



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

**IN THE COUNTY COURT at
Clerkenwell & Shoreditch,
sitting at 10 Alfred Place,
London WC1E 7LR**

Tribunal reference : **LON/00AP/LSC/2019/0209**

Court claim number : **F5QZ01A8**

Property : **30 Summersby Road, London
N6 5UH**

Applicant/Claimant : **London Borough of Haringey**

Representative : **Mr Khoshel of counsel**

Respondent/Defendant : **Mrs Farouk**

Representative : **Dr Farouk (daughter)**

Tribunal members : **Judge S Brilliant and Mr R Shaw
FRICS**

In the county court : **Judge S Brilliant**

Date of decision : **11 October 2019**

DECISION

Those parts of this decision that relate to County Court matters will take effect from the 'Hand Down Date' which will be:

If an application is made for permission to appeal within the 28-day time limit set out below – 2 days after the decision on that application is sent to the parties, or;

If no application is made for permission to appeal, 30 days from the date that this decision was sent to the parties

Summary of the decisions made

1. The following sums are payable by the tenant to the landlord:

Service charges: £8,799.26.

Court fee: £410.00.

Legal costs: £100.00.

Interest at 2% pursuant to section 69 of the County Courts Act 1984 calculated from 25 December 2017 to the date of this decision: £319.10 and continuing thereafter at the rate of 48p per day until the date of the judgment in the County Court proceedings or sooner payment.

The service charges of £8,799.26 are payable by the tenant to the landlord within 28 days of the date of this order.

The application

2. The applicant landlord, London Borough of Haringey, seeks a determination pursuant to section 27A of the Landlord and Tenant Act 1985 (“the 1985 Act”) as to the amount of service charges payable by the respondent tenant, Mrs Farouk, in respect of 30 Summersby Road, London N6 5UH (“the flat”).

3. On 14 March 2019, the landlord, commenced proceedings in the County Court Business Centre against the tenant for arrears of service charges in the sum of £8,799.26 under claim number F5QZ01A8.

4. The tenant filed a Defence dated 25 March 2019. On 3 June 2019, District Judge Swan transferred the proceedings to the Tribunal. On 28 June 2019, the Tribunal issued directions, including a direction that it would deal with the case in its entirety¹. The matter eventually came to a hearing on 18 September 2019.

The hearing

5. The landlord was represented by Mr Khoshel of counsel, instructed by the landlord’s Legal Services, who called Mr Bester, Leasehold Services Manager to give evidence. The tenant appeared in person, represented by her daughter and accompanied by her son.

The background

6. The flat is a two bedroom second floor flat (“the flat”) in Muswell Hill.

¹ This part of the directions was missed by all parties at the hearing.

7. Neither party requested an inspection of the flat; nor did the Tribunal consider that one was necessary, or that one would have been proportionate to the issues in dispute.

8. By a lease dated 7 September 2015 (“the lease”), the landlord demised the flat to the tenant for a term of 125 years. The lease was granted under the right to buy legislation.

9. The lease is a long lease of the flat, which requires the landlord to provide services and for the lessee to contribute towards their costs by way of a variable service charge. The expenses incurred by the landlord which are recoverable under the service charge include sinking funds for both future minor works of a periodically recurring nature and future major one off major works.

10. The relevant provisions concerning the expenses and outgoings recoverable through the service charge set out in the Fourth Schedule to the lease are as follows:

(f) The expression “the expenses and outgoings incurred by the Corporation” as hereinbefore used shall be deemed to include not only those expenses outgoings and other expenditure hereinbefore described which has been actually disbursed incurred or made by the Corporation during the year in question but also such reasonable part of all such expenses outgoings and other expenditure hereinbefore described which are of a periodically recurring nature (whether recurring by regular or irregular periods) whenever disbursed incurred or made and whether prior to the commencement of the Turn or otherwise including a sum or sums of money by way of reasonable provisions for anticipated expenditure in respect thereof as the Corporation may in its discretion allocate to the year in question as being fair and reasonable in the circumstances

(fx) Without prejudice to the generality of paragraph (f) the annual amount of the Service Charge payable by the Tenant shall also include such sums as the Corporation may reasonably require from the Tenant to meet such future costs as the Corporation shall reasonably expect to incur in replacing maintaining and renewing those items which it hereunder covenants to replace maintain and renew

The issue

11. The sole issue in these proceedings is whether the landlord has to give the tenant credit for the whole of her contributions to the sinking fund which have accrued at the time that the service charge falls due to be paid, or the lesser sum which has accrued at the earlier time when the relevant invoice is raised.

County Court issues

12. The order transferring issues to the Tribunal was in very wide terms: “Send to the First-tier Tribunal (Property Chamber)”.

13. Following amendments to the County Courts Act 1984, made by schedule 9 of the Crime and Courts Act 2013, all First-tier Tribunal (“FTT”) Judges are now Judges of the County Court. Accordingly, where FTT Judges sit in the capacity as Judges of the County Court, they have jurisdiction to determine issues relating to ground rent, interest or costs that would normally not be dealt with by the Tribunal.

14. Accordingly, the Tribunal wrote to the parties, inviting their agreement to the Tribunal dealing with all issues raised by the County Court proceedings at the forthcoming Tribunal hearing, that is to say, where appropriate, the Tribunal Judge appointed to hear the case would exercise the power to sit as a County Court Judge. In the view of the Tribunal, the interests of justice were best served by one body hearing all the evidence and making all the relevant decisions in the case; and there would be an advantage to the parties as well, by saving both time and expense.

15. These reasons will act as both the reasons for the Tribunal decision and the reasoned judgment of the County Court, where a separate order has been made. Judge Brilliant and Mr Shaw are both responsible for the Tribunal decision. Judge Brilliant is solely responsible for the County Court decision.

Determinations and reasons

16. The tenant makes 12 monthly payments in respect of advance service charges and separate 12 monthly payments in respect of the sinking fund.

17. The landlord carried out major works (replacing windows and front doors and some roof work) on the estate of which the flat forms part. The work was completed in November 2016 and the invoice was dated 25 December 2016. The Third Schedule to the lease makes it clear that these works constitute part of the annual service charge. The sinking fund payments are made in advance on account of the service charge.

18. On 25 December 2017, the landlord sent the tenant an invoice for her share of the costs of the major works. This was in the sum of £11,106.67. This was a capped amount as provided for by the right to buy legislation².

19. On the same day, the landlord sent the tenant a further invoice for her share of the costs of the same works but showing a credit of £2,257.41. This credit was the amount paid by the tenant into the sinking fund in 16

² See page I-39 in the hearing bundle.

instalments from 21 October 2015 until 12 January 2017. This reduced the amount claimed to £8,849.26. The tenant has paid £50.00 towards this sum. Thus the amount said to be still owed by her is £8,799.26, and it is this sum which is being claimed in the County Court proceedings.

20. The landlord has not given the tenant credit for further instalments paid into the sinking fund by the tenant after 12 January 2017. These are now held to be offset against future major works.

21. By the time that the Defence in the County Court proceedings was served by the tenant on 25 March 2019, she had paid a further £1,946.63 into the sinking fund. In the Defence, the tenant says that she should have been given credit for that payment of £1,946.63, as well as for the payment of £2,257.41. Accordingly, a total credit of £4,254.04 should have been given to her, resulting in a balance due of £6,852.63 due.

22. By the time that the tenant's statement of case was served on 30 July 2019, the amount she had paid into the sinking fund since 12 January 2017 had risen to £2,200.98. Accordingly, she says in paragraph 64 of her statement of case that a total credit of £4,458.39 should have been given to her, resulting in a balance due of £6,598.28.

23. The correct amount of credit in respect of the sinking fund payments is the only point taken in the Defence. There is no challenge in the Defence to the starting figure of £11,106.67. Indeed, in paragraph 64 of the statement of case the tenant accepts that a balance of £6,598.28 is left.

24. In his evidence Mr Brewer explained that sinking fund payments made after the date of an invoice are used for paying future works. Renewal of the entry phone system is an example of future works contemplated in the long term.

25. The major works invoice is payable when presented and, in our judgment, the landlord is entitled under the terms of lease to give the tenant credit for just the contributions to the major works sinking fund which have been made at the time that the relevant invoice is raised. It is reasonable and within the terms of the lease for the landlord to do this.

Conclusion

By way of conclusion, the following awards are made in favour of the landlord:

Service charges: £8,799.26 (First-tier Tribunal decision).

Court fee: £410.00 (County Court decision).

Legal costs: £100.00 (County Court decision).

Interest at 2% pursuant to section 69 of the County Courts Act 1984 calculated from 25 December 2017 to the date of this decision: £319.10 and continuing thereafter at the rate of 48p per day until the taking of effect of the County Court decision.

We recommend that the landlord contacts the tenant to make arrangements for payment of the outstanding amount.

Name: Judge Simon Brilliant **Date:** 11 October 2019

ANNEX - RIGHTS OF APPEAL

Appealing against the tribunal's decisions

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 date this decision is sent to the parties.

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 state the grounds of appeal, and state the result the party making the application is seeking.

Appealing against the decisions made by the Judge in his/her capacity as a Judge of the County Court

Any application for permission to appeal must arrive at the tribunal offices in writing within 28 days after the date this decision is sent to the parties.

The application for permission to appeal must state the grounds of appeal, and state the result the party making the application is seeking.

If an application is made for permission to appeal and that application is refused, or if no application for permission to appeal is made but, in either case, a party wants to pursue an appeal, that party must file an Appellant's Notice at the County Court office (not the tribunal office) within 28 days of the Hand Down date.

Appealing against the decisions of the tribunal and the decisions of the Judge in his/her capacity as a Judge of the County Court

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