



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

Case reference : **LON/00AK/LSC/2016/0009**

Property : **Flat 5, North Star House, 130 High Road, London N11 1PG**

Applicant : **North Star House RTM Company Ltd**

Representative : **Ms Laithwaite, barrister**

Respondent : **Mr Hamed Fadulelmoula**

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

Tribunal members : **Ruth Wayte (Tribunal Judge)
Mel Cairns MCIEH
John Francis**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of decision : **8 July 2016**

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the sum of £1,643.70 is payable by the Respondent in respect of the service charges claimed by the Applicant.
- (2) The tribunal makes the determinations as set out under the various headings in this Decision.
- (3) The tribunal determines that the Respondent shall pay the Applicant £1,000 within 28 days of this Decision, in respect of their legal costs of the proceedings before the tribunal.
- (4) This matter should now be referred back to the Willesden County Court for consideration of the county court costs, interest and any other outstanding matters.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") payable by the Respondent in respect of £3,524.45 of service charges and costs.
2. Proceedings were originally issued on 13 October 2015 in the County Court Business Centre under claim no. B7QZ3CoN. The claim was transferred to the Willesden County Court and then in turn transferred to this tribunal, by order of District Judge Gill on 30 December 2015.
3. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

4. The Applicant was represented by Ms Laithwaite at the hearing, with Margaret Taylor and Donna Shiels of the managing agents attending as witnesses. The Respondent appeared in person.

The background

5. The property which is the subject of this application is a small block of 9 flats.
6. The Respondent disputed that internal decorations work had been carried out and produced photographs on his mobile phone of the common parts in evidence. In the light of those photographs the tribunal did not consider that an inspection was necessary, nor would it have been proportionate to the issues in dispute.

7. The Respondent holds a long lease of the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease and will be referred to below, where appropriate.

The issues

8. The case as prepared by the Applicant centred on three items, two demands for interim service charges and one demand in respect of decoration works to the common parts, amounting to a total of £1,643.70. The Respondent had taken no active part in the proceedings, following its transfer, although he disputed the items on the basis that he wished to see the evidence which supported the amount claimed and, in respect of the internal decoration work, disputed that it had been carried out at all.
9. However, the claim issued by the Applicant in the County Court was for £3,524.45. After agreeing to a short adjournment to allow Ms Laithwaite to take instructions, it became clear that the Applicant's case should have proceeded on a different basis, in respect of arrears predating the demands identified by the Applicant following the directions. Although the Applicant asserted there were demands in the hearing bundle which supported that claim, no evidence in the form of accounts or invoices was available at the hearing predating 2014. Ms Laithwaite applied for permission to send additional documentation to the Respondent to see whether he would now agree the outstanding service charges and avoid the need for a further hearing. Having conferred, the tribunal refused that application. The Applicant – a Right to Manage company, had been professionally represented at all times and had to take responsibility for its failure to properly prepare its claim. There was no good reason to delay matters further or incur additional costs having reached the hearing date. In the circumstances the tribunal agreed to proceed on the basis the case had been prepared and limit its consideration to the three items listed in the Scott Schedule, together with any application for costs. The case will then be referred back to the County Court to deal with any outstanding matters, unless they can be agreed between the parties.
10. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

Service charges 01.06.2015 to 31.08.2015 - £308.11

11. The tribunal heard evidence that the service charge year ran from 1 September to 31 August in any year, to coincide with the company accounts. This demand was for provisional service charges in accordance with the Second Schedule of the Lease which provides for quarterly payments in advance of 10.50% of the Annual Expenditure,

defined as all costs expenses and outgoings in or incidental to providing all or any of the Services.

12. The Respondent's evidence was unclear in terms of his objections to this claim, which appeared to be on the basis that he wanted to see the invoices for the work done as opposed to any objection as to the ability to claim monies on account or the validity of the demand.

The tribunal's decision

13. In the absence of any clear defence to the sum claimed and in light of the service charge provisions in the lease the tribunal determines that £308.11 is payable in respect of this service charge item.

Service charges 01.09.2015 to 30.11.2015 - £314.56

14. This demand was also a claim for provisional service charges but in respect of the following service charge year. Again, the Respondent's defence was unclear but contained no objection in respect of the ability to claim a service charge on account or the actual amount.

The tribunal's decision

15. For the same reasons as stated in paragraph 13 above, the tribunal determines that the amount payable in respect of this service charge item is £314.56.

Claim for internal decorations - £1,021.03

16. This claim followed a section 20 consultation process and involved internal decoration works to the common parts, carried out by Michmark Ltd at a cost of £7,485. The managing agents sought 10% plus Vat in terms of supervision costs, amounting to a total of £8,380.20. The accounts produced for 2015 rounded that cost down to £8,380. In the section 20 notice justification was given for the £1,021.03 claimed, which included replacement of the carpet in addition to the decoration works.
17. The Respondent's objections were on the basis that he did not believe the work had been carried out at all. He produced his mobile phone which had photographs of the hallway, which he claimed indicated that it had not been painted recently. The photographs also showed a carpet which was in need of replacement.
18. The Applicant confirmed that the carpets were being replaced now and relied on their ability to claim payment in advance, to which the Respondent made no objection.

The tribunal's decision

19. Having viewed the photographs produced by the Respondent, the tribunal is satisfied that they show a recently painted hallway, albeit with fresh damage and scuff marks in the stairwell. There also appears to be damage to the handrail. In the circumstances and in the absence of any further objection from the Respondent the tribunal determines that £1,021.03 is payable by the Respondent in relation to the decoration works, including the replacement of the carpet.

Rule 13 application for costs

20. At the end of the hearing, the Applicant made an application for an order that the Respondent pay the costs of the proceedings pursuant to Rule 13 of the Tribunal Procedure Rules¹. This rule gives the tribunal the power to award costs against a party on account of their unreasonable behaviour in bringing, defending or conducting proceedings before it. The Applicant relied on the Respondent's failure to abide by any of the tribunal's directions, including as to mediation and his previous conduct in failing to make any payment towards his service charge, together with the absence of any real defence. Ms Leathwaite produced a schedule of costs amounting to £6,521.01.
21. The Respondent was clearly very shocked by the amount and said he couldn't understand why the costs were so high. He said he hadn't understood the claim or got the papers, although he had previously admitted to receiving the directions which had also been sent to the property, which is the address he gave for service.
22. The tribunal does consider that the Respondent has acted unreasonably. He admitted receiving the directions which required him to provide a statement of case and any evidence on which he intended to rely. It was also clear that this was a case where mediation was considered appropriate by the tribunal, given the nature of the defence in the county court which again related to whether the works had been carried out. Again, the Respondent had failed to make any attempts to mediate the dispute. Apart from his defence to the internal decorations, which was unsupported by his own evidence, he also made no attempt to raise any proper defence at the hearing.
23. That said, the Applicant has prepared its case very badly. The schedule of service charges was for far less than the amount sought in the county court and it was only in the light of the tribunal's questioning that Ms Laithwaite acknowledged that the original sum sought included different alleged arrears, which could not be evidenced on the day of the hearing. If the Respondent had made an application for an order

¹ The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 SI 2013 No 1169

under section 20C of the Landlord and Tenant Act 1985 preventing the Applicant passing the costs on through the service charge the tribunal would have had no hesitation in granting it, as their representatives have not served them well.

24. The costs schedule includes all the county court costs as well as time claimed in relation to preparation for the hearing before the tribunal. County Court costs are a matter for the County Court and the tribunal has therefore limited its consideration to the costs which appear to relate to the tribunal proceedings and amount to approximately £4,500, including letters and telephone calls, preparation time, counsel's fees and disbursements.
25. Taking all the circumstances into account, the tribunal considers that a reasonable sum to represent the Respondent's unreasonable behaviour in defending these proceedings is £1,000. This is set at that level to repay the hearing fee, reasonable photocopying charges for the bundles and make a contribution to the cost of presentation of the case at the hearing. In the tribunal's view it is not reasonable for the Respondent to pay any further costs given the Applicant's advisers failure to properly prepare their case.

The next steps

26. This matter should now be returned to the Willesden County Court for consideration of any further sum in dispute, county court costs and interest.

Name: Ruth Wayte

Date: 8 July 2016

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not

complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

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.