



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

Case reference : LON/00BG/LSC/2016/0487

Property : 13, Pepys House, 62, Kirkwall Place, London, E2 0NB

Applicant : Mr O C Mason, accompanied by Mr R Mason

Representative : In Person

Respondent : The Mayor and Burgesses of the London Borough of Tower Hamlets

Representative : Mrs Iqbal

Type of application : Determination of reasonableness and payability of service charges under Section 27A Landlord and Tenant Act 1985

Tribunal member : Mrs H C Bowers

Venue : 10 Alfred Place, London WC1E 7LR

Date of decision : 26 April 2017

DECISION

- The application of 19 December 2016 is struck out as the Tribunal has no jurisdiction to consider this case.
- Insofar as it is relevant, the Tribunal makes an Order under section 20C of the Landlord and Tenant Act 1985 that any costs incurred or to be incurred in respect of this application are not to be regarded as relevant costs in respect of future service charges.

REASONS

Background:

1. Mr Mason, the Applicant, made an application on 19 December 2016 seeking a determination pursuant to section 27A of the Landlord and Tenant Act 1985 (the Act) in respect of service charges relating to major works. The major works involved the installation of a 'boosted water system' at 13-18 Pepys House, Kirkwall Place, London, E2 0NB (the subject Building). The works were carried out in 2012 and the service charge contribution in respect of 13, Pepys House (the subject Property) amounted to £3,549.94. There was a subsequent refund and the revised amount is now £3,507.46.
2. Mr Mason had acquired the leasehold interest in the subject Property on 3 December 2012. On the 12 December 2012 he had received notification from the Respondent of a service charge bill for the major works. His dispute arises in respect of the enquiries made by his solicitor on the purchase of the leasehold interest and representations made by the London Borough of Tower Hamlets (the Respondent).
3. Initial Directions were issued on 14 February 2017. These Directions followed a Case Management Conference held on that date and which recorded that Mr Mason was not disputing his liability to pay these costs under the terms of his lease, nor that the costs had been unreasonably incurred or that the work was carried out to an unreasonable standard.
4. An application was received from the Respondent on 28 February 2017 for the main application to be struck out on the grounds that the Tribunal has no jurisdiction. As a consequence, Further Directions were issued on 2 March 2017 for the consideration of the application to strike out.

Hearing:

5. A hearing was held on 26 April 2017 at 10.00am at 10, Alfred Place, London, WC1E 7LR. In attendance was the Applicant Mr O Mason, accompanied by his father Mr R Mason. Representing the Respondent, the London Borough of Tower Hamlets, was Mrs Iqbal.
6. Mrs Iqbal explained that the Applicant had accepted liability of service charges under the terms of his lease and that there were no arguments in respect of the reasonableness of the costs or the standard of work. As such the provisions of section 27A(4)(a) applied in that no application may be made in respect of a matter agreed or admitted by the tenant.
7. It was stated that the Tribunal's jurisdiction is limited to the determination of service charges. The matter that is being pursued by Mr

Mason is a claim for damages or estoppel and this would arise from other causes of action such as misrepresentation or negligent misrepresentation. The correct forum for those claims would be the County Court.

8. Mr Mason stated that he believed from the Case Management Conference and the subsequent Directions that he could still pursue his arguments over payability and that he could advance arguments in respect of misrepresentation, negligence and potentially estoppel.
9. In response to the Tribunal's question about what information had been sought from the Vendor's solicitor, Mr Mason explained that the Vendor's solicitors had forwarded the 'Re-Sale Pack' dated 23 August 2012 that had been prepared by the Respondent. He stated that he may also have received the general Leasehold Property Enquiries form but he did not have that information to hand.
10. He did not have legal submissions to make about jurisdiction, but considered that it was unfair for the Respondent to pass the buck to the Vendor in respect of the section 20 notices of which they should have been aware.
11. There was also an application under section 20C of the Act, that any costs in relation to the current case should not be recovered by in the future service charges. Mrs Iqbal explained that the lease did not contain a provision to allow the recovery of the costs on relation to the Tribunal application and hearing to be treated as service charges.

Determination:

12. As noted above Mr Mason had made the earlier concessions that he was not disputing his liability to pay these costs under the terms of his lease, nor that the costs had been unreasonably incurred or that the work was carried out to an unreasonable standard. Consequently, the Tribunal agrees with Mrs Iqbal that due to section 27A(4)(a) it does not have the jurisdiction to consider this application.
13. It maybe that Mr Mason does have other causes of action such as damages. The Tribunal may have limited jurisdiction to consider such a claim if there was an issue of set-off and that could arise from a landlord's breach of its obligations. However, when the relevant statement was made (in the Re-Sale Pack) there was no landlord and tenant relationship between the parties. Accordingly, in this case the Tribunal determines that it does not have the jurisdiction to deal with this claim. The correct forum for this dispute would appear to be the County Court. Accordingly, the Tribunal strikes out the main application for lack of jurisdiction.
14. In respect of the application under section 20C of the Act, the Tribunal notes the concession made by Mrs Iqbal in respect of the terms of the lease. However, for the sake of clarity, the Tribunal makes an Order under section 20C that any costs incurred or to be incurred in respect of this

application are not to be regarded as relevant costs in respect of future service charges.

Name: Helen Bowers

Date: 26 April 2017

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).

Appendix 1

LANDLORD AND TENANT ACT 1985

Section 19 Limitation of service charges: reasonableness

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -

- (a) only to the extent that they are reasonably incurred, and
 - (b) where they are incurred on the provision of services or the carrying out of works, only of the services or works are of a reasonable standard;
- and the amount payable shall be limited accordingly.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A Liability to pay service charges: jurisdiction

(1) An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and if it is, as to -

- (a) the person by whom it is payable,
- (b) the person to whom it is payable,
- (c) the amount which is payable,
- (d) the date at or by which it is payable, and
- (e) the manner in which it is payable.....

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to a leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -

- (a) the person by whom it would be payable,
- (b) the person to whom it would be payable,
- (c) the amount which would be payable,
- (d) the date at or by which it would be payable, and
- (e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which -

- (a) has been agreed or admitted by the tenant,
- (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
- (c) has been subject of determination by a court, or
- (d) has been subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement,

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

20C.— Limitation of service charges: costs of proceedings.

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court [, residential property tribunal] ² or leasehold valuation tribunal [or the First-tier Tribunal] ³ , or the [Upper Tribunal] ⁴ , or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken

into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

(2) The application shall be made—

(a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to [the county court] ⁵ ;

[

(aa) in the case of proceedings before a residential property tribunal, to a leasehold valuation tribunal;

] ²

(b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;

[

(ba) in the case of proceedings before the First-tier Tribunal, to the tribunal;

] ⁶

(c) in the case of proceedings before the [Upper Tribunal] ⁴ , to the tribunal;

(d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to [the county court] ⁵ .

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Commonhold and Leasehold Reform Act 2002

Schedule 11 ADMINISTRATION CHARGES

Meaning of "administration charge"

Paragraph 1

(1) In this Part of this Schedule "*administration charge*" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—

(a) for or in connection with the grant of approvals under his lease, or applications for such approvals,

(b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,

(c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or

(d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.

(2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

(3) In this Part of this Schedule "*variable administration charge*" means an administration charge payable by a tenant which is neither—

(a) specified in his lease, nor

(b) calculated in accordance with a formula specified in his lease.

(4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Paragraph 2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013/1169

9.— Striking out a party's case

(1) The proceedings or case, or the appropriate part of them, will automatically be struck out if the applicant has failed to comply with a direction that stated that failure by the applicant to comply with the direction by a stated date would lead to the striking out of the proceedings or that part of them.

(2) The Tribunal must strike out the whole or a part of the proceedings or case if the Tribunal—

(a) does not have jurisdiction in relation to the proceedings or case or that part of them; and

(b) does not exercise any power under rule 6(3)(n)(i) (transfer to another court or tribunal) in relation to the proceedings or case or that part of them.

(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.