FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AN/LSC/2020/0049**
HMCTS code	**:**	**P: PAPER REMOTE**
Property	**:**	**Upper Maisonette, 68 Hammersmith Grove, W6 7HA**
Applicant	**:**	**68 Hammersmith Grove Limited**
Representative	**:**	**Nicola Lesbirel (Leaseholder and Director)**
Respondent	**:**	**Dr Sara Taylor**
Representative	**:**	**In person**
Type of application	**:**	**For the determination of the liability to pay service charges under S.27A Landlord and Tenant Act 1985.**
Tribunal member	**:**	**Judge Robert Latham**
Venue	**:**	**10 Alfred Place, London WC1E 7LR**
Date of decision	**:**	**2 September 2020**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote hearing on the papers which has not been objected to by the parties. The form of remote hearing was P:PAPERREMOTE. A face-to-face hearing was not held because the tribunal determined that this application could be fairly determined on the papers. The applicant has provided a bundle of documents for the hearing which total 60 pages.

Decisions of the tribunal

(1) The tribunal determines that the sum of £568.38 is payable by the Applicant in respect of damp proof works.

(2) The tribunal determines that the Respondent shall pay the Applicant £100 within 28 days of this Decision, in respect of the reimbursement of the tribunal fees paid by the Applicant.

The Application

1. By an application dated 24 January 2020, the Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the Act") as to the amount of service charges by the Applicant in respect of the service charge year 2020. It must establish that the sum demanded is payable and reasonable. The application relates to the cost of damp proofing works. The same issue, in respect of 2018 damp proofing works, was determined by the Tribunal in a decision dated 14 November 2018.

2. On 3 February, the Tribunal gave Directions. These provided for the application to be determined on the papers in the week commencing 13 April 2020. Dr Sara Taylor, the Respondent, was directed to file her Statement of Case by 2 March. She failed to do so.

3. On 13 March, in response to a letter from the tribunal, the Respondent raise some general concerns about Covid-19, stating that she hoped in due course to send a "more informative letter about her situation". The application was not determined in April. Nothing further was received from the Respondent.

4. By a Notice, dated 24 June, the tribunal informed the Respondent that it was considering debarring her from participating in the proceedings unless she sent a Statement of response and took further steps by 8 July. Again, the Respondent failed to comply and gave no good reason as to why she should not be debarred.

5. On 16 July 2020, Judge Martynski made an order debarring the Respondent from further participation in the proceedings. The application would be determined on the Applicant's evidence and

submissions only. The Tribunal gave further Directions for the determination of the application. Pursuant to these Directions, the Applicant has filed a bundle of the documents upon which it seeks to rely.

The Background

6. 68 Hammersmith Grove ("the Building") is divided into three flats: (i) Nicola Lesbirel owns the Basement flat which has been affected by the dampness; (ii) Seema Sehgal owns the Ground floor flat and (iii) the Respondent owns the upper maisonette (1st and 2nd floors). The Landlord is 68 Hammersmith Grove Ltd. Each tenant owns one share and the service charges are shared 25% Nicola Lesbirel; 25% Seema Sehgal; and 50% Sara Taylor. Each tenant is a director of the Applicant Company. Nicola Lesbirel is the Company Secretary.

7. In 2011, a survey of the basement revealed that the existing damp proof course had failed and that most of the structural walls in the basement were damp and required attention. A damp-proof course was installed to those walls and each tenant paid their share of the costs.

8. In 2018, one of the structural walls that had not been originally treated, was showing signs of damp. The most cost-effective solution was sought and agreed, with the proviso that should this not resolve the problem, a more extensive/costly solution might be necessary. The tenants could not agree of the extent of the works which were proposed or the apportionment of the costs. The Applicant therefore made its first application to this Tribunal (LON/00AN/LSC/2018/0288). On 14 November 2018, the Tribunal (Judge Professor Robert Abbey and Luis Jarero FRICS) determined that the proposed works were both payable and reasonable. Ms Sehgal accepted this decision, Ms Taylor did not. Ms Taylor appealed but permission to appeal was refused. She eventually paid the sum demanded.

9. Unfortunately, these works did not resolve the problem. On 28 August 2019, Ms Lesbirel wrote to her co-directors enclosing a copy of a damp report from Timberwise together with a quotation for the further works. She requested their approval and the payment of a deposit. Ms Sehgal responded immediately and positively, Ms Taylor did not. The Applicant has provided a copy of the relevant correspondence.

10. The works were completed on 30th June 2020. Ms Sehgal has paid her contribution in full. The Respondent has not paid her contribution and has not offered explanation for her failure to do so. Ms Lesbirel, who has had to pay for the works, believes that the Respondent is being deliberately obstructive to cause the maximum amount of frustration, time and cost.

The Tribunal's Determination

11. The Tribunal has been provided with a copy of the Respondent's lease which is dated 12 March 1981. The Respondent is the original tenant. The Tribunal is satisfied that the proposed works fall within the scope of the landlord's covenant to repair. The landlord is obliged to repair and maintain the foundations, exterior walls and interior walls of the Building (paragraph 1(a)(i) of Schedule 5). The tenant covenants to pay the landlord 50% of all expenditure incurred by the landlord in complying with its covenants (Clause 3(12)).

12. The works were completed on 30 June 2020. On the same day, Timberwise invoiced the Applicant £1,136.76 for the works. The Tribunal is satisfied that this sum was reasonable for the works which had been executed. On 9 February 2020, the Applicant had demanded an interim service charge from the Respondent in the sum of £568.38. This was her 50% share. The Tribunal is satisfied that this sum is payable and is reasonable.

Application for refund of fees and costs

13. The Applicant applies for reimbursement of the tribunal fees of £100 which it has made pursuant to Rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. Having regard to the determinations above, the Tribunal orders the Respondent to refund any fees paid by the Applicant within 28 days of the date of this decision.

14. There is no application for an order under section 20C of the 1985 Act. It would therefore be open to the Applicant to pass on the costs that it has incurred in bringing these proceedings through the service charge, provided that the lease permits this.

15. Ms Lesbirel also seeks to recover the costs that she has incurred in connection with these proceedings in the sum of £1,226.55. These proceedings have been brought by 68 Hammersmith Grove Limited. It is not entirely clear whether the Applicant Company has agreed to reimburse these sums to Ms Lesbirel. This would be a decision for the directors.

16. There is a further problem in that this tribunal is normally a "no costs" jurisdiction. A successful party does not have a right to apply for their costs to be met by the losing party. Under Rule 13(1)(b) of the Tribunal Rules, the Applicant would only be entitled to recover costs if the Respondent has acted **unreasonably** in **defending** or **conducting** the proceedings. The high threshold that must be met before such an order is made was considered by the Upper Tribunal in *Willow Court Management Company (1985) Limited* [2016] UKUT 290 (LC). A mere failure to pay a sum demanded or to engage with tribunal proceedings

would not normally be considered to meet this high threshold. Further, the applicant would need to show that the costs were incurred as a result of the Respondent's unreasonable behaviour. If the Applicant wishes to pursue such an application, it must notify the tribunal of its intention to do so. The Applicant should specify why it is said that the Respondent has acted unreasonably in defending or conducting proceedings and why this behaviour is sufficient to invoke the rule, dealing with the issues identified in the Upper Tribunal at paragraphs 27 to 30 of its decision.

Judge Robert Latham
2 September 2020

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).