122604

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AZ/LSC/2017/0012**
Property	:	**Flat 1 Weldon Court, 2 Lucas Street, London SE8 4QH**
Applicant	:	**Mr Geoffrey Brown**
Representative	:	**In person**
Respondent	:	**Residential Freeholds Limited**
Representative	:	**Mr L Freilich from Moreland Estate Management**
Type of Application	:	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal Members	:	**Judge L Rahman** **Mrs A Flynn MA MRICS**
Date and venue of Hearing	:	**8th May 2017 at 10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**26/6/17**

DECISION

© CROWN COPYRIGHT

Decisions of the tribunal

(1) The application be struck out under rule 9(3)(a) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013.

(2) The tribunal does not make an order for costs under paragraph 13(1)(b) of The Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013.

Background

1. In an application dated 4/1/17 the applicant sought a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the applicant in respect of the service charge years 2016 and 2017.

2. The tribunal considered the application and issued directions on 10 February 2017. In particular the tribunal directed that the applicant shall send to the respondent by 6 March 2017 a completed schedule identifying the items and amount in dispute, the reasons why the amounts are disputed, and the amount the applicant would pay for those items. The applicant was also required to provide copies of any alternative quotes or other documents upon which he intended to rely and a statement setting out the relevant service charge provisions in the lease and any legal submissions in support of the challenge to the service charges claimed and a signed witness statement of fact upon which he intended to rely. The respondent was then to provide a response by 20 March 2017. The directions clearly stated in bold writing that if the applicant failed to comply with these directions the tribunal may strike out all or part of his case.

3. The applicant failed to comply with this direction. The respondent wrote to the applicant and to the tribunal in a letter dated 4 May 2017 stating that the applicant had not complied with the direction. The respondent further stated that it would ask the tribunal to award costs incurred by the respondent due to the applicants unreasonable conduct.

4. The tribunal wrote to the applicant in a letter dated 4 May 2017 (and emailed to him on the same date) reminding him that he had failed to comply with the tribunal's directions. The appellant was required to contact the tribunal in writing by no later than 4 PM 4 May 2017 to explain why he had not complied with the directions, what steps he was going to take to comply with those directions to ensure that the hearing date of 8 May 2017 was not affected, and to explain whether there were any reasons why the tribunal should not bar him from taking further part in these proceedings.

5. The applicant did not provide any response to either the letter from the tribunal or the letter from the respondent.

The hearing

6. The applicant appeared in person and the respondent was represented by Mr Freilich.

7. The applicant confirmed that he had received the tribunal's directions. When asked why he had failed to comply with the relevant direction, the appellant stated he was under pressure as his mother was unwell suffering from dementia and he was having to deal with his mother. A full-time carer was employed to look after his mother but he and one of his siblings were having to spend time with her also. He was working full-time as an office manager (in charge of 17 staff) and was spending time with his mother after work. Although he had understood the direction, he was busy with work and looking after his mother. When asked why he did not write to the tribunal asking for more time to comply with the direction, he stated he did not realise he could do that. He confirmed he had received the letter from the tribunal dated 4 May 2017 and had understood it but was not able to provide a detailed response as he had received the email at 5 PM and the response was to be provided by 4 PM. When asked why he had not explained this and asked for permission to be allowed to provide a late response, the applicant provided no clear answer.

8. It was explained to the applicant that as a result of his failure to comply with the direction the respondent and the tribunal were unaware what his case was about. The applicant stated that he thought he would be able to explain his case on the day. When he was reminded of the clear direction, he stated he understood it but had been very busy.

9. He confirmed that he had refused to take part in mediation. When asked why, he stated that was a mistake and he should have pursued the mediation route but he did not have time.

10. When asked whether he had read the tribunals warning in the directions in bold writing, he stated he had missed it.

11. When asked whether he had anything else to add, he repeated that he thought he could say everything at the hearing as to why he disputed the service charges. He had been living at the premises for 25 years and during that time there were three different managing agents. This particular managing agent was the most difficult to deal with. He had always paid his service charges. However, the service charges had been increasing significantly over the last three years therefore he made this application.

12. Mr Freilich stated as follows. He had considered the applicant's circumstances. This was the applicant's application and the applicant needed to comply with the directions so that the respondent was aware why the service charges were being challenged. The applicant has "extenuating circumstances" but he was employed as an office manager in charge of 17 staff and must have understood the directions. The respondent does not know what the issues in this case are. The applicant had not stated which element of the service charge he disputed and why. The landlord had provided the actual service charges for the 2016 year and had provided the estimate for the 2017 service charge year. If the hearing were to proceed and the applicant were to challenge the cleaning cost for example, the respondent would not be able to deal with the matter as the matter had not been raised in advance of the hearing to allow the respondent the opportunity to provide evidence in rebuttal.

13. Given the circumstances, the application should be struck out. The matter should not be adjourned as this would incur more wasted costs.

14. It was explained to the applicant that there were three options, namely, to proceed today, to adjourn the case, or to strike out the application. The applicant stated there was "no point going forward" as he had already paid the outstanding service charges and was up to date with all his payments (confirmed by the respondent). The applicant stated that he understood that the respondent does not know his case and therefore his application should be struck out. At this stage the applicant stated that he was aware that he could appeal any decision to strike out the case within 28 days but that he did not intend to do so. When asked why he did not want the case to be adjourned to another date, the applicant stated "there is so much going on I just cannot deal with it". When he was reminded that the respondent intended to make a costs application, the applicant stated "everything is just loaded against me, if I had known this would be the outcome I would not have made this application". The tribunal noted that the applicant was emotional and tearful.

15. Having considered the representations made by both parties, the tribunal determined as follows. There was inadequate evidence before the tribunal to make any decision at all on the merits. The applicant had not raised any specific issues as to why he challenged the service charges and the respondent could not possibly deal with any such issues raised at the hearing. Given the circumstances, it would clearly be unfair to the respondent to proceed with the hearing as the respondent did not know what the applicant's case was and therefore did not have the opportunity to provide any evidence in rebuttal. Adjourning the matter to another date would clearly add to the costs and neither party in any event wanted the matter to be adjourned to another date. The only available option therefore, as agreed by the applicant, was to strike out the applicant's case pursuant to rule 9(3)(a)

of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013.

16. Mr Freilich stated that the respondent wanted to make a costs application on the grounds that the applicant had behaved unreasonably and that it should be considered at the hearing rather than on any future date. The tribunal adjourned the matter for 35 minutes to allow both parties to consider their respective submissions.

17. Mr Freilich stated as follows. The current managing agents have been managing the property since 2006. The service charges since 2008 were as follows: 2008=£1,230, 2009=£950, 2010= £1588, 2011= £1603, 2012= £1120, 2013= £1250, 2014= £1300, 2015= £1285, 2016= £1472, and 2017= £1628. The respondent had not sought any contributions towards a sinking fund before 2016. However, the service charges for the years 2016 and 2017 included a sum of £218 and £400 respectively for a sinking fund. Therefore, the service charges had not gone up significantly if the contribution for the sinking fund was excluded.

18. External redecorations were carried out in the years 2010 to 2011. The service charges for the years 2016 to 2017 included costs for internal decorations. However costs had not yet been incurred. The lease does not allow for "interim" demands therefore the works will be carried out after the monies had been collected as a service charge.

19. A letter would have been sent to the applicant explaining that monies would be collected through a sinking fund for future works. With respect to the 2017 service charge year, the information provided may have simply stated that an amount was needed for the sinking fund without explaining that it was needed for internal redecoration.

20. The applicant had not written to the respondent stating that he did not understand the service charge demands. The applicant has not provided any explanation to the respondent and had refused to mediate. This amounted to an abuse of process.

21. The applicant made the application in January 2017. His mother's condition did not develop "overnight" therefore he was fully aware of his circumstances before he made the application.

22. The applicant stated as follows. He received the service charge demands at the end of December 2016. He spoke with the managing agent at the beginning of January 2017 and informed them of his intention to make the application to the tribunal as he felt the service charge demand was too high. He spoke with a male person who did not explain why the service charge was too high (Mr Freilich stated he did not have any

evidence before the tribunal to confirm or deny that this conversation took place).

23. He did not receive any letter explaining the need for a sinking fund and he was not told what it was for. (Mr Freilich referred the tribunal to the letter on page 95 of the bundle. The tribunal noted that this did not explain the need for a sinking fund. Mr Freilich then stated that he did not have any evidence before the tribunal to confirm or deny this).

24. He received the "application for payment" on page 41 of the bundle which referred to the payment of £218.81 for "internal redecoration project". However, he did not receive any letter explaining when the works would be carried out. He thought he had already paid for the works by the end of 2015 but no works had been carried out. (Mr Freilich stated that he did not have the relevant file and therefore he could not say whether the applicant had been informed of the works).

25. The respondent was responsible for blocked drain pipes on the ledge. He had asked the respondent on numerous occasions, including in 2016 and 2017, to clear the blocked drain pipes. They took the messages but did not clear it and in the end the applicant had to clear it himself. (Mr Freilich stated there was no evidence concerning this in the bundle provided by the respondent).

26. He had complained about the lights outside his flat not working since March 2015. He had complained about this in the last two years. However, the lights have been in the same state since March 2015. (Mr Freilich stated "I can't say either way").

27. The applicant had not taken any legal advice. His father died two years ago. His mother is 85 years old and suffers from dementia. His mother lives at home and has a daytime carer. One of his siblings lives with his mother but he cannot be there all the time therefore the applicant needs to cover any gaps. The applicant is having to spend four evenings during the week at his mother's and he is finding this very stressful. He has a seven-year-old daughter who he looks after every weekend and during the holidays. He has been living at the property for 25 years and has always paid the service charges on time. He made the application because he felt nothing was being done despite paying all the service charges. He made the application out of necessity.

28. Mr Freilich at this stage stated that he wanted the matters concerning the costs to be adjourned to another date so that the respondent may provide evidence concerning the issues raised by the applicant. When reminded by the tribunal that he had clearly stated that he wanted the costs to be determined today at the hearing, he stated that he thought it could be dealt with on the papers that have already been disclosed by the respondent in the respondents bundle. When asked, given that he had attended the hearing today knowing that he would be making a

costs application and therefore why all the relevant evidence was not provided in the 106 page bundle, he stated that he did not know what the applicant would be saying.

29. The applicant stated he did not want the matter to be adjourned. He stated "I just want the matter to be dealt with today as I tend to over-think a lot and I can't deal with this on my mind".

30. Having considered the representations from both parties the tribunal determined as follows.

31. Both parties had clearly stated at the outset that they wanted the costs matter to be determined at the hearing without any further adjournment. The respondent was aware prior to coming to the hearing that it would make a costs application at the hearing (see letter on page 100 dated 4 May 2017) and had provided a costs schedule. The applicant had stated in his application that internal redecorations had not taken place, he referred to blocked drains, and he referred to internal lights not working since March. In the circumstances, the respondent could have collected evidence on those points at the very least, if not for the substantive matter, for the costs application. The tribunal heard evidence from the respondent first and then from the applicant. The respondent only sought an adjournment in reply. The applicant objects to the adjournment as he would find the delay "stressful". The tribunal notes that any adjournment would result in additional expense and tribunal time. In the circumstances, the tribunal determined it would not be in the interests of justice to adjourn the costs matter to another date.

32. The tribunal may make an order in respect of costs only if a person has acted unreasonably in bringing, defending or conducting proceedings (paragraph 13(1)(b) The Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013). The word "unreasonable" is not defined but it was held in Ridehalgh v Horsefield [1994] 3 All ER 848 *"'Unreasonable' also means what it has been understood to mean in this context for at least half a century. The expression aptly describes conduct which is vexatious, designed to harass the other side rather than advance the resolution of the case, and it makes no difference that the conduct is the product of excessive zeal and not improper motive. But conduct cannot be described as unreasonable simply because it leads in the event to an unsuccessful result or because other more cautious legal representatives would have acted differently. The acid test is whether the conduct permits of a reasonable explanation. If so, the course adopted may be regarded as optimistic and as reflecting on a practitioners judgment, but it is not unreasonable."*

33. The tribunal noted the applicant was unrepresented and had not taken legal advice. The service charge bill had been increasing in the previous

three years from £1205, to £1472, to £1620. The respondent was collecting monies for a new sinking fund from 2016. The tribunal heard evidence from the applicant that he had not received any information about the need for a sinking fund or when works were to be carried out. Even if any letters were sent, it does not mean that it was received by the applicant. On balance, the tribunal accepts the applicant was not aware of the need for a sinking fund and why works had not been completed despite payments being made by the end of December 2015. In the circumstances the tribunal does not find that the applicant had behaved unreasonably in bringing these proceedings.

34. The tribunal notes the applicant's failure to comply with directions. The tribunal notes the applicant was not legally represented. The tribunal notes the applicants personal circumstances which Mr Freilich referred to as "extenuating circumstances". The applicant has a good record of paying his service charges. The amount he had disputed had been paid in full a week before the hearing. The applicant had attended the hearing today to explain why he had failed to comply with directions. The applicant had openly and fairly conceded that it would have been unfair to proceed today as he had failed to comply with the directions. The applicant had openly and fairly conceded that it would not be fair to adjourn the case. Finally, the applicant had fairly and openly conceded that in all the circumstances it would be fair to strike out his application. In all the circumstances, the tribunal is satisfied the applicant has not acted unreasonably.

Name: Mr L Rahman **Date:** 26/6/17

ANNEX - RIGHTS OF APPEAL

1. 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.

2. 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.

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 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.