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		FIRST-TIER TRIBUNAL PROPERTY CHAMBER (RESIDENTIAL PROPERTY)
Case Reference	:	LON/00BG/LSC/2016/0294
Property	:	1 Fraserburgh House, Vernon Road, London E3 5HF
Applicant	:	The Mayor and Burgesses of the London Borough of Tower Hamlets
Representative	:	Mr Karl Schooling, solicitor, Tower Hamlets Homes
Respondent	:	Ms Allison Charles
Representative	:	In person
Type of Application	:	Liability to pay service charges
Tribunal Members	:	Judge Dickie Mr P Roberts, DipArch RIBA Mrs L Walter
Date and Venue of hearing	:	12 December 2016, 10 Alfred Place, London WC1E 7LR
Date of decision	:	23 January 2017

DECISION

Summary of Determination

- The tribunal orders that the Respondent is debarred from taking further part in the proceedings.

- The tribunal determines the application in favour of the Applicant – service charges of £1,988.93 claimed are all payable by the Respondent.
- The Respondent shall reimburse to the Applicant £200 in respect of the hearing fee within 28 days.

The Law

The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013

9.—

- (3) The Tribunal may strike out the whole or a part of the proceedings or case if—
- (a) the applicant has failed to comply with a direction which stated that failure by the applicant to comply with the direction could lead to the striking out of the proceedings or case or that part of it;
 - (b) the applicant has failed to co-operate with the Tribunal such that the Tribunal cannot deal with the proceedings fairly and justly;
 - (c) the proceedings or case are between the same parties and arise out of facts which are similar or substantially the same as those contained in a proceedings or case which has been decided by the Tribunal;
 - (d) the Tribunal considers the proceedings or case (or a part of them), or the manner in which they are being conducted, to be frivolous or vexatious or otherwise an abuse of the process of the Tribunal; or
 - (e) the Tribunal considers there is no reasonable prospect of the applicant's proceedings or case, or part of it, succeeding.
- (4) The Tribunal may not strike out the whole or a part of the proceedings or case under paragraph (2) or paragraph (3)(b) to (e) without first giving the parties an opportunity to make representations in relation to the proposed striking out.
- (5) If the proceedings or case, or part of them, have been struck out under paragraph (1) or (3)(a), the applicant may apply for the proceedings or case, or part of it, to be reinstated.
- (6) An application under paragraph (5) must be made in writing and received by the Tribunal within 28 days after the date on which the Tribunal sent notification of the striking out to that party.
- (7) This rule applies to a respondent as it applies to an applicant except that—
- (a) a reference to the striking out of the proceedings or case or part of them is to be read as a reference to the barring of the respondent from taking further part in the proceedings or part of them; and
 - (b) a reference to an application for the reinstatement of proceedings or case or part of them which have been struck out is to be read as a reference to an application for the lifting of the bar on the respondent from taking further part in the proceedings, or part of them.
- (8) If a respondent has been barred from taking further part in proceedings under this rule and that bar has not been lifted, the Tribunal need not consider any response or other submission made by that respondent, and may summarily determine any or all issues against that respondent.

Introduction

1. Following the transfer of proceedings from the County Court the tribunal is required

to make a determination under s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") in respect of the service charges (including buildings insurance) payable by the Respondent for the service charge years 2013/14 and 2014/15. The claim was for £2,008.93 (plus statutory interest and costs). This sum included £20 for ground rent (in respect of which this tribunal has no jurisdiction).

2. The Applicant (Claimant in the County Court) is the local authority freeholder of the subject premises, a self contained flat on a local authority estate, and the Respondent (Defendant) is the leaseholder. A copy of the lease was produced to the tribunal, the relevant terms of which are not set out in this decision.
3. The tribunal issued directions on the application on 22 September 2016 at a case management hearing. Direction 9 stated:

"By 30 September 2016 the landlord is to provide to the tenant the evidence to substantiate all costs incurred for the years in dispute. At the directions hearing there was some dispute as to whether the standard evidence that the Applicant provides is sufficient to demonstrate that the charges are payable and reasonable. The tribunal made it clear that any argument about the quality of the evidence provided by the Applicant is a matter to be resolved at the hearing."

4. In response to that direction, the Applicant produced a Summary of Service Charges, setting out in respect of each head of service charge an itemised list of expenditure on the block (1-20 Fraserburgh House) or estate, as the case may be, and a calculation of the apportionment to the individual flat. The heads of service charge were:

- Repairs and maintenance
- Caretaking
- Grounds maintenance
- Refuse
- Communal electricity
- Leasehold management
- Housing Management.

5. Thus for example, in respect of repairs, the works order reference, invoice date, completion date, description and cost were set out in respect of each repair (to the block or estate) for which a service charge had been charged. In respect of refuse, each item collected was shown, with the date, location and cost breakdown. In respect of communal electricity details of each bill were shown. Direct costs (salaries) were shown where applicable. The Applicant also provided to the Respondent a Scott Schedule, setting out each service charge item with an explanation, in compliance with Direction 10.

6. The Direction 11 required the Respondent by 4 November 2016 to send to the Applicant:

"- the landlord's schedule, having completed the column for the tenant's comments with her responses to the landlord's claim.

- a full statement in response setting out the specific reasons why she considers the demands are not reasonable and payable."

7. It is not in dispute that the Respondent did not comply with Direction 11, and that there was no further progress with preparation of the case by the time it came for

hearing on 12 December.

8. On 31 October a procedural judge of the tribunal declined the Respondent's application for the proceedings to be stayed in response to her assertion that the Applicant's disclosure was not sufficient to comply with Direction 9. That decision is the subject of an application for permission to appeal to the Upper Tribunal.
9. On 9 November 2016 the Applicant filed an application under Rule 9 for an order debaring the Respondent from further participation in the proceedings and for a summary determination pursuant to Rule 9(8). The parties were advised that that application would be determined as a preliminary issue at the hearing on 12 December.

The application to debar the Respondent

10. The Respondent's Defence filed in the County Court included complaint that the landlord had not given her inspection under s.22 of the 1985 Act (subsection 2(a) of which permits a tenant inspection of "accounts, receipts and other documents" supporting the landlord's summary of relevant service charge costs). In short, the Respondent disputed the adequacy of the council's disclosure and compliance with Direction 9, and considered that it was insufficiently informative for her to be able to put a case before the tribunal in respect of the service charges claimed. The Respondent said there had been a history of discussions between the parties as to the documents to which she is entitled. However, she has failed to put forward any grounds in a statement of case or Scott Schedule for disputing that the disclosure in question was not adequate to support the payability of the service charges.
11. The Respondent produced correspondence showing her attempts to address the issues of disclosure with the Applicant in these proceedings, though this had not resulted in an application to the tribunal for specific disclosure of any document.
12. The tribunal made it clear in its directions that any argument about the quality of the evidence provided by the Applicant was a matter to be resolved at the hearing. It was therefore for the Respondent to analyse the material that was available to her and to present a case to the tribunal as to why that evidence did not demonstrate on the balance of probabilities that the service charges claimed were indeed payable (incurred, properly apportioned, reasonable etc.). She made no attempt to do this. She has therefore not begun the process of challenging her service charges before this tribunal by particularising the nature of her dispute, including by filling in the Scott Schedule.
13. The Respondent said that she had not been provided with disclosure of invoices. Direction 17 required the production in the bundle of invoices for the items in dispute, but the Respondent having not completed a Scott Schedule has not put any items in dispute, and she cannot therefore complain that no invoices have been produced for the hearing.
14. The Respondent therefore came before the tribunal at the hearing with no more than assertion that the Applicant's evidence did not demonstrate that the service charges were payable by her. The Applicant therefore did not know what case it had to answer, and the tribunal has no issues put before it for determination.

15. Mr Schooling produced evidence of five offers of inspection. The Applicant considered that the Respondent had already inspected its files relating to the year 2013/14 on 26 June 2015 and had said in correspondence that files relating to the year 2014/15 were available for inspection. The Respondent said she had only attended the Applicant's offices that day to collect a document, when she was presented with three files which she did not have time to inspect.
16. However, the Respondent did not take the opportunity to inspect, it appears because she believed she would not be provided with all of the documentation which she felt was necessary. Without particularisation of her case, it would have been difficult for the landlord to have known what further documentation she did want beyond what it would normally provide upon statutory inspection. Concurring with the tribunal which refused her application for a stay, this tribunal is of the view that the Respondent had ample opportunity for inspection.
17. It was clear that there was a difference of opinion between the parties as to the documents which the Respondent was entitled to inspect pursuant to s.22 of the 1985 Act, though she did not articulate clearly to the tribunal which documents she considered were missing. She did not show an analysis of the figures which would serve to demonstrate that the disclosure was deficient, or that there was a break in the Respondent's chain of evidence which undermined its case as to payability.
18. The tribunal understood from the Respondent's oral explanation at the hearing that her challenge to the service charge related to the derivation of costs incurred under overarching contracts which she wanted to see. However, Mr Schooling said that in previous tribunal proceedings between the parties these documents (Service Level Agreements with its various service providers, and Qualifying Long Term Agreements) were disclosed. The Respondent clearly had ample information with which to identify issues in dispute in the form of a schedule.
19. The Respondent acknowledged orally that she had misunderstood the tribunal process, though given that there had been previous tribunal proceedings between these parties, this excuse is not accepted. In case reference LON/00BG/LSC/2014/0240 a differently constituted tribunal issued a decision dated 19 December 2014 after a hearing, with inspection, that took place 10th to 12th November 2014. The subject of the dispute was the service charges for the years 2009/10 – 12/13 inclusive. Other than about £60 of service charges which were conceded as duplicated, all service charges demanded were found by the tribunal to be reasonable and payable. Ms Charles was unsuccessful in seeking permission to appeal that decision.
20. Having failed to advance a case, the tribunal considers there is no reasonable chance of the Respondent's success in these proceedings. Her breach of directions has prevented the tribunal from dealing with this matter justly and fairly. In particular, her position implied an application for an adjournment of the hearing, but this would be unjust given the additional costs to the Applicant and the burden on limited tribunal resources. The directions of the tribunal notified her that failure to comply could result in serious detriment to her – e.g. the tribunal may refuse to hear all or part of her case, and this was sufficient notice of a sanction for the purposes of Rule 9(3)(a). The tribunal thus determines that it should debar the Respondent from further participation in the proceedings on the grounds in Rule 9(3)(a), (b), and (e).

21. Mr Schooling also applied to debar on the ground that the proceedings are between the same parties and arise out of facts which are similar or substantially the same as those contained in proceedings which have been decided by the tribunal (Rule 9(3)(c)) and on the ground that the Respondent's case was frivolous, vexatious and an abuse of process (Rule 9(3)(d)). The Respondent without doubt is earnest in her challenge to the service charges, and her conduct has not met the test in Rule 9(3)(d). Mr Schooling said there had been no change in procedure for substantiating charges by disclosure since the last proceedings. The tribunal declines to debar on the ground in Rule 9(3)(c). Simply because the Council was successful in proceedings relating to a previous service charge period does not mean that no challenge can properly be brought to service charges for a subsequent year.

Costs and Fees

22. The Respondent made an application under s.20C of the 1985 Act for an order that the Applicant's costs of these proceedings could not be added to the service charge. The Tribunal dismisses the application in light of the outcome of these proceedings, but notes that Mr Schooling orally confirmed that the Council would not be seeking to add its legal costs to the service charge. The Applicant sought an order that the Respondent reimburse the hearing fee £200. In light of the outcome of the proceedings, and in spite of correspondence produced at the hearing by the Respondent by which she had sought to avoid litigation, the tribunal considers it appropriate to order that the Respondent reimburse the hearing fee to the Applicant.

Determination

23. Mr Schooling invited the tribunal summarily to determine all issues between the parties pursuant to Rule 9(8). In exercising that power the tribunal in any event had regard to all of the evidence before it.

24. The Respondent's Defence in the County Court referred to alleged disrepair to the property dating back to 2001. She had attached poor quality photographs of disrepair which she was unable to date. She had manifestly failed to particularise or provide persuasive evidence in support of a set off against her service charges for alleged breach of the landlord's covenant to repair.

25. Mr Schooling presented a cogent explanation of the service charge documentation produced. Having considered the case put forward which itemises expenditure under each head, and the service charge certificate, the tribunal determines that all service charges that are the subject of this dispute are payable by the Respondent in full.

26. The tribunal orders the transfer of these proceedings back to the County Court sitting at Bow.