11436

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00AT/LSC/2015/0279**
Property	:	**Flat D, 34 Woodstock Road, London W4 1UF**
Applicant	:	**Miss Dipika Rathod**
Representative	:	**In person**
Respondent	:	**Woodstock Freehold Management Limited**
Representative	:	**Mr Armstrong, Miss Bryant, Mrs Burke and Mrs Wahashi**
Also present	:	**Mr Avery, Averys Limited, managing agents**
Type of application	:	**For the determination of the reasonableness of and the liability to pay service charges**
Tribunal member	:	**Judge Timothy Powell**
Venue	:	**10 Alfred Place, London WC1E 7LR**
Date of decision	:	**5 November 2015**
Date of written reasons	:	**13 November 2015**

DECISION

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Decisions of the tribunal

(1) The tribunal strikes out the application pursuant to rule 9(2) and 9(3)(d) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013; and

(2) The tribunal declines to make any award of costs under rule 13 of the Rules.

Reasons for the decisions

Background

1. The application that I am dealing with is made by Miss Dipika Rathod, the leaseholder of Flat D, the top floor flat of 34 Woodstock Road, London W4 1UF. She has owned the flat since September 2001 and she seeks a determination, pursuant to section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act"), as to the amount of service payable by her in respect of the service charge years 2013, 2014 and 2015.

2. No.34 is a house designed by the celebrated Victorian architect, Richard Norman Shaw, and converted into four flats, all of which are let on long leases. The freehold was purchased by the respondent company, Woodstock Freehold Management Limited (WFML), in August 2013. The respondent company was set up for this express purpose and shares in the company are owned by the other three leaseholders. The applicant was either deliberately excluded from, or she declined to participate in, the freehold purchase, depending on whose viewpoint is taken; but either way, her continued exclusion today and the refusal of the three shareholders to countenance the applicant's admission to the company is, in my view, one of the root causes of the current dispute.

3. From the acquisition of the freehold by WFML onwards, things appear to have gone wrong. The applicant was very unhappy with the way her three fellow leaseholders ran the company and carried out the freeholder's obligations in the respective leases; in particular, with regard to the carrying out of major works, but also in relation to what she saw as the deliberate lack of consultation, the non-provision of information and documentation, and the raising of a charge for "management services" (for the other leaseholders' time in carrying out the freeholder's obligations), amongst others.

4. What the applicant characterised as deliberate conduct amounting to harassment by the other leaseholders, they characterised as obstruction, obstinacy and lack of co-operation on her part. I am in no position to say where the truth lies, but it is clear that by early 2015,

there had been a total breakdown in relations between the two sides. In the absence of documentation, the applicant had withheld a number of the service charges demanded of her, and the other leaseholders, through the vehicle of WFML, began to threaten court action.

5. On 24 April 2015, WFML issued a county court claim against applicant for £1,076.45 alleged service charge arrears, claim no. B3QZ100X. On 11 June 2015, the applicant issued her own claim against WFML, B0QZ17N1 (later discontinued); then, on 16 June 2015, filed a Defence and Counterclaim in the original action, challenging the payability of the service charges.

6. On 8 July 2015, the applicant issued an application before this tribunal, again challenging the payability of the service charges. As county court proceedings were pending, the tribunal application was stayed to the end of August, to await the outcome of those proceedings. Upon the request of the applicant, the matter was listed for a case management hearing on 5 November 2015; and the respondent sought a strike-out of the application, due to duplication of the issues, and an order for costs.

7. In the midst of all this, in June 2015, WFML appointed Mr Mark Avery of Averys Limited (an established, independent property management company) as its residential manager for the building.

8. Prior to the hearing, I was provided with a copy of an order dated 12 October 2015 made by District Judge Harrison sitting at the County Court at Brentford, in claim no. B3QZ100X. Although I heard from the applicant about an unfortunate turn of events that led to her not being at the court hearing on that date, that she has written to the court about those events and that she may yet appeal the order made, at the date of my hearing, I had before me a valid court order declining the applicant's request (in her Defence and Counterclaim) to transfer the matter to the First-tier Tribunal, allocating the dispute to the small claims track in the county court, giving directions for the instruction of a joint surveyor, and listing a further case management conference on 14 January 2016.

9. When, during the hearing, I compared the schedule of disputed items in the applicant's tribunal application (which were very helpfully and clearly set out in three spreadsheet schedules) with the disputes in her county court Defence and Counterclaim, I found that all of them, bar three, were at issue before the court.

10. The three items not expressly before the county court were:

    (i) Invoice 102, being the 2013 cost of buildings insurance. The applicant had already paid her share, some £138.75, and her only dispute on the papers was the alleged non-receipt of the summary schedule of insurance, as evidence of that insurance.

Although Miss Bryant for the respondent said this had already been provided, she accepted it would be simple for her to provide a fresh copy to the applicant, and she agreed to do so. There was also a mysterious sealed envelope passed to the applicant during the hearing, which she did not open, that was said to contain a copy. Be that as it may, I see no dispute for the tribunal to determine in relation to this item, notwithstanding the applicant's complaint that the insurance was inadequate, due to under-insurance for re-building costs, and a vague concern that somehow the insurance may have voided by the respondent's action/inaction in relation to repairs (which, so far as I could tell, was not something the insurers or anyone else had raised);

(ii) The respondent's 2015 charge for so-called "management services", in the sum of £360. No invoice had been issued to the applicant for this charge and, subject apparently to taking legal advice, there was no current plan to do so. Therefore, there is again nothing for the tribunal to determine; and

(iii) The prospective property management charge for Mr Avery's firm, newly appointed in June 2015. The applicant's share for the half-year from June to December 2015 was £144. Apart from noting that the annual (fixed) charge was £288 and therefore less than the respondent's previous charges for "management services", after discussion it was understood and agreed, first, that paragraph 3 of schedule 4 of the lease allows for fees to be payable to managing agents and, secondly, that until Mr Avery had been in place for a year, it would not be possible to say whether or not the budgeted figure for his charge was reasonable, or not. Therefore, once again, there is nothing, at this stage, for the tribunal to determine.

11. It follows from all of the above that the application before the tribunal repeats matters of which the county court is already seized. The court proceedings came first in time; they have been subject to judicial consideration and directions have already been given; everything the applicant raised before the tribunal can be and will be aired before the court, as part of her Defence and Counterclaim.

12. It is not viable, reasonable or a good use of public funds to have two judicial bodies with concurrent jurisdiction dealing with the same matters, between the same parties, at the same time. One has got to give and, in my judgment, it should the tribunal application. My method of doing so is to strike out the application pursuant to my powers under rule 9(2) and 9(3)(d) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

Costs application

13. The respondent sought an order for costs against the applicant, presumably their costs of attending the case management hearing as litigants in person. As I explained at the hearing, the tribunal is a "no-costs" jurisdiction, where costs are not and cannot be awarded against the losing party, save in circumstances set out in rule 13 of the Procedure Rules. Under rule 13(1)(b) I would have to be satisfied that "a person has acted unreasonably in bringing, defending or conducting proceedings".

14. When considering what conduct is "unreasonable" the tribunal has regard to the test set out in *Ridehalgh v Horsefield* [1994] EWCA Civ 40, where Sir Thomas Bingham MR equated "unreasonable" as being "conduct which is vexatious, designed to harass the other side rather than advance the resolution of the case.".

15. While I consider the application to be misconceived (due to the pre-existing court proceedings), it nonetheless raises legitimate issues that could, and normally would, be dealt with by this tribunal. I have struck it out to avoid duplication with the county court, at the first opportunity. Overall, I am not satisfied that the conduct of the applicant in issuing the application and requesting a case management hearing was such as to constitute unreasonable conduct within rule 13.

16. Further, I take the view that to make any costs order in this case (which must be a minimal amount, anyway), would be invidious and only fuel the fire of the dispute between the parties.

The future

17. Although, at the hearing, a lot of anger and frustration was vented by the parties, I remain firmly of the view that they could solve this dispute, if they had the will to do so.

18. There *is* hope for the parties. They have a new manager in the form of Mr Avery, who appears to have appreciated the depth of feeling of the parties and who expressed an open wish to be the vehicle for change: a fresh start. It may be that things have not begun well, in terms of the applicant's requests for information apparently not yet satisfied; but Mr Avery understands the need for communication and transparency, the need to consult and answer queries, and to put the condition and well-being of the building first.

19. The very best sign of this new beginning was Mr Avery's offer to meet with the applicant and to discuss her issues. She may not have been ready for that at the hearing, but it is an offer that she should take in due course, in the spirit it was meant.

20. The parties must at least draw a line under the past, i.e. the pre-Averys period, so that their future will be secure. Resolving the past is more difficult, of course; and it is disappointing that the parties would not consider mediation, when I encouraged them to do so. Despite this, the parties really should consider compromising on the sum in dispute in the litigation (perhaps with a 50:50 split, with no admission of liability on either side) and just putting their past differences behind them.

21. Perhaps doing so will allow the parties to devote their lives to more pleasurable and more personally-rewarding pursuits; and then for the three leaseholders to tackle the elephant in the room, namely the unnecessary and counter-productive exclusion of the top floor flat from the freehold company. That would be a big gesture on their part; but one that, ultimately, will end this dispute and pay dividends for all concerned in the future. Apart from the interests of the current flat owners, it is what the building needs and deserves.

Rights of appeal

22. At the end of the hearing, the applicant said that she would appeal my decision. An appeal is, of course, the right of either party. Appeal rights are contained in the tribunal's guidance note, but for the sake of completeness, I refer the parties to rule 52 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, which in summary states:

    (i) 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 London office, in this case;

    (ii) 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;

    (iii) 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; and

    (iv) 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.

Name: Judge Timothy Powell **Date:** 13 November 2015