FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00AC/LBC/2015/0040**
Property	:	**240A Station Road, Edgware, Middlesex, HA8 7AU**
Applicant	:	**Richard Archer Property Trading Ltd**
Representative	:	**Mr Meyers of Churchills Solicitors**
Respondent	:	**Ms S Pandya**
Representative	:	**Did not attend and was not represented**
Type of application	:	**Section 168(4) of the Commonhold & Leasehold Reform Act 2002**
Tribunal members	:	**Judge I Mohabir**
Date and venue of hearing	:	**3 June 2015 at 10 Alfred Place, London WC1E 7LR**
Date of decision	:	**3 June 2015**

DECISION

Introduction

1. By an application dated 21 April 2015, the Applicant made an application to the Tribunal under section 168(4) of the Commonhold and leasehold Reform Act 2002 ("the Act") for an order that the Respondent had breached a covenant or condition in her lease by failing to pay service charges for the periods 25 march to 28 September 2014 and 29 September 2014 to 24 March 2015 totalling £6,417.02.

2. It is common ground in this case that the Applicant is the freeholder and the Respondent is the present lessee of the subject property. As will become apparent, for the purpose of this decision, it is not necessary or relevant to set out the relevant covenants or conditions that give rise to the Respondent's contractual liability to pay service charges under the terms of her lease.

3. Before making this application, the Applicant had issued proceedings in the County Court for the unpaid service charges that are the subject matter of the application and has obtained a default judgement dated 5 January 2015 in the sum of £7,022.62.

4. By reason of the default judgement, the Tribunal concluded that a jurisdiction point arose as to whether it could make a determination in relation to the application. Therefore, the Tribunal listed the matter for a preliminary hearing to decide the issue of jurisdiction and directed the parties to *"prepare brief statements on jurisdiction and exchange them with the other party and the Tribunal by 22 May"*.

5. Unfortunately, the direction given to the parties failed to properly identify the jurisdiction issue on which they were to make submissions and, understandably, the statements filed and served by them also failed to deal with the point.

writ and to set aside the judgement. Mr Meyers confirmed that he had not received a copy of any application made by the Respondent to have the judgement set aside.

12. Identical provisions to section 168(5)(b) of the Act can also be found, for example, in section 27A(4)(c) of the Landlord and Tenant Act 1985 (as amended) and section 81 of the Housing Act 1996. In each instance the legislation does not define the meaning of a "determination". Whilst those statutory provisions relate to different jurisdictions, in the Tribunal's judgement, the position is directly analogous to the present case and regard can be had to previously decided cases in these jurisdictions.

13. Of assistance to this Tribunal was the earlier Tribunal decision dated 25 January 2011 in the case of ***Brannock v Circle 33 Housing Trust Ltd*** (LON/00AU/LSC/2010/0708). The issue decided in that decision was identical to the present case, namely, whether a default judgement obtained prior to an application made under section 27A of the Landlord and Tenant Act 1985 was a determination within the meaning of section 27A(4)(c) thereby depriving the Tribunal of jurisdiction.

14. In ***Brannock*** the Tribunal also considered the same provision in section 81 of the Housing Act 1996 and reviewed the earlier County Court decisions of ***London Borough of Southwark v Tornaritis*** [1999] and ***Hillbrow (Richmond) Ltd v Alogaily*** [2006]. In the former case it was held that a default judgement was a determination for the purposes of section 81 of the 1996 Act whereas in the latter case it was held not to be so. In ***Brannock*** the Tribunal decided, on balance, that a default judgement was a determination within the meaning of section 27A(4)(c) of the 1985 Act and it did not have jurisdiction to make a determination in relation to those service charges that were subject to the default judgement.

15. In the recent Court of Appeal decision in the case of ***Faizi v Greenside Properties Ltd*** [2013] EWCA Civ 1382 on the same issue of a default judgement and section 81 of the 1996 Act, Lord Justice Kitchin, albeit *obiter*, said that it was immaterial whether judgement was obtained by default or following a contested hearing. In either instance it amounted to a "determination" within the meaning of the section.

16. Turning to the present case, there was no evidence that the default judgement obtained by the Applicant had been set aside. Therefore, following the (binding) Court of Appeal authority in ***Faizi*** the Tribunal found that the default judgement was a "determination" within the meaning of section 168(5)(b) of the Act. The advantages of such an approach bring clarity and finality to what would otherwise potentially be an unnecessarily vexed and ambiguous issue.

17. Legal debate has taken place that a default judgement cannot be a "determination" because that requires some judicial input. In the Tribunal's judgement, such an approach cannot be correct or should be adopted for good reasons.

18. If judicial input was required, the potential unwieldy situation where concurrent and conflicting appeals or challenge before the Court or Tribunal could occur.

19. In addition, if a tenant refuses to respond or ignores a claim by a landlord, he is entitled to use normal court procedures and rules to seek judgement by default. To do otherwise would raise a number of practical issues. For example, in the absence of a Defence, what would be the issues to be determined by the court, the required procedure and what would be the nature of the hearing? Moreover, how could the landlord bring the matter before the court? Perversely, if the landlord made an application for judgement in default, it would still be judgement in default and, arguably, still not a "determination".

20. Furthermore, if every landlord was obliged to take each claim for a determination to trial, they would be placed in the invidious position where rent and service charges falling due could not be demanded because of the risk of waiver of the right to forfeit. This is especially relevant in service charge disputes where potentially an 18 month limitation period applies.

21. For the above reasons, the Tribunal concluded that the default judgement obtained by the Applicant is a "determination" within the meaning of section 168(5)(b) of the Act. It follows, therefore, that the Tribunal does not have jurisdiction to make any determination in relation to this application and orders that it be dismissed. Of course, in the event that the Respondent is successful in having the default judgement set aside, it may be open to the Applicant to make a further application to the Tribunal as it may regain jurisdiction in those circumstances.

Judge I Mohabir

3 June 2015