



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

Case Reference : LON/00AH/LSC/2016/0493

Property : Flat B, 37 Penge Road,
London SE25 4EJ

Applicant : David Cannon Properties Ltd

Representative : CG Naylor LLP

Respondent : Howard Garfield Lemon

Type of Application : Liability to pay service charges

Tribunal : Judge Nicol
Mr WR Shaw FRICS

Date of Decision : 3rd May 2017

DECISION

Decisions of the Tribunal

- (1) The Tribunal refused to adjourn the hearing of this application.
- (2) The Tribunal has concluded that the sum of £6,546.67 is payable by the Respondent to the Applicant.
- (3) This matter is now transferred back to the county court to address any remaining issues within its jurisdiction.

Relevant legislative provisions are set out in the Appendix to this decision.

The Application

1. The Applicant is the freehold owner of the subject property, comprising one of four flats in the building. The Respondent is the lessee of the subject property. The lessees in the block exercised their right to manage with effect from 2nd February 2015. The Applicant now seeks sums said to be owing for service charges prior to that date. There were apparently cases against the lessees of the other three flats which the Applicant decided not to pursue because of the small sums involved.
2. In April 2016 the Applicant issued proceedings against the Respondent in the county court (claim no:C89YJ472) for the sum of £7,873.42 plus costs. The Respondent put in a defence in Form N9B saying that the charges had already been adjudicated on by the Tribunal in case LON/00AH/LSC/2014/0092. On 28th November 2016 the court transferred the case to the Tribunal.
3. The Tribunal arranged a case management conference for 7th February 2017. The Respondent says he was not notified and so did not attend. The Tribunal issued directions, including for the Applicant to provide by 7th March 2017 a statement of account, an explanation as to why the sums are payable in the light of the previous Tribunal decision and any witness statements. The material was sent by email on 7th March and by post on 8th March. The Respondent did receive them because he had them with him when he attended the final hearing on 3rd May 2017.
4. The Tribunal further directed that the Respondent put in his reasons for not paying the disputed charges. He purported to do so by letter dated 17th March 2017. It consisted of four short paragraphs. Despite the lack of detail, the Applicant put in a Reply.
5. The Applicant's solicitors compiled a bundle. In addition to the material already sent to the Respondent, it contained the county court documents, the Respondent's letter of 17th March 2017 and the correspondence with the Tribunal. The Respondent says he did not receive it but it contained nothing that he had not already seen in good time.
6. The hearing of this matter took place on 3rd May 2017. The Applicant attended by counsel, Ms Katie Gray, accompanied by Ms Emma Gregory of their solicitors and Mr Neil Anderson of their managing agent. The Respondent attended on his own behalf.
7. It was clear that the Respondent was entirely unfamiliar with legal proceedings and completely unprepared for the hearing. He had chosen not to seek legal advice, although he knew that his fellow lessees had, on the basis that it was too expensive. He asked the Tribunal for time to get legal advice but he had had plenty of time in which to do so and he had no reasonable excuse for why he had not done so to date and no explanation as to why it should be thought that more time would make any substantive difference. The Tribunal is satisfied that it would not

have been fair to the Applicant or conducive to the efficient administration of justice to put off the final hearing for the faint possibility that the Respondent would both take legal advice and be able to present a more effective case as a result.

8. The Tribunal went through the Respondent's letter of 17th March 2017 with him in order to get a better understanding of his position and to help evaluate whether there would be any benefit to an adjournment.
9. The above-mentioned previous Tribunal decision reduced the amounts claimed by the Applicant at that time. By far the largest item was in relation to major works carried out by a contractor called Saxon. Unfortunately, there had been problems with their work and the Applicant had ultimately ordered them off site. The Tribunal held that the Applicant could not recover the additional cost caused by this, over and above the original estimate, and could not recover the cost at all until the works had been completed. The Applicant sent in a new contractor, WSW, to complete outstanding internal works and now seek to recover costs to the full amount of the estimate, of which the Respondent's share was £5,019.
10. The Respondent appeared to be unaware that this was the effect of the previous Tribunal decision or that this was the Applicant's argument. He asserted that some of the works for which Saxon charged were either not done or not done to a satisfactory standard so that he should not be charged the amount now sought from him. However, he had not said this in his statement of case and had no evidence to support his assertion. In particular, the effect of the previous Tribunal decision is that he has not been charged the full cost of the works but he was unable to point to anything which would indicate that, if his allegations were true, that might lead to a reduction in the amount being sought from him now.
11. In his letter of 17th March 2017 the Respondent objected to court and tribunal fees which had been listed in his statement of account. However, the Applicant is not pursuing these items and had already given credit for them in the Schedule of Charges setting out to the Tribunal what they were claiming.
12. The Respondent also objected to "balancing charges" but did not pursue this when it was explained that this refers to the balance of service charges outstanding at the end of each year after credit has been given for the advance service charges of £100 required under the lease.
13. Essentially, the Respondent had no sustainable objection to the sums claimed by the Applicant. He said that he had had illness issues and that he tries to avoid stress whenever possible. Even making allowances for this (despite, again, a lack of evidence), the Tribunal is satisfied that the Respondent had had a more than sufficient opportunity to obtain advice and present a coherent case in time. The Applicant's case has been sufficiently supported by relevant documentation (including a full

accounting of the credits due as a result of the previous Tribunal decision), explained in a witness statement from Mr Anderson, and the Respondent provided no reason as to why that case should not be accepted in any respect.

14. Ms Gray conceded that there was one error in the Applicant's calculation of their claim. An invoice had been raised which included insurance for the period beyond the date when the right to manage took effect and legal costs relating to the right to manage claim. A credit of £126.75 was due, reducing the Applicant's claim from £6,673.42 to £6,546.67. The Tribunal is satisfied that this latter amount is payable by the Respondent to the Applicant.
15. The Tribunal has no jurisdiction over matters, such as the costs in the county court, which were not transferred to it and so the case must go back to the county court to address any residual matters. Despite an indication to the contrary in their Reply, the Applicant did not make any application for costs to the Tribunal.

Name: NK Nicol

Date: 3rd May 2017

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.