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

**Case Reference** : **LON/00BE/LSC/2013/0405**

**Property** : **28 Consort Road, Clifton Estate,  
London SE15 2PU**

**Applicant** : **Mr M Iwuji**

**Representative** : **In person**

**Respondent** : **LB Southwark**

**Representative** : **Ms E Bennett  
(income enforcement officer)**

**Type of Application** : **For the determination of the  
reasonableness of and the liability  
to pay a service charge**

**Tribunal Members** : **Miss J E Guest (Judge)  
Mr W R Shaw FRICS  
Mr A D Ring (lay member)**

**Date and venue of  
Hearing** : **27/01/2014  
10 Alfred Place, London WC1E 7LR**

**Date of Decision** : **30/01/2014**

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**DECISION**

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## **Decisions of the tribunal**

- (1) Pursuant to Rule 35(1) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013, the tribunal consents to an agreement reached between the parties that the Applicant is not liable to pay the service charge demand served on 06/09/2011 in the sum of £5,262.59.
- (2) The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge.
- (3) The tribunal declined to make an order against either party under paragraph 10 of Schedule 12 of the Commonhold and Leasehold Reform Act 2002.

## **Background**

1. By way of an application received by the tribunal on 04/06/2013, the Applicant sought a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to service charges payable in respect of the costs of major works undertaken in 2008-2009 demanded on 06/09/2011 in the sum of £5,262.59.
2. The application was first considered by the tribunal at a pre-trial review hearing on 09/07/2013 when the hearing was adjourned in order to give the Applicant an opportunity to obtain legal advice. This was because the main issue raised by the Applicant concerned an allegation that a surveyor employed by the Respondent had given a verbal representation that the Applicant would not be liable to contribute towards the costs of the major works as they had commenced prior to his acquisition of the leasehold interest under the Right to Buy scheme and/or the Respondent had failed to comply with the requirements of section 125 of the Housing Act 1985.
3. At the subsequent pre-trial review hearing on 10/09/2013, the tribunal notified the Applicant that the tribunal was minded to strike out his application and gave directions for the hearing of this issue.
4. At the hearing on 10/09/2013, the Applicant indicated that he also intended to challenge the service charges under section 20B of the Landlord and Tenant Act 1985. The Applicant then wrote to the Respondent on 21/09/2013 setting out his case under section 20B.
5. At a further pre-trial hearing on 23/10/2013, the tribunal decided that the application would not be struck out and directions were given for

the hearing of both issues on 27/01/2014 (with a time estimate of one day).

6. Prior to the final hearing on 27/01/2014, the Respondent agreed that the Applicant was not liable for the disputed service charges. On 14/11/2013, the Respondent agreed that the vast majority of the charges fell outside the 18 month period required by section 20B leaving the sum of £167.51 due, which it subsequently agreed on 14/01/2014 to write off.
7. On 20/01/2014, the Applicant wrote to the Respondent seeking costs and damages totalling £31,900. The Respondent offered £100.00 as a goodwill gesture towards the Applicant's travel costs in order to avoid the necessity of attending the hearing on 27/01/2014.

### **The issues**

8. In view of the above, the only issues to be determined on 27/01/2014 related to costs.
9. As the Applicant's fees for the application and hearing had been waived by the tribunal, the remaining issues to be determined by the tribunal were:
  - (a) the Applicant's application under section 20C; and
  - (b) whether any costs order should be made.

### **The hearing**

10. The Applicant appeared in person at the hearing and the Respondent was represented by Ms E Bennett (income enforcement officer).
11. The tribunal explained to the Applicant that its power to award costs was limited as the application had been received on 04/06/2013 so that the tribunals powers to make a costs order under Rule 13 did not apply as the Rules came into force on 01/07/2013. The tribunal informed the Applicant that it only had the power to make an award of costs against a party to a maximum of £500 if paragraph 10(2)(b) of Schedule 12 of the Commonhold and Leasehold Reform Act 2002 applied (see Appendix).
12. The Applicant wished to pursue an application for costs under the 2002 Act. He explained that he had incurred travel costs in respect of his attendances at the three pre-trial review hearings and the final hearing totalling £217.60 (approx.) as he lives in Rochdale. Although his claim for costs put forward to the Respondent on 20/01/2014 included legal costs of £10,950, there was no evidence that the Applicant had engaged

and paid for such legal services and it was noted that he had acted in person throughout the proceedings. The Applicant was also unaware of the tribunal's limited costs powers until this was explained to him by the tribunal at the hearing despite the considerable legal costs he claimed he had incurred.

13. Ms Bennett indicated that the Respondent also intended to pursue an award of costs as she considered that the Applicant's rejection of the offer of £100 in respect of his travel costs was unreasonable and that the hearing on 27/01/2014 could have been avoided.
14. Ms Bennett also informed the tribunal that the Respondent would not seek to recover the costs of the proceedings through the service charges so the application for an order under section 20C was not opposed.

### **The tribunal's decision**

15. The tribunal made an order under section 20C as this was not opposed by the Respondent.
16. The tribunal declined to make a costs order the 2002 Act against either party.

### **Reasons for the tribunal's decision**

17. In respect of the Applicant's application, the tribunal did not consider that the Respondent's conduct fell within any of the categories listed in paragraph 10 (2)(b).
18. The Applicant had initially pursued allegations concerning misrepresentation and the section 125 notice so that the tribunal had to consider whether it should strike out the applicant. The Applicant only set out his case under section 20B on 21/09/2013 following the second pre-trial review hearing on 10/09/2013 when he had been warned that the tribunal was minded to strike out. The Respondent conceded this issue on 14/11/2013 and well in advance of the final hearing. The Respondent then agreed to write off the remaining service charges.
19. The tribunal considered that the Respondent had, therefore, acted reasonably in relation to the conduct of the proceedings.
20. Whilst the tribunal noted that the Applicant had incurred travel expenses in relation to the proceedings, this was because he chose to live some distance from the location of the property.
21. In relation to the Respondent's application, Ms Bennett did not provide any details as to any losses suffered by the Respondent in respect of its

attendance on 27/01/2014. Accordingly, the tribunal did not consider it appropriate to make an order.

**Name:** J E Guest

**Date:** 30/01/2014

## **Appendix of relevant legislation**

### **Landlord and Tenant Act 1985 (as amended)**

#### **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 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.

### **Section 20C**

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.
- (2) The application shall be made—
- (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
  - (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
  - (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
  - (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
  - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

## **Commonhold and Leasehold Reform Act 2002 Schedule 12**

### **Paragraph 10 Costs**

(1) A leasehold valuation tribunal may determine that a party to proceedings shall pay the costs incurred by another party in connection with the proceedings in any circumstances falling within sub-paragraph (2).

(2) The circumstances are where—

(a) he has made an application to the leasehold valuation tribunal which is dismissed in accordance with regulations made by virtue of paragraph 7, or

(b) he has, in the opinion of the leasehold valuation tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.

(3) The amount which a party to proceedings may be ordered to pay in the proceedings by a determination under this paragraph shall not exceed—

(a) £500, or

(b) such other amount as may be specified in procedure regulations.

(4) A person shall not be required to pay costs incurred by another person in connection with proceedings before a leasehold valuation tribunal except by a determination under this paragraph or in accordance with provision made by any enactment other than this paragraph.