



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

**Case Reference** : **LON/00AH/LSC/2016/0219**

**Property** : **Ground Floor Flat, 92 Bensham  
Manor Road, Thornton Heath,  
Surrey CR7 7AU**

**Applicant** : **Ashdens Management**

**Representative** : **Mr Lars Tonkin**

**Respondent tenant** : **Mr George Somogyi**

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

**Type of Application** : **Service charge transfer from  
County Court**

**Tribunal Members** : **Tribunal Judge Adrian Jack**

**Date and venue of  
determination** : **19<sup>th</sup> July 2016 at 10 Alfred Place,  
London WC1E 7LR**

**Date of Decision** : **19<sup>th</sup> July 2016**

---

**DECISION**

---

## **Procedural**

1. By a claim issued in the County Court Money Claims Centre on 23<sup>rd</sup> February 2016, Ashdens Management, claimed the sum of £7,960.30 in respect of arrears of rent and service charges said to be due under a lease made 27<sup>th</sup> December 1986 of the Ground Floor Flat, 92 Bensham Manor Road, Thornton Heath, Surrey CR7 7AU. After the tenant filed a defence, the claim was automatically transferred to the County Court at Bow. By an Order made on 26<sup>th</sup> April 2016 District Judge Bell transferred the claim to this Tribunal.
2. On 21<sup>st</sup> June 2016 the Tribunal held a case management hearing. Mr Tonkin of the Ashdens Management attended; the tenant did not. The Tribunal directed the tenant to set out his case by 12<sup>th</sup> July 2016. The tenant sent an email on that day, but did not fully comply with the order. The directions provided for the matter to be determined on paper in the week commencing 18<sup>th</sup> July 2016 unless the tenant served a fully pleaded case by 12<sup>th</sup> July 2016. Since he has not done so, the Tribunal has proceeded to determine the case on paper.

## **No cause of action**

3. Paragraph 3 of the Particulars of Claim pleads that the “claimant is the managing agent instructed on behalf of the lessor and freeholder, Silverprior Properties Ltd.” As such the Particulars of Claim disclose no cause of action. Any claim for rent and service charges is vested in Silverprior Properties Ltd, not in Ashdens Management.
4. Where a case is transferred from the County Court under paragraph 3 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002, this Tribunal does not have the power to substitute or add parties under paragraph 10 of the Tribunal Procedure (First-tier Tribunal) (Property Chambers) Rules 2013: cf *Woelke v London Borough of Southwark* [2013] UKUT 349 (LC) at para [27]. (In view of the limitation problem, discussed below, it may be doubtful whether it would be appropriate to substitute the landlord for the current claimant, even if the Tribunal had the power to do so: see CPR rule 19.5.)
5. The Tribunal therefore has no alternative but to determine that the tenant owes Ashdens Management nothing by way of service charges.

## **Merits**

6. In case I am wrong about that, I should add that the evidence presented by the claimant in support of its claim is at present insufficient to prove that the tenant is liable to the landlord for the service charges claimed. Firstly, the demands all seem to have been generated around the same time as the certified financial statements, namely 2<sup>nd</sup> October 2015.

The tenant denies having received the demands previously and there is no evidence to gainsay that. This means that any service charge expenditure older than 18 months before the service of the demands is irrecoverable: Landlord and Tenant Act 1985 section 20B. Neither the claimant nor the landlord has made any attempt to show that they put the tenant on notice that such charges might be claimed.

7. Secondly, the demands do not comply with section 47 and 48 of the Landlord and Tenant Act 1987 in that the name and address of the landlord are not stated, nor any place in England and Wales for the service of notices. Nor is there any evidence that the statement of the tenant's rights and obligations was served with the demands, as required by the Service Charges (Summary of Rights and Obligations, and Transitional Provision) (England) Regulations 2007. The result is again that the service charges (and the rent, but this is not a matter for this Tribunal) are not presently recoverable.
8. Thirdly, the lease reserves the payment of service charges as rent. Claims for arrears of service charge are therefore subject to a six year limitation period: Limitation Act 1980 section 19.
9. Fourthly, the tenant has asked for evidence that the sums claimed have been incurred. For example, he has asked for copies of the certificates of insurance. These have not been provided. There is thus no evidence that insurance was in force for the relevant period. Likewise the tenant disputes that there was any cleaning or repairing. He complains that the landlord has produced no invoices.
10. If the claim were not fatally flawed by the misnomer of the claimant, I would have given further directions, so that the landlord would have an opportunity to answer the above points. However, since I cannot substitute the landlord as claimant, there is no purpose doing so.

### **Costs**

11. These are a matter for the County Court. The tenant has not sought an order under section 20C of the Landlord and Tenant Act 1985 to prevent the landlord recovering the costs of the current proceedings through the service charge. If he wishes to do so, he will have to apply to the Tribunal. However, it may be that the landlord (as opposed to the managing agent) has incurred no costs.

## **DETERMINATION**

- 1. The tenant owes the Claimant nothing.**
- 2. The matter is to be transferred back to the County Court at Bow for the final determination of the case.**

Judge Adrian Jack, 19<sup>th</sup> July 2016

### **ANNEX: The law**

The Landlord and Tenant Act 1985 as amended by the Housing Act 1996 and the Commonhold and Leasehold Reform Act 2002 provides as follows:

#### **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, improvement 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 of 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 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 provision 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 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) a leasehold valuation 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 charges 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 charges 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 27A**

- (1) An application may be made to a leasehold valuation 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 a leasehold valuation tribunal for a determination whether 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.”

Sections 47 and 48 of the Landlord and Tenant Act 1987 require a landlord to give his name and address and to give an address for the service of notices by the tenant on him. The Service Charges (Summary of Rights and Obligations, and Transitional Provision) (England) Regulations 2007 requires a landlord to serve a summary of tenants' rights and obligations with any demand for service charges on pain of irrecoverability of the service charges demanded.



HM Courts  
& Tribunals  
Service

**Property Chamber  
London Residential Property  
First-tier Tribunal**

10 Alfred Place, London, WC1E 7LR  
Telephone: 020 7446 7700  
Facsimile: 01264785060  
E-mail: rplondon@hmcts.gsi.gov.uk  
DX: 134205 Tottenham Court Road 2

Direct Line: 020 7446 7727

---

The Court Manager  
Bromley County Court  
DX 98080 Bromley 2

Your ref: B3QZ9R92  
Our ref: LON/00AF/LSC/2016/0185

Date: 19 July 2016

---

Dear Sirs

**RE: Landlord & Tenant Act 1985 - Section 27A(1)**

**PREMISES: 4 Cork House, 77 Leasons Hill, Orpington, Kent, BR5 2LF**

I refer to the above case, which was transferred to the Tribunal on 26 April to determine the service charges

The Tribunal has now determined the matter and I enclose a copy of the document recording their decision.

The court's file and original documents are also returned herewith.

Yours faithfully

**Mrs Seyi Ajayi  
Case Officer**