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Evening Standard Homes & Property Wednesday 23 November 2005

2 Property news

Block on bullies

Win for tenants facing 'service-charge harassment'. By Mira Bar-Hillel

FROM now on, rogue landlords will not be able to threaten leaseholders with endless legal action over disputed service charges. A new Court of Appeal judgment will make life easier for many leaseholders who so frequently in the past have been bullied by intimidating landlords.

The case goes back to 2002, when Timothy O'Keefe went to a Leasehold Valuation Tribunal (LVT) to challenge the service charges that had been imposed on his Earl's Court flat by his landlord, Sinclair Gardens Investments.

When the tribunal agreed and reduced the charges, his landlord appealed to the Lands Tribunal. The second tribunal not only upheld the first decision, it refused the landlord permission to seek a judicial review of its conclusions.

The persistent landlord then went to the High Court, which turned it down, and finally to the Appeal Court. The appeal judges said that the High Court "rightly concluded" permission to seek judicial review should be granted only in exceptional cases, where there were either "jurisdictional errors" or "procedural

residential service-charge issues to their "good sense".

"The point of law raised by Sinclair Garden Investments appears to me to involve what could accurately be characterised as a standard, or bread-and-butter, issue for an LVT," he said. "In those circumstances, it seems to me that this case is very far away indeed from being one of those exceptional cases where judicial review should be available."

Tim O'Keefe said: "I hope other leaseholders

will take comfort from this and stand up for their rights. I also hope that the question of whether Sinclair Garden Investments is a vexatious litigant is addressed, so that leaseholders don't continually end up being abused by a company that seems to have turned intimidatory litigation into an industry".

Leaseholders should take comfort from this and stand up for their rights

irregularities amounting to a denial of the applicant's right to a fair hearing".

Lord Justice Neuberger said that both tribunals were independent judicial bodies, with the additional advantage of specialising in service-charge disputes, and that the general policy of the Landlord and Tenant Act 1985 was to leave

Ⓐ Of course they will do it !!

They will still file unjustified claims in county courts
And they will still try their luck in higher courts

≡ They will STILL frighten leaseholders into paying due to the cost of employing lawyers to respond to court actions

Nonetheless, it is a good result!

Ⓑ But they have ^(*) no jurisdiction/power to enforce their determination.
So, if you ARE dealing with a landlord who refuses to implement a determination, you must go to court
≡ of course = more costs in professional fees.

(*) See attached 12 Sep 03 letter from Seobhan McGrath, Head, LVT.

Poppy Anderton, Tomkinson and Keith will miss swimming pool mother's rose he is not short of owning a duplex and California.

Noelle K-Dit-Rawé

12 September 2003

Dear Ms K-Dit-Rawé

**LVT REPORT - LVT/SC/007/120/02
3 JEFFERSON HOUSE, 11 BASIL STREET, LONDON SW3**

I am in receipt of your letters dated September 6, and September 9, 2003, which I have read together with the decision of the tribunal.

I should say at the outset that neither I nor the tribunal have power to re-open a decision. The correct course of action for a party who is dissatisfied with an LVT determination is to appeal to the Lands Tribunal.

On that basis it is not possible to either change the decision or to provide a supplement to it. I regret that this will inevitably appear unhelpful but it is not possible to act outside the regulations which govern the LVT procedure.

One of the difficulties for LVTs generally has been the limited nature of their jurisdiction under section 19(2A) and 19(2) of the Landlord and Tenant Act 1985. Those sections confine the tribunal's power to deciding the reasonableness of relevant costs incurred, or to be incurred in a service charge. The LVT cannot decide liability to pay a service charge.

From September 30, 2003, those two sections are to be repealed. The LVT's jurisdiction will then be governed by a new section 27A of the same Act. This will allow LVTs to decide all aspects of the liability to pay past and future service charges.

Following the introduction of the new jurisdiction we plan to devise a two part form so that in appropriate cases, the LVT can give a decision separately from the reasons for that decision.

So far as the agreement to hold a hearing in relating to your section 20C application is concerned, this is a matter for which the tribunal has no

(A) Having a summary is not addition
of course, inconvenient for
Steel Services if there is one as
other residents can see outcome!

discretion. The regulations make no provision for applications to be decided on consideration of documents alone without the consent of both parties.

Finally, the third page of your letter dated September 6, 2003, includes submissions which you may wish to be considered by the tribunal in making their decision on the section 20C application. If this is the case then the correspondence must be copied to the respondent. Please let Mr Stewart, the tribunal clerk, know if you wish to have the correspondence copied in this way.

Yours sincerely



AP Siobhan McGrath
President