



FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference : MAN/OOCJ/BSC/2024/0001

Premises : 91 St Ann's Quay
Newcastle upon Tyne
NE1 3BB

Applicant : Martin Nuernberg

Representative : N/A

Respondent : Adderstone (216 Res) Limited

Representative : N/A

Type of Application : Building Safety Act 2022 – Paragraph 16(5) of Schedule 8

Tribunal Member : Judge J Holbrook

Date of Decision : 29 July 2024

DECISION

DECISION

The landlord deed of certificate provided in respect of the Premises on 8 May 2024 claims that the Applicant does not qualify for the qualifying lease protections in Schedule 8 to the Building Safety Act 2022. That is a false claim.

The Respondent has therefore failed to comply with the Building Safety (Leaseholder Protections) (England) Regulations 2022 and is accordingly ordered to provide the Applicant with a corrected landlord deed of certificate within 7 days.

REASONS

The proceedings

1. The Applicant has applied to the Tribunal under paragraph 16(5) of Schedule 8 to the Building Safety Act 2022 (the BSA). He alleges that a “landlord deed of certificate” provided by the Respondent landlord on 8 May 2024 contains a false claim and he therefore seeks a determination that the Respondent has failed to comply with its obligations under the Building Safety (Leaseholder Protections) (England) Regulations 2022 (the Leaseholder Protections Regulations).
2. The alleged false claim is that the Applicant does *not* qualify for the qualifying lease protections in Schedule 8 to the BSA. There is an underlying dispute about whether the Applicant holds a “qualifying lease” of the Premises (as defined in section 119 of the BSA).
3. Directions were issued for the conduct of these proceedings on 18 June and the parties were notified that the Tribunal might determine the application without holding an oral hearing unless either party gave notice that they required a hearing to be arranged. No such notice was received and I have accordingly made my determination on the basis of the representations and documents provided by the parties, but without holding a hearing. Rule 31 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 permits a case to be dealt with in this manner provided that the parties give their consent (or do not object when a paper determination is proposed). In this case, the parties have not objected. Moreover, having reviewed the case papers, I am satisfied that this matter is indeed suitable to be determined without a hearing: although the parties are not legally represented, the issue to be decided is readily apparent: it turns on a single – but important – question of statutory interpretation.

Background

4. The Applicant is the leaseholder of a residential flat known as 91 St Ann's Quay, Newcastle upon Tyne (the Premises). The Premises form

part of a 10-storey mixed-use development, the residential parts of which are owned by the Respondent, which is a "relevant landlord".

5. On 7 May 2024, the Applicant notified the Respondent's agent of a potential sale of the Premises and, on 8 May, the agent provided him with a "landlord deed of certificate" pursuant to regulation 6 of the Leaseholder Protections Regulations. This is a standard form which contains, among other things, a section about whether the leaseholder holds a qualifying lease. The landlord giving the certificate is required to select one of three alternative statements: in this case, the Respondent selected option 2; "the leaseholder has provided a leaseholder deed of certificate, but does not qualify for the qualifying lease protections".
6. The lease in question (the Lease) is dated 6 October 2003 and was made between St Ann's Quay Limited (1) St Ann's Quay Management Limited (2) and Robert Brian Nicholson & Candy Nicholson (3). The Lease was granted for a term of 999 years and reserved an initial annual rent of £250. The Lease contains provisions which oblige the leaseholder to pay service charges.
7. On 3 May 2024, the Applicant had provided the Respondent with a "leaseholder deed of certificate" in which he confirmed, among other things, that he acquired the Lease prior to 14 February 2022; that the Premises were not his only or principal home on that date, and on that date he owned no more than two dwellings in the UK in addition to the Premises.

Discussion

8. The Respondent's case is that the Applicant does not hold a qualifying lease of the Premises for one simple reason: the Premises were not his only or principal home on 14 February 2022.
9. Section 119(2) of the BSA provides:

"A lease is a "qualifying lease" if—

 - (a) it is a long lease of a single dwelling in a relevant building,
 - (b) the tenant under the lease is liable to pay a service charge,
 - (c) the lease was granted before 14 February 2022, and
 - (d) at the beginning of 14 February 2022 ("the qualifying time")—
 - (i) the dwelling was a relevant tenant's only or principal home,
 - (ii) a relevant tenant did not own any other dwelling in the United Kingdom, or
 - (iii) a relevant tenant owned no more than two dwellings in the United Kingdom apart from their interest under the lease."

10. A “relevant tenant” means a person who, on 14 February 2022, was a tenant under the lease in question (see section 119(4)(c)).
11. In the present case, there is no dispute that the conditions in paragraphs (a), (b) and (c) of section 119(2) are satisfied. The dispute is whether the condition in paragraph (d) was also satisfied – in particular, whether that condition can only be satisfied if the condition in sub-paragraph (i) is met, irrespective of whether the conditions in (ii) and (iii) are also met: put simply, is a lease a qualifying lease only if the dwelling in question was a relevant tenant’s only or principal home at the qualifying time?
12. The Respondent argues that this is indeed so, referring to paragraph 26 of the Tribunal’s decision in *Triathlon Homes LLP v Stratford Village Development Partnership & Others* [2024] UKFTT 26 (PC), where the Tribunal said this:

[“Qualifying lease”] is defined in section 119(2) and refers to a long lease of a single dwelling in a relevant building which was granted before 14 February 2022 and under which the tenant is liable to pay a service charge. The dwelling must also have been the tenant’s only or principal home on that date and the tenant must not have owned any other dwelling, or not more than two, apart from their interest under the lease.” [emphasis added]
13. Although these observations do indeed indicate that the condition in sub-paragraph (i) of subsection (2)(d) must be satisfied in *every* case, they are at odds with the description of section 119(2)(d) in the Explanatory Notes which accompany the BSA. In particular, paragraphs 940 of the Explanatory Notes states:

“Subsection (2)(d) sets out the categories of leases that are qualifying. For a lease to be qualifying, at the qualifying time the lease must have been the tenant’s only or principal home, or it must have been the only property they owned in the United Kingdom (even if it was not their only or principal home), or the relevant tenant must have owned no more than two additional properties in the United Kingdom in total. A “relevant tenant” is defined in subsection (4)(c) as a person who is a tenant under the lease (in other words, a leaseholder) at the qualifying time.” [emphasis added]
14. Paragraph 941 goes on to explain the policy underlying this provision:

“The provision at subsection (2)(d) means that a leaseholder will qualify for the leaseholder protections for their properties if they own up to three properties in the United Kingdom in total. If more than three properties in total are owned, then the principal home qualifies for the protections, but the other properties do not.”
15. It does not appear that the Tribunal in *Triathlon Homes* was referred to the above paragraphs in the Explanatory Notes, and I note that the comments made at paragraph 26 of its decision were not a central

feature of its reasoning in any event (in that they did not affect the outcome of the case). It seems to me that the condition in section 119(2)(d) is satisfied if *any* of sub-paragraphs (i) – (iii) apply in the particular circumstances of the case: that is apparent from the structure of subsection (2)(d), in particular the use of the word “or” immediately before sub-paragraph (iii). This is the ordinary meaning of the words of the provision (and it is consistent with the Explanatory Notes). It is also consistent with the structure of the prescribed form of leaseholder deed of certificate. That form contains questions as to qualifying lease criteria, and invites a leaseholder giving the certificate to select just one of five alternative statements. The apparent intention is that statements 1 – 4 indicate a qualifying lease, with only statement 5 indicating a non-qualifying lease. When the Applicant in this case provided a leaseholder deed of certificate, he selected statement 3: “The dwelling was owned by me at the beginning of 14th February 2022, was not my only or principal home on that date, and on that date I owned no more than two dwellings in the United Kingdom in addition to the dwelling”.

16. I therefore conclude that the Lease of the Premises *is* a qualifying lease, as defined by section 119 of the BSA. Accordingly, the landlord deed of certificate provided on 8 May 2024 contains a false claim.

Outcome

17. Regulation 11(2) of the Leaseholder Protections Regulations provides that a leaseholder may apply for an order under paragraph 16(5) of Schedule 8 to the BSA where a relevant landlord has made a false claim in the landlord’s deed of certificate. That is what has happened here.
18. Paragraph 16(5) of Schedule 8 empowers the Tribunal to make an order determining that a relevant landlord has failed to comply with the Leaseholder Protections Regulations (and I duly make such an order), and to require the relevant landlord to provide specified information or documents to a specified person by a specified time.
19. Accordingly, I order the Respondent to provide the Applicant with a corrected landlord deed of certificate within 7 days.

Signed: J W Holbrook
Judge of the First-tier Tribunal
Date: 29 July 2024