



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

**IN THE COUNTY COURT at
Edmonton sitting at 10 Alfred
Place, London WC1E 7LR**

Tribunal reference : **LON/00AK/LSC/2021/0197**

Court claim number : **H4AA8372**

Property : **1 Fisher Close, Enfield, London
EN3 6WQ**

Applicant/Claimant : **Enfield Island Village Phase II
(Blocks P Q & R) Management Ltd**

Representative : **Mr Vladimir Ioannou**

**Respondent/
Defendant** : **Ms Julie Topiwala**

Representative : **I/P**

Tribunal members : **Judge Tagliavini
Mrs Sarah Redmond MRICS**

In the county court : **Judge Tagliavini**

Date of decision : **2 November 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote paper hearing which has been consented to by the parties. The form of remote hearing was V: VIDEOREMOTE. A face-to-face hearing was not held because it was not practicable, and all issues could be determined in a remote hearing. The documents that the tribunal was referred are contained in the electronic bundle numbered 1-94 with a separate 3-page Index.

This decision takes effect and is 'handed down' from the date it is sent to the parties by the tribunal office:

Summary of the decisions made by the Tribunal

- I. The tribunal finds that no sums are payable by the respondent to the applicant and the application is dismissed.

Summary of the decisions made by the Court

- II. The claim is dismissed with no order as to costs.
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The proceedings

1. Proceedings were originally issued against the respondent on 15/01/2021 in the County Court under claim number H4AA8372. The respondent filed a Defence dated 10 February 2021. The proceedings were then transferred to this tribunal by the order of District Judge Cohen dated 26 May 2021.
2. Directions were issued dated 14 July 2021 and the matter eventually came to hearing on 6 October 2021.

The hearing

3. The applicant Enfield Island Village Phase II (Blocks P Q and R) Management Limited was represented by Mr Vladimir Ioannou. The respondent leaseholder, Ms Julie Topiwala appeared in person.

The background

4. The subject property is a ground floor flat in a purpose-built block of flats.

5. Neither party requested an inspection of the property; nor did the tribunal consider that one was necessary, or that one would have been proportionate to the issues in dispute.
6. The respondent holds a long lease of the subject property, which requires the landlord to provide services and for the lessee to contribute towards their costs by way a variable service charge. The specific provisions of the lease will be referred to below, where appropriate.

The issues

7. The sums claimed by the Applicant were as follows:
 - (i) £655 administration costs made up of £250 for damages arising out of the respondent's tenant unauthorised removal of a bush outside the premises; £100 late payment charge (for non-payment of the £250); a fly tipping charge of £25 (paid and no longer subject to dispute) and a legal process fee of £280.
 - (ii) Interest of £37.18
 - (iii) Costs in the sum of £2,379.00 (as per the applicant/claimant's Statement of Cost – summary assessment).
8. At the start of the hearing the tribunal identified the following issues:
 - (i) Was the £250 for the removal of the bush being claimed as damages or as arrears of service charges, and if the former, how did the tribunal have jurisdiction to determine such a claim?
 - (i) What were the provisions in the lease that allowed the recovery of the late payment fee and the legal process fee?

County court issues

9. After the proceedings were sent to the tribunal offices, the tribunal decided to administer the whole claim so that the Tribunal Judge at the final hearing performed the role of both Tribunal Judge and Judge of the County Court (District Judge). No party objected to this.

The applicant/claimant's evidence

11. Mr Vladimir Ioannou, director of the claimant/applicant's managing agent ICRI Ltd and VI Corporate Ltd the Corporate Secretary of the applicant/claimant company spoke to his witness statement dated 3 August 2021. On cross-examination by Ms Topiwala, he asserted that the bush he alleged had been removed by the respondent's tenant on or around 4 June 2018 without permission, was the bush outside the 'large window' (living room). Mr Ioannou accepted that the sum of £250 represented 'damages' rather than arrears of service charges and

was unable to explain to the tribunal how he had reached that sum and accepted he had effectively ‘plucked it out of the air.’

12. On being questioned by the tribunal about how the admin/legal process fees had been calculated, Mr Ioannou stated that they were ‘standard fees’ without producing any documentary evidence to support this claim.

The respondent/defendant’s case

13. Ms Topiwala referred the tribunal to photographs of the common/garden area outside her flat in April 2018. This showed that there was no bush present, although one was present outside the smaller kitchen window. Ms Topiwala denied that there had been any bush outside the large window since she had become the lessee in 2009 and in any event had not removed or given permission to anyone else to remove any bushes in the communal gardens. Ms Topiwala asserted that until the hearing she had believed Mr Ioannou was referring to the bush outside the kitchen window, which had been trimmed as it allowed ants to enter her flat.

Decisions and reasons

14. The tribunal finds that the claimant/applicant has been unable to demonstrate that a bush was present outside the respondent/defendant’s large window on 4 June 2018, as claimed. The tribunal accepts Ms Topiwala’s evidence that there had been no bush outside this window in April 2018 or June 2018 and therefore, could not have been removed at her or anyone else’s instruction.
15. The tribunal finds the claim substantively relates to a claim for damages rather than arrears of service charges. Notwithstanding, the tribunal finds the sum of £250 to be wholly unsupported by any evidence.
16. Therefore, the tribunal dismissed the applicant/claimant’s claim for £250 and all the associated costs that have been said to flow from it.

Claims for costs and interest determined by Judge Tagliavini sitting as a judge of the county court.

17. It must follow that in light of the claimant’s wholly unsuccessful claim that there can be no entitlement to costs. Therefore, it is directed that there be no order for costs.

Name: Judge Tagliavini

Date: 2 November 2021

ANNEX - RIGHTS OF APPEAL

Appealing against the tribunal's decisions

1. A written application for permission must be made to the First-tier Tribunal at the Regional tribunal office which has been dealing with the case.
2. The application for permission to appeal must arrive at the regional tribunal office within 28 days after the date this decision is sent to the parties.
3. 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.
4. The application for permission to appeal must state the grounds of appeal and state the result the party making the application is seeking. All applications for permission to appeal will be considered on the papers
5. Any application to stay the effect of the decision must be made at the same time as the application for permission to appeal.

Appealing against the County Court decision

1. A written application for permission must be made to the court at the regional tribunal office which has been dealing with the case.
2. The date that the judgment is sent to the parties is the hand-down date.
3. From the date when the judgment is sent to the parties (the hand-down date), the consideration of any application for permission to appeal is hereby adjourned for 28 days.
4. The application for permission to appeal must arrive at the regional tribunal office within 28 days after the date this decision is sent to the parties.
5. The application for permission to appeal must state the grounds of appeal and state the result the party making the application is seeking. All applications for permission to appeal will be considered on the papers.

6. If an application is made for permission to appeal and that application is refused, and a party wants to pursue an appeal, then the time to do so will be extended and that party must file an Appellant's Notice at the appropriate County Court (not Tribunal) office within 14 days after the date the refusal of permission decision is sent to the parties.
7. Any application to stay the effect of the order must be made at the same time as the application for permission to appeal.

Appealing against the decisions of the tribunal and the County Court

In this case, both the above routes should be followed.