



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

Case Reference : **LON/OOAS/LSC/2019/0405**

Property : **40 Philpotts Close**

Applicant : **Philpott's Farm Management Company
(no 2) Ltd**

Representative : **Mr Wragg**

Respondent : **Eleanor Murphy**

Representative : **In person**

Type of Application : **Determination pursuant to s.27A Landlord
and Tenant Act 1985**

Tribunal Member : **Judge Jim Shepherd
Sarah Phillips MRICS**

Date of Decision : **28th September 2021**

DECISION

1. This case started life in the County Court. Philpott's Farm Management Company (no 2) Ltd ("The landlord") brought a claim for unpaid service charges and reserve funds against Eleanor Paula Murphy ("The tenant"). Miss Murphy is the leaseholder at 40 Philpott's close, West Drayton UB7 7RX. The value of the claim against her was £2991.02.

2. The claim was issued on 14 May 2018 and was allocated to the small claims track. In response to the claim the tenant raised various challenges including the reasonableness of charges being made.

3. The matter came on for trial on 11 September 2019. The case was heard in Uxbridge County Court by Deputy District Judge Woodcraft. The landlord was represented by Counsel and the tenant appeared in person. During the hearing the tenant indicated that she never contested that there was a contractual obligation to pay the service charge but was questioning the payment of them on the basis that there was “no service” according to her. In other words she was challenging the reasonableness of the charges. The Tribunal has seen the transcript of the hearing which was ordered because the landlord challenged the judge's decision in relation to costs which is not relevant to this hearing.

4. During the hearing before Deputy District Judge Woodcraft the landlord’s counsel suggested that it was appropriate to give judgement for the sums due and delay enforcement on the basis that the tenant was still able to challenge the reasonableness of the sums in the Tribunal. It does not appear that the judge or Counsel considered the possibility of the reasonableness of the sums being determined in the County Court. The judge accepted counsel’s suggestion and made the following order:
 1. There be judgement for the claimant in the sum of £1956.02

 2. The defendant do pay the claimant the sum of £365 in costs.

 3. The sums due under paragraph 1 and 2 above are not to be enforced without further order provided the Defendant makes an application within 28 days of today to the First-Tier Tribunal for assessment of the reconsideration of the

service charge and administration fees which are the subject of paragraph 1 above.

5. Thereafter the tenant made an application to the Tribunal as required under paragraph 3. There was considerable delay partly as a result of the global pandemic and the matter finally came on for hearing before the tribunal on 28 September 2021. The tenant brought a broad challenge as to the reasonableness and payability of the service charges in the Tribunal. This challenge was defended by the landlord. To all intents and purposes the matter was heading for a final hearing on 28 September 2021.
6. Prior to the hearing however on 23 September 2021 the landlord's solicitors PDC Law wrote to the Tribunal indicating that they considered that the Tribunal did not have jurisdiction because there had already been a determination of the service charges due in the County Court. They made reference to section 27 A (4) (C) of the Landlord and Tenant Act 1985. They also made reference to the Upper Tribunal decision in *Cowling v Worcester Community Housing Limited* [2015] 0496 (LC).
7. Section 27A(4)(c) states that no application can be made to the tribunal in respect of a matter which has been the subject of a determination by a court.
8. It appears that the "penny had dropped" for the landlord's solicitors albeit belatedly. Significantly they did not really offer any form of solution to the situation other than asking the Tribunal to declare that there was no jurisdiction. In fairness this is strictly speaking as far as the Tribunal can go.
9. It is clear that this case is caught by s.27A (4)(c). The County Court made a money judgement and therefore the Tribunal does not have jurisdiction to deal the case because there is no longer a live dispute. It is equally clear that Deputy

District Judge Woodcraft was misled albeit inadvertently by the landlord's Counsel to believe that it was open to him to give judgement and yet preserve for the tenant an opportunity to challenge the reasonableness of the charges in the Tribunal. What should have happened was one of two things: Firstly the Deputy District Judge should have determined the issue of reasonableness himself as this was open to him to do or secondly the case should have been stayed before any determination was made and the matter transferred to the Tribunal. This is the ordinary course of proceedings. It seems to the tribunal that in light of this error and the fact that it has effectively prevented the tenant through no fault of her own from challenging the reasonableness of the service charges the parties ought to agree an order under which the County Court order can be set aside and the proceedings stayed pending a redetermination by the Tribunal. The Tribunal does not have power to order this but it does seem the fairest course. There is provision under the civil procedure rules for orders to be set aside where the court has been inadvertently misled (see the court's general powers of management under CPR 3.1 and the commentary in the White Book).

10. It is regretted that the jurisdiction issue was not picked up either by the parties or the tribunal before the current date nonetheless it is clear that the Tribunal does not have jurisdiction and finds accordingly. The Tribunal was however encouraged by the fact that both parties indicated that there may be scope for settlement.

Judge Shepherd

Dated

ANNEX - RIGHTS OF APPEAL Appealing against the tribunal's decisions

1. A written application for permission must be made to the First-tier Tribunal at the Regional tribunal office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional tribunal office within 28 days after the date this decision is sent to the parties.
3. If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with

the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

4. The application for permission to appeal must state the grounds of appeal, and state the result the party making the application is seeking. All applications for permission to appeal will be considered on the papers

5. Any application to stay the effect of the decision must be made at the same time as the application for permission to appeal.