



PROPERTY TEAM NEWSLETTER

Article: Another trap for the unwary residential landlord

With the plethora of statutory regulations now in place to protect residential leaseholders from unscrupulous landlords, it is becoming increasingly difficult to recover service charges at all. The recent Lands Tribunal decision in *London Borough of Islington v Abdel-Malek 7th August 2007* identified one more trap for the unwary landlord.

As is often the case with large schemes undertaken by public landlords, Islington came to bill a major works project a number of years after the project was first conceived. The works were carried out in stages and stage payments continued even after the works were completed.

Section 20B of the Landlord and Tenant Act 1985 is intended to protect the tenant from unexpected and unbudgeted for bills. Section 20B (2) provides that the lessor may only recover costs if:

“ . . .within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of the lease to contribute to them by the payment of a service charge.”

There is no “get out” clause in relation to this subsection – failure to comply means that the relevant service charge cannot be recovered – there is no power to grant a dispensation. In the Islington case, the Council sent its leaseholders a letter within the 18 month period enclosing an estimated invoice for the works and advising the tenant that the works continued and that the final account would be produced once the defects liability period had expired. The invoice attached to the letter was for the same sum as had been estimated for the whole of the works in the Section 20 notice. The tenant argued that only part of this sum had so far been incurred and she had no way of knowing what part. The tenant said as no figure stating the amount actually spent to date was included in the notice, it was invalid. The Lands Tribunal agreed.

Inevitably, this decision gives rise to a number of problems for landlords. First, in relation to many old cases where it was assumed that it was sufficient to warn the tenant that he would be receiving a bill in due course without specifying the liability to date, many claims for service charges will now be statute barred.

Secondly, it is easy to imagine the chaos which may ensue where landlords pay for the works as and when. In order to comply with s. 20B the landlord would be well advised to keep a running tally of the costs spent so that they can notify the tenant of the exact amount incurred within the time limit set down by the section.

Nicola Muir

Did you see..... ? Recent cases you may have missed

Landlord & Tenant

Private Nuisance; Defective Premises; Leaseholds

Nicholas David Kingsley Jackson v JH Watson Property Investment Limited [2008] EWHC 14 (Ch)

The Claimant tenant under a long lease brought an action alleging that the Defendant landlord, an assignee of the reversion of the property, was liable in nuisance for the ingress of water into his flat which was caused by the defective laying of concrete to the light wells that adjoined the flat. It was accepted that the problem occurred when the building was first converted into flats and therefore prior to the commencement of the lease. It was contended on the part of the claimant that the defendant had adopted the nuisance, whereas the defendant argued that the principle of caveat lessee applied.

Held: In the circumstances the principle of caveat lessee did apply and the defendant was under no obligation to the claimant. The claimant took the demised premises as they were and could not complain about a pre-existing defect. This was so whether the complaint related to the state and condition of the demised premises or of other parts of the building in which the demised premises were located: *Southwark LBC v Mills [2001] 1 AC 1* applied. Accordingly, the claimant could not rely on the law of nuisance to impose upon the defendant an obligation to put right faulty construction work by the defendant's predecessor in title.

Landlord & Tenant

Enfranchisement; Houses; Statutory Interpretation; s.2(1) Leasehold Reform Act 1967

Boss Holdings Limited v Grosvenor West End Properties [2008] UKHL 5

The appellant (Boss) appealed against the decision of the trial judge, upheld by the Court of Appeal, that it was not entitled to a declaration that it was entitled to acquire the freehold of a property under s.1(1) of the Leasehold Reform Act 1967 ("the LRA") because the property was not a 'house' within the meaning of s.2(1) of the LRA. The court had so held on the basis that at the time the requisite notice was served the property was not 'designed or adapted for living in' due to its heavily dilapidated and indeed uninhabitable state.

Held: The appeal would be allowed. As a matter of ordinary language, supported by the other provisions of the subsection and the original terms of s.1(1) as well as considerations of practicality and policy, the property was at the time of service of the notice 'designed or adapted for living in' within the meaning of s.2(1). The phrase directed attention firstly to the property as originally built and the purpose for which it was originally designed, and secondly to whether subsequent work had changed the original design. The fact that the property had become dilapidated and incapable of beneficial occupation did not detract from the fact that it had been designed for living in when first built.

Landlord and Tenant

Collective Enfranchisement, Valuation of Freehold, Deferment Rate, Outside PCL

Hildron Finance Ltd v Greenhill Hamsstead Ltd LTL 17/01/08 (unreported elsewhere)

The Lands Tribunal allowed an appeal against the determination by the LVT of the value of the freehold interest in a block of flats using a 7% deferment rate. Although the Property was in Hampstead and outside of Prime Central London, there was no evidence which justified a departure from the 5% rate adopted in *Earl Cadogan v Sportelli (2006) RVR 382*.

Landlord and Tenant

Leasehold Valuation Tribunal, Jurisdiction, Definition of Service Charges, Assured Tenancies

Home Group Ltd v (1) Lewis (2) Marsden (3) Easton LTL 22/01/08 (unreported elsewhere)

The Landlord appealed to the Lands Tribunal against the LVT's determination of the tenants' liability for service charges which were varied annually pursuant to assured tenancy agreements and ss.13 and 14 of the Housing Act 1988.

Held: The AT agreements provided for the relevant charges to be fixed annually in advance, which in practise was based on the estimated cost of provision of the services. There was no accounting for any shortfall or surplus at the end of the year. The charges levied on the tenants did not vary according to the actual expenditure incurred and were not 'service charges' within the meaning of s.18 of the Landlord and Tenant Act 1985. Accordingly the LVT had no jurisdiction to consider the application and the appeal would be allowed.

Real Property

Standard Conditions of Sale, s.49 Law of Property Act 1925, Return of Deposits

Midill (97PL) Ltd v (1) Park Lane Estates Ltd (2) Gomba International Investments Ltd [2008] EWHC 18 (Ch)

The Claimant buyer paid a 10% deposit to D2 pursuant to a share sale agreement for its 100% stake in D1, a company whose only asset was a commercial property in Park Lane. C had failed to complete but pursued the return of the deposit on the grounds that D2 had not been in a position to complete or in equity as D1 had made a profit on the subsequent sale of the property. D2 conceded that the share sale fell within s.49(3) of the LPA 1925 as being 'a contract for the sale or exchange of any interest in land', such that the Court had a discretion under s.49(2) to order the repayment.

Held: C had failed to establish that D2 had not been 'ready able and willing' to complete on the date of the service of the notice or the date specified therein for completion. In this case, where the buyer had failed to complete, there were no special circumstances which justified the return of a deposit which was effectively security against that very risk: *Omar v El Wakil [2001] EWCA Civ 1090* applied.

Case summaries Alice Marshment and Andy Creer

The members of the Hardwicke Property Team have specialised skills and experience in all aspects of the law relating to Real Property, Landlord & Tenant, Housing and other property-related subjects.

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