxlade**
Date of hearing	**:**	**6th October 2020 (made on the papers)**

DECISION

For the reasons given below, the application made for a direction that the Respondent do provide bank details to enable the residents of site at Upton Park to pay their ground rent by standing order, is dismissed for want of jurisdiction.

REASONS

This has been a remote hearing which has been consented to/not objected to by the parties. The form of remote hearing was on the papers, which was requested by the Applicants and not objected to by the Respondent. Further, it was suitable for consideration on the papers alone, as all issues could be determined in a remote hearing.

The Application

1.On behalf of the residents at the property, the Applicant sought an order for the Respondent to disclose a bank account into which the residents could pay their ground rent, by a more up-to-date method than the current arrangement of payment by cash or cheques, which - until new arrangements had been made in the Covid crisis, and which require posting through a letter box – involve queuing up outside the Respondent's site office on the first Friday of each month between the hours of 9:30 and 11am. The Applicant says that this is archaic and not convenient for many of their residents alike: some who are elderly, some who work, and some who are (in ordinary years) able to take extended breaks.

2. Prior to the application, the Applicant had requested in writing from the Respondent suitable bank details to enable this to happen, but the Respondent's principle objection to this method was that it would be impossible to identify payments – and so an administrative "nightmare" – unless all 700 residents (over several sites) used a recognisable reference. The Applicant's suggestion that each resident could use the postcode of the site with their unique house number – so ensuring easy and clear identification – did not receive a reasoned response; rather, the Respondent would "wish to leave things as they are".

3. It appears from the correspondence that at least one meeting has taken place between the Applicant and the Respondent/a representative, but no way forward has been found. Additionally, in an effort to resolve the matter there has been correspondence over some months, but the matter remains unresolved.

4. In support of the Applicant's argument that the proposed method is possible and practical, from the Applicant's letter dated 23rd May 2020, it appears that prior to the Respondent's ownership of the site, some residents had in fact paid their ground rent by standing order, which arrangement endured for a time after the Respondent took over the site. Further, from the Respondent's letter dated 28th August 2020 it was accepted that in parks they have recently purchased, 90% of the residents do pay by standing order. However, the Respondent's position is that it would not be practical to employ this for the 700 residents across their portfolio – most of whom therefore pay by cash or cheque, and where it is believed that the profile of the residents may mean that they do not have access to internet banking.

5. The Respondent's backstop position is that as a matter of law there is no legal obligation to accept payment by standing orders, and wish to continue on the basis of "what works for them". The Respondent provided an email from John Clement of IBB Law, advising that neither the 1983 Act, the associated Regulations nor case law require the receipt of payment of pitch fees or other charges in any specific way.

6. The Applicant has not sought representation on the issue, as they are not in funds, so not able to do so; they have not addressed the jurisdiction issue.

Evidence

7. In accordance with the Directions issued by the Tribunal on 22nd July 2020, both parties have filed a bundle of documents each. There are no witness statements filed by the parties, but their positions (as set out above) contained within correspondence passing between them and letters directly to the Tribunal. From perusal of the documents, it does not appear that there is any factual dispute.

8. In both bundles the parties have each included a pitch agreement, both incomplete, and both in different terms.

9. The pitch agreement provided by the Applicant is limited to pages 1 and 12 of a document headed "written statement under Mobile Homes Act 1983". It does not disclose the names of the parties, the pitch to which it related, nor when it was entered into; nor is there anything within the documents filed which provides this information. At clause 18, it provides how a pitch fee shall be reviewed, the matters that will be taken into account, and those which shall be disregarded. At clause 21 the obligation on the occupier is by 21(a) to "pay the pitch fee to the owner", but does not prescribe how and when it shall be paid.

10. The pitch agreement provided by the Respondent is limited to pages 1 and 2 of the "written statement under the Mobile Homes Act 1983" between the Respondent and Mrs. S. Dunkley, and which at clause 3(a) provides that the occupier undertakes to pay the owner "an annual pitch fee of £1164, subject to review as hereinafter provided, by equal monthly payments in advance on the First Saturday of each month".

11. It is true to say the agreement which is provided by the Applicant is less prescriptive than that provided by the Respondent, but none prescribe the method by which the fee shall be paid (cash, cheque, direct debit, bank transfer or BACS). Further, neither provide a limitation as previously imposed by the Respondent, namely that it shall be paid on the First *Friday* of the month between limited hours, with those ready to pay being expected to stand in a line queueing up.

12. The only obligation on the occupier under both agreements provided, is to "pay" the sum notified as due.

The Law

13. The jurisdiction of the Tribunal is as follows:

"4(1) In relation to a protected site… a Tribunal has jurisdiction -

(a)to determine any question arising under this Act or any agreement to which it applies; and
(b) entertain any proceedings brought under this Act or any such agreement, subject to subsection (2) to (6)".

Findings

14. I have carefully considered the evidence filed and the points made by the parties.

15. The preliminary issue raised by the Respondent is whether the Tribunal has any power to dictate how the sum due is paid, and so this is an issue to which I first turn.

16. Whilst the Applicants may be encouraged by the statutory wording - which provides that the Tribunal has jurisdiction to determine "any question arising" – to think that the Tribunal can determine this issue, the limitation is a "question under the Act or agreement to which it applies". The Act provides specific circumstances when the Tribunal can intervene i.e. to determine an issue as to the size of the pitch fee review, a dispute about the express terms which have been referred to it within the 6 months of the start of the agreement, the rights of statutory "inheritance" of the tenancy, and so on. It does not provide carte blanche to consider any question arising between the parties which relates to the rights of occupation.

17. This interpretation is reinforced by the case of Wyldecrest Paris v Turner [2020] UKUT 40, in which the Upper Tribunal allowed an appeal against the FTT order for disclosure of a lease of the pitch, which lease was immaterial to resolution of the issues between the parties. It referred to the subsidiary powers under section 231A of the Housing Act 2004, but which (it held) could only be invoked when the Tribunal is exercising its jurisdiction conferred *under* the 1983 Act.

18. I find that the order sought by the Applicant is not one that the Tribunal has power to make as the issue does not relate, even tangentially, to any right that the parties have under the Act.

19. However, I will add that I interpret that the obligation to "pay" the Respondent, as imposing an obligation to tender and succeed in making payment to the Respondent. It is open to the Applicant to attend in person to make payment by cash or cheque, or to pay by cheque (or a series of post-cheques) in the post. If the Respondent had provided bank account details, the duty to pay would be discharged by making successful transfers. The Respondent's position that the Applicants should attend in person on a Friday between limited hours, is not within the terms of the agreement, so it remains open to the Applicant to make payment by cheque by sending to the Respondent's registered address.

20. I appreciate that this decision is not what the Applicant would wish to receive, but I remain hopeful that there is room for manoeuvre on the Respondent's side, when it appreciates that the strictures placed on the pre-covid arrangements do not accord with the express terms of the agreement referred to at paragraph 10 nor the terms of paragraph 9.

21. I therefore dismiss the application for want of jurisdiction.

.....

Judge J. Oxlade

6th October 2020