



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

Case Reference : LON/00BK/LSC/2015/0180

Property : 188a Ashmore Road London W9
3DE

Applicant : Lalji Naran Patel and Kesharben
Lalji Patel

Representatives : Mr P Patel, Managing Agent –
Naran Jesha Sons (UK) Limited

Respondent : A2 Dominion Homes Limited

Representative : -

Type of Application : For the determination of the
liability to pay and reasonableness
of service charges (s.27A Landlord
and Tenant Act 1985)

Tribunal Members : Prof Robert M. Abbey (Solicitor)

**Date and venue of
Hearing** : 24th August 2015 at 10 Alfred Place,
London WC1E 7LR

Date of Decision : 24 August 2015

DECISION

Decisions of the tribunal

- (1) The tribunal makes an order for the refund of the tribunal fees paid by the applicant and to be paid by the respondent in the sum of £440 being the application fee of £250 and the hearing fee of £190.
- (2) The tribunal makes an order that the respondent do pay the applicants costs incurred in connection with these proceedings in the sum of £1010.
- (3) The fees refund and the costs are both to be paid by the respondent to the applicant within 28 days of the date of this decision.

The application

1. The applicant applied for a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the respondent in respect of service charges payable for services provided at 188a Ashmore Road London W9 3DE, (the property) and the liability to pay such service charge.
2. The relevant legal provisions and rules are set out in the Appendix to this decision.

The hearing

3. The applicant was represented by Mr P. Patel from the managing agents Naran Jesha Limited and there was no attendance by the respondent of any representative of the respondent.
4. The tribunal had before it an agreed bundle of documents prepared by the applicant. At the hearing a letter dated 20 August 2015 addressed to the tribunal was produced in which the Managing Agents confirmed that all the service charges claimed in this application had been paid in full. Accordingly the claim was fully satisfied save for the Applicant's claim for costs.

The costs

5. The first part of the claim advanced by Mr P. Patel for the Managing Agents was for a refund of the tribunal fees for the commencement of the application and for the hearing. The application fee was £250 and the hearing fee £190 giving a total claimed of £440. The tribunal was of the view that it was entirely reasonable and proportionate that there be an order for the refund of these fees and would so order so that the fees refund be paid within 28 days of this decision.

6. Mr Patel then applied for a costs order. He said the respondent had acted unreasonably as it had known about the service charges arrears from 2011 but had done nothing about them. He also produced emails and letters in which he indicated that the matter of the service charges was repeatedly brought to the attention of the respondent but again nothing was paid. He reminded the tribunal that the arrears covered a period from 2008 right through to 2015.

Costs Decision

7. The tribunal is of the view that the conduct of the respondent has been unreasonable in that it has not engaged with the process at the tribunal. It failed appear at the two hearings and did not file any documentation with it. The arrears existed from 2008 and there is little or no evidence that the arrears were taken seriously until the full hearing was imminent. For all these reasons and because it was reasonable and proportionate so to do the tribunal is of the view that there should be an order for costs made against the respondent. The tribunal of course had in mind the provisions of rule 3 of the The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 S.I. 2013 No. 1169 (L. 8) whereby the tribunal had to ensure that matter proceeded justly and fairly and that parties must help the Tribunal and co-operate with the Tribunal generally.
8. Mr Patel produced a costs schedule dated 7 August 2015 addressed to the respondent amounting to £2790. The tribunal has considered each element of this claim and is unable to agree it as drawn. Each element will be considered in turn.
9. The first item was described as application costs and was for the preparation and filing of the claim. The tribunal cannot agree the amount claimed as the time period mentioned seemed excessive and reduces it to £150. The second item was for the attendance at the first hearing and was for £525. Again the tribunal was of the view that the time period was excessive and therefore reduced the amount claimed to £300. The next three items were it seems relating to work completed after the first hearing but again the time periods seemed to the tribunal excessive for what was covered. Accordingly instead of the original combined total of the three items of £750 the tribunal will allow £250.
10. The next item was for charges for the hearing in the sum of £750. However bearing in mind the turn of events just before the hearing and the short nature of the costs hearing that did take place the tribunal cannot allow this figure and will instead allow £300. The next two items were the tribunal fees but these have already been covered above and so will not be considered here. Finally Mr Patel sought to make a disbursements claim of £100 without any supporting invoices etc. and in these circumstances the tribunal will only allow £10 to cover incidental photocopying and other such expenses.

11. Accordingly, the total of the above revised and reviewed costs claim amounts to £1010 and the tribunal orders that these costs be paid by the respondent to the applicant within 28 days of the date of this decision.

Name: Judge Professor Robert
M. Abbey

Date: 24. August.2015

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 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.

The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 S.I. 2013 No. 1169 (L. 8)

Overriding objective and parties' obligation to co-operate with the Tribunal

Rule 3.

- (1) The overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly.
- (2) Dealing with a case fairly and justly includes—
- (a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties and of the Tribunal;
 - (b) avoiding unnecessary formality and seeking flexibility in the proceedings;
 - (c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;
 - (d) using any special expertise of the Tribunal effectively; and
 - (e) avoiding delay, so far as compatible with proper consideration of the issues.
- (3) The Tribunal must seek to give effect to the overriding objective when it—
- (a) exercises any power under these Rules; or
 - (b) interprets any rule or practice direction.
- (4) Parties must—
- (a) help the Tribunal to further the overriding objective; and
 - (b) co-operate with the Tribunal generally.

Orders for costs, reimbursement of fees and interest on costs

Rule 13.

(1) The Tribunal may make an order in respect of costs only—

(a) under section 29(4) of the 2007 Act (wasted costs) and the costs incurred in applying for such costs;

(b) if a person has acted unreasonably in bringing, defending or conducting proceedings in—

(i) an agricultural land and drainage case,

(ii) a residential property case, or

(iii) a leasehold case; or

(c) in a land registration case.

(2) The Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor.

(3) The Tribunal may make an order under this rule on an application or on its own initiative.