



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

Case Reference : LON/00AF/LSC/2014/0180

Property : 4 Burton Pynsent House, West
Common Road, Hayes BR2 7BY

Applicant : Mark Skelton

Respondents : DBS Homes (Kings Hill) Ltd

Representative : Northleach Property Management Ltd

Type of Application : Liability to pay service charges

Tribunal Members : Judge Adrian Jack, Professional
Member M Cartwright FRICS,
Tribunal Member J Dalal

Date and venue of hearing : 3rd July 2014
10 Alfred Place, London WC1E 7LR

Date of Directions : 24th April 2014

DECISION

Background

1. The applicant tenant seeks a determination under section 27A of the Landlord and Tenant Act 1985 as to whether service charges are payable to the Respondent for 29th January 2010 to 31st March 2014.
2. An oral case management hearing took place on 24th April 2014 before Judge Nicol attended by the applicant on his own behalf and by Mr Simon Dothie of Northleach, accompanied by Mr James Barker, also of Northleach, and Ms Deborah Seaton and Mr Dennis Minnis of the Respondent. The directions (including the hearing date of 3rd July 2014) were drawn up in consultation with those attending.

Discussion

3. The parties both complied fully with directions. At the hearing on 3rd July 2014 the applicant was present at 10 am with a number of other tenants at the premises. The landlord, however, did not appear, nor was it represented.
4. The Tribunal had its clerk telephone the agents and the landlord. At the agents he was able to speak to Sunny Uppal and subsequently a female employee called Lauren. They were unable to contact either Mr Dothie or Mr Barker, who had appeared at the case management conference. They knew nothing of the Tribunal hearing. The tenant told us that Mr Uppal and Lauren were junior employees of the agents.
5. At the landlord's, the clerk was able to speak to Ms Seaton, who had attended the case management conference. She said that she had spoken to Mr Barker on 2nd July 2014 and that Mr Barker had told her the hearing was on 19th July 2014. That would be surprising, because 19th July 2014 is a Saturday.
6. However, it seemed to the Tribunal that there might have been some mistake made on the part of the landlord's agents. Certainly it was surprising, given the full compliance with the directions, that the landlord did not appear to argue the case.
7. The Tribunal considered that it had three options. Firstly, it could carry on with the case in accordance with rule 34 of the Procedure Rules 2013. Secondly, it could adjourn the case. Thirdly, it could make an order in the form which we discuss shortly. The tenant's preferences were for the first option followed by the third option.
8. We considered whether it was in the interests of justice to proceed with a substantive hearing in the absence of the landlord. The difficulty in our judgment was that the landlord had put a detailed and technical case forward in answer to the tenant's points. If the Tribunal was going to have a substantive hearing, the Tribunal itself would have to put these points to the tenant and put the arguments which could be raised by the landlord to the tenant.
9. Now of course the Tribunal as part of its normal function in assisting litigants in person regularly does explain points and put arguments to the other side. However there is a line to be drawn between assisting a litigant in person in that way and coming into the arena to fight the case on technical, legal and factual issues on behalf of one side. In the current case, the Tribunal would in our judgment be stepping firmly into the arena, if it argued the points sought to be argued by the landlord.
10. So far as the second option is concerned, the Tribunal had no request for an adjournment. Neither Mr Uppal nor Lauren nor Ms Seaton made such a request. Further it was mere surmise that there were any

good grounds for granting an adjournment. Accordingly we did not adjourn the case.

11. This left the third option, which we discussed with the applicant. Since the landlord did not appear, there were no arguments advanced and no oral evidence adduced to gainsay the tenant's case that nothing was owing. Accordingly the Tribunal could properly declare that nothing was owing in the years in question.
12. However, since there was at least a possibility that the landlord had not appeared due to some mistake or misadventure, the possibility should be given to it to explain why it had not appeared. The Tribunal in considering whether to set aside the decision we have reached should, however, consider whether a condition of setting aside the judgment should be that the landlord pay the tenant a day's wages, which he said were £770.
13. Such an order would be in our judgment in accordance with the overriding objective and also within the Tribunal's case management powers under rule 6 of the Procedure Rules 2013.
14. Attending the hearing were a number of other tenants. None had been joined as parties to the current proceedings, so the decision of the Tribunal only binds the current applicant and the landlord. If the landlord does apply successfully to set aside this decision, it will be open to other tenants to apply in writing to be joined as additional applicants.

DECISION

- i. The tenant owes the landlord nothing in respect of service charges in the period 29th January 2010 to 31st March 2014.
- ii. The landlord do pay the tenant £440 in respect of the fees payable to the Tribunal.
- iii. The landlord do have permission to apply by 17th July 2014 to set aside this decision, any such application to be accompanied by full explanation and evidence in relation to their non-appearance on 3rd July 2014.
- iv. If the landlord does so apply, the tenant has permission to respond by 24th July 2014.
- v. If the decision is set aside the Tribunal will consider whether the setting aside should be conditional, including

conditional on payment by the landlord to the tenant of £770 or some other sum.

- vi. The determination whether to set aside this decision is **not** reserved to the current Tribunal.

Name: Adrian Jack

Date: 3rd July 2014

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

- (1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
 - (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
 - (b) the whole or part of which varies or may vary according to the relevant costs.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose -
 - (a) "costs" includes overheads, and
 - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
 - (a) only to the extent that they are reasonably incurred, and
 - (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;and the amount payable shall be limited accordingly.
- (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary

adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

- (1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to -
 - (a) the person by whom it is payable,
 - (b) the person to whom it is payable,
 - (c) the amount which is payable,
 - (d) the date at or by which it is payable, and
 - (e) the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
 - (a) the person by whom it would be payable,
 - (b) the person to whom it would be payable,
 - (c) the amount which would be payable,
 - (d) the date at or by which it would be payable, and
 - (e) the manner in which it would be payable.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which -
 - (a) has been agreed or admitted by the tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
 - (c) has been the subject of determination by a court, or
 - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Section 20

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
 - (a) complied with in relation to the works or agreement, or
 - (b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .

- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
 - (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
 - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
 - (a) an amount prescribed by, or determined in accordance with, the regulations, and
 - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20B

- (1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.

- (2) Subsection (1) shall not apply 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 his lease to contribute to them by the payment of a service charge.