



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

<b>Case Reference</b>	:	<b>LON/OOBJ/OCE/2015/0197</b>
<b>Property</b>	:	<b>31 Garratt Terrace, London SW17 OQE</b>
<b>Applicant</b>	:	<b>Russell Francis Da Rocha and Maria Garcia Da Rocha (1); Jonathan Robert Parker (2); Matthew Leigh Hazell (3)</b>
<b>Representative</b>	:	<b>E D C Lord &amp; Co solicitors</b>
<b>Respondent</b>	:	<b>Arumgathasan Thirumoolan and Ehamparam Sasikandarajah</b>
<b>Representative</b>	:	<b>Unrepresented</b>
<b>Type of Application</b>	:	<b>s25 and schedule 5 of the Leasehold Reform, Housing and Urban Development Act 1993 (the Act)</b>
<b>Tribunal Members</b>	:	<b>Tribunal Judge Dutton Mrs H C Bowers BSc Econ MSc MRICS</b>
<b>Date and Venue of determination</b>	:	<b>22<sup>nd</sup> September 2015 at 10 Alfred Place, London WC1E 7LR</b>
<b>Date of Decision</b>	:	<b>22<sup>nd</sup> September 2015</b>

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**DECISION**

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## DECISION

**The Tribunal determines that no further sums are presently payable under the provisions of Schedule 5(3)(1)(b) of the Act for the reasons set out in the Findings section below.**

**The Tribunal makes an order under s20C of the Landlord and Tenant Act 1985 for the reasons set out below.**

### BACKGROUND

1. By an order dated 6<sup>th</sup> July 2015, made by the County Court at Wandsworth in claim AO1Wt229, in proceedings before the parties named at the front of this decision, this matter was transferred to us to determine “2. *The question of what amounts, if any, in addition to the premium of £1000 for the property within paragraph 2 of the said Section 13 Notice, shall be due from the Claimants or any of them to the Defendants shall be referred to and determined by the First Tier Tribunal (Property Chamber) in accordance with Schedule 5 (3)(1)(b) of the Act, it being accepted and ordered that claims statute barred will not be recoverable*”.
2. By an earlier order dated 30<sup>th</sup> January 2015, on application by the Applicants, the Court ordered that the price payable for the freehold of the property at 31 Garratt Terrace, London SW170QE (the Property) should be £18,000, including £1,000 for additional property. It is thought that the July order may be in error in only referring to the sum of £1000.
3. On 26<sup>th</sup> August 2015 this Tribunal debarred the Respondents from participating in these proceedings as a result of their failure to comply with directions. It appears that subsequent to this debarring order the Respondents have lodged papers with the Tribunal and with the Applicants. However, as a result of the debarring order they were not considered by us in reaching the determination we have made in this case.
4. Papers had been lodged by the solicitors for the Applicants, EDC Lord & Co. and we have considered those in reaching our decision. These papers included a statement of case, two witness statements of Mr Hazell, with exhibits, the application to the Court leading to the order date 6<sup>th</sup> July 2015 and this Tribunals directions and debarring order.
5. The matter was listed for a paper determination and came before us for that purpose on 22<sup>nd</sup> September 2015.

## FINDINGS

6. There appear to be two items of monetary claims being in issue, the first is ground rent and the second is service charges. Dealing with the ground rent first we were told that by virtue of s19 of the Limitation Act 1980 the Respondents could not recover the ground rent before 1<sup>st</sup> January 2009. The Limitation Act limits the recovery of ground rent for a period of no more than 6 years. The ground rent is payable on 25<sup>th</sup> December in each year. The assertion by the Applicant is therefore correct. The earliest year for which ground rent could be payable would be the year ending December 2009. However, there is another string to this bow. The Respondents, it is said, have failed to comply with the provisions of s166 of the Commonhold and Leasehold Reform Act 2002 in that they have not served demands that are compliant and that therefore the sums are not payable by the Applicants. There is no evidence before us that the Respondents have complied with this requirement. Accordingly we find that at the date of our determination there is no ground rent presently payable by the Applicants in respect of the Property. Any such ground rent that might be payable would be limited as provided for above and as set out in the conclusion to the Applicants' statement of case.
  
7. Turning to the question of service charges we are told that this relates to insurance premiums. The Applicants' case is two-fold. Firstly the Respondents have fallen foul of s20B of the Landlord and Tenant Act 1985 (the 1985 Act) in that there are no demands made for service charges that appear to have been made within 18 months of any cost being incurred. The cut off date would appear to be the year ending 2013. A demand dated 31<sup>st</sup> December 2013 sent under cover of a letter dated 8<sup>th</sup> April 2015, purportedly for the year ending November 2013 includes insurance but it is not said when this cost was incurred and as a result of the debarring we have no evidence on this point from the Respondents. The demand for service charges in the year ending December 2014 was for ground rent only. Further the Respondents have failed to comply with s21B of the 1985 Act in that any demands that may have been served do not contain the required statutory wording. Accordingly it is said for the Applicants that the Respondents cannot recover any service charge costs. We agree with that assertion and find that there are no outstanding service charge payments due from the Applicants.
  
8. Finally, the Applicants sought an order under s20C that the costs of these proceedings could not be added as a service charge. In the light of the debarring of the Respondent and our findings we consider it to be just and equitable to make such an order.

*Andrew Dutton*

Tribunal Judge  
Andrew Dutton

22<sup>nd</sup> September 2015.