12823

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AU/LSC/2017/0443**
Property	:	**46 Thornhill Houses, Thornhill Road, London N1 1PA**
Applicant	:	**Mayor and Burgesses of the London Borough of Islington**
Representative	:	**Law and Governance, London Borough of Islington**
Respondent	:	**Mr Peter Cain**
Representative	:	**In Person**
Type of Application	:	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal Members	:	**Tribunal Judge Prof R Percival** **Kevin Ridgeway MRICS**
Date and venue of determination	:	**21 May 2018** **10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**8 June 2018**

DECISION

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The application

1. The Applicant seeks a determination pursuant to section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the reasonableness and payability of certain estimated service charges for the service charge year 2016-2017.

2. Proceedings were originally issued in the County Court by the applicant landlord by particulars of claim dated 20 March 2017. The total claim was in relation to a balancing charge of £11.61 on the 2015-2016 actual accounts, and an estimated annual service charge of £798.53, plus interest, a total of £821.66. A counter-claim by the respondent was struck out, and the County Court judge entered summary judgment in the sum of £468.43 (including interest), and referred the balance of the claim to the Tribunal on, it appears, 22 September 2017.

3. As a result, the Tribunal is dealing with the reasonableness and payability of the estimated service charges for 2016-2017 for block repairs, in the sum of £94.00; and caretaking fees of £256.00. In addition, there is a balancing charge of £21.80 in respect of caretaking fees for 2015-2016, less a credit against block repairs of £17.59. The overall total is thus £354.21.

4. Original directions issued on 20 November 2017 were superseded by directions on 10 January 2018. Those directions made provision for the respondent to provide a statement of his case, for the applicant to reply to that case and for a further short statement in reply, should the respondent so wish.

Decision

5. The respondent is liable to pay the estimated service charge for 2016-2017 in full. The Tribunal has no jurisdiction to consider the payability or reasonableness of the actual service charge for 2016-2017.

Determination

6. The jurisdiction of this Tribunal is limited by the matter as transferred to us by the County Court. In this case, that comprises very largely the estimated service charge for 2016-2017.

7. It appears that now the actual figures for 2016-2017 are available.

8. The respondent's reply is long, rambling and deals extensively with matters going back well before 2016-2017, including material

apparently thought by the respondent to undermine previous decisions of this Tribunal, the Upper Tribunal and the courts.

9. What it does not at any point deal with is *the estimated service charges* for block repairs and caretaking for 2016-2017.

10. The question is therefore whether the Tribunal has jurisdiction to consider the actual service charge demanded for 2016-2017, rather than the estimated service charge.

11. The Deputy President deals with the modern approach of the Tribunal to its jurisdictions in such circumstances in *Cain v London Borough of Islington* [2015] UKUT 117 (LC), as it happens a case concerning the same parties and lease. At paragraph [17], he said:

> "As the Tribunal has explained in *Lennon v Ground Rent (Regisport) Ltd* [2011] UKUT 330 (LC) and in *Staunton v Taylor* LRX/87/2009 , the jurisdiction of the F-tT in a case transferred to it from the County Court is confined to the question transferred and all issues comprehended within that question. I would suggest, however, that that principle ought to be applied in a practical manner ... . When trying to identify which subsidiary issues ought properly to be treated as being included within the scope of the questions transferred it is not appropriate to be too pedantic, especially where an order transferring proceedings is couched in general terms and where there is no suggestion that the court intended to reserve for itself any particular question. It is not uncommon for orders for transfer to be expressed rather generally, and in practice the tribunals of the Property Chamber sensibly recognise that it would be a disservice to the parties (and to the transferring court) for them to adopt an over-scrupulous approach to their jurisdiction."

12. In that case, the Upper Tribunal, in what it said was a good example of the principle, concluded that this Tribunal could properly construe the lease to decide the proportion of the relevant expenditure that Mr Cain was contractually obliged to pay, even though the terms of the order transferring the matter from the County Court were limited to determining the "reasonableness of the service charges demanded". Until that proportion was determined, the Tribunal could not, except in an abstract sense, determine the reasonableness of the service charges. Thus the secondary question of apportionment was a logically prior question to the proper determination of the primary, transferred question of reasonableness.

13. The situation is different in this case. The landlord issued proceedings against the respondent for the payment of his contractual obligation to

pay the estimated charge. To the (limited) extent that the respondent's submissions are relevant to the time frame under consideration at all, they relate to the separate and distinct legal obligation to pay whatever is necessary to balance the estimated service charge against the out-turn service charge relating to 2016-2017. While of course the two are factually connected, there is no logical relationship of dependency as to their determination, as existed in relationship to apportionment and reasonableness in *Cain v Islington*.

14. It is true that the secondary element transferred relates to balancing payments in relation to actual expenditure in 2015-2016. And it is also true that, if we were to seek to disentangle those elements of the respondent's narrative, which covers multiple matters going back many years, some may be relevant to the reasonableness of charges made during the service charge year 2015-2016. However, to do so would be at the very least grossly disproportionate. The net balancing sum demanded is £4.21. We note that the respondent says in paragraph 53 of his reply (at tab 1 of the bundle) that he intends to make a separate application in relation to the service charge for 2015-2016.

15. We conclude therefore that the respondent has provided no answer at all to the main substance of the applicant's claim as pleaded in the County Court, and accordingly we find for the applicant in relation to all sums demanded. As to the minor matters relating to the balancing charge for 2015-2016, we decline to consider what submissions may be available to the respondent as a matter of proportionality.

16. However, if we are wrong to conclude that we are strictly deprived of jurisdiction in relation to the actual service charge demands for 2016-2017, we consider that a second decision is open to us. If *Cain v Islington* is to be regarded – as we consider it is – as having the effect of broadening what are to be seen as the category of "issues comprehended" within the matters transferred, then it does so on a principle derived from the application of a sense of practicality and common sense.

17. Such a principle goes both ways. This suggests the proper approach where the question before us is whether a particular matter which, before *Cain v Islington*, would have been thought to have been excluded from our jurisdiction, should be considered as within jurisdiction.

18. In other words, we consider that the question of whether *Cain v Islington* confers that further jurisdiction is to be considered in the light of the practicalities of the matter. This is an exercise of judgement for the Tribunal. It may therefore be something of a misnomer to describe it as a discretion. That term is, however, a convenient way of referring to that exercise of judgment.

19. The respondent has very largely ignored the limits set in the directions to the material which should be provided, and instead has sought to reopen complaints involving material going back, in some cases, to 2002, and to attempting to undermine clear judicial findings. Insofar as he makes coherent complaints in relation to expenditure in the service charge year 2016-2017, he does so merely incidentally to a narrative – or, more accurately, a series of narratives – of much broader scope.

20. In these circumstances, we consider that common sense and practicality suggest that we should decline jurisdiction to consider our jurisdiction extended – that is, we would exercise our post-*Cain v Islington* discretion or judgement to confine our jurisdiction to the estimated service charge, and decline to consider the actual service charge demanded for 2016-2017 as being within jurisdiction.

21. However, and further, if we are wrong to consider that such a discretion exists, or we would be wrong to exercise it the way we have indicated that we would do so, we would still have declined to consider the merits of such an attack on the 2016-2017 actual service charge as we could discern from the material provided by the respondent.

22. We would, in those circumstances, have barred the respondent from taking any further part in the proceedings, on the basis that his submissions amount to a failure to comply with the directions issued on 20 November 2017 and 10 January 2018, under Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013, rule 9(3)(a) and 9(7)(a). Both sets of directions made it clear that the respondent's reply should relate to the matters transferred. Equally, both contained a warning that "if the respondent fails to comply with these directions the Tribunal may bar it from taking any further part in these proceedings".

23. Had we done so, the respondent would have been entitled to have made an application for reinstatement under rule 9(5) and 9(7)(b). We make it clear that we are indicating, on a hypothetical basis, that we would have followed this course of action, if we are wrong to conclude that, first, the extension of jurisdiction in *Cain v Islington* does not apply in this case, and, secondly, that either the discretion/practicality judgement to decline the extended discretion does not exist, or we have wrongly exercised it. We make the point that this would have been our approach in such circumstances in case it is of assistance to the Upper Tribunal in either considering an application for permission to appeal or deciding an appeal. It is not, therefore, open to the respondent to make an application to reinstate.

24. We emphasise that while the respondent is an unrepresented litigant in person, he has considerable experience of litigation in this Tribunal, the Upper Tribunal and the courts, including a renewed application to appeal to the Court of Appeal.

The next steps

25. This matter should now be returned to the County Court.

Name: Tribunal Judge Professor Richard Percival **Date:** 8 June 2018

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
   (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
   (b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose -
   (a) "costs" includes overheads, and
   (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

(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 provisions of services or the carrying out of works, only if 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

(1) An application may be made to the appropriate 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 the appropriate 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 the subject of determination by a court, or
(d) has been the 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.