

10452



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

Case reference : **LON/00AT/LSC/2014/0495**

Property : **Flat 14, The Gables, 290 Heston Road,
Hounslow TW5 0RP**

Applicant/Claimant : **Sinclair Gardens Investments
(Kensington) Ltd**

Attending : **Mr A Wijeyaratne – of counsel
Mr M Kelly – managing agent**

Representative : **W H Matthews & Co, Solicitors**

Respondent/Defendant : **Mr Muhammad Mukhtar Ahmad**

Attending : **Ms Kofi Anifowoshe – of counsel
Mr M M Ahmad - respondent
Mr M Tayab – witness
Mr M Zaid – witness
Mr A Tuheed – witness
Mr A Alam – 12 Bridge solicitors**

Representative : **12Bridge Solicitors**

Type of application : **Liability to pay service charges and
administration charges**

Tribunal members : **Judge Timothy Powell**

**Date of determination
and venue** : **4 December 2012
10 Alfred Place, London WC1E 7LR**

Date of decision : **4 December 2014**

DECISION

1. On 2 November 2012, the applicant freeholder, Sinclair Gardens Investments (Kensington) Limited, issued county court proceedings (claim no. 2YN00278) against the respondent leaseholder, Muhammad Mukhtar Ahmad, of Flat 14, The Gables, 290 Heston Road, Hounslow, Middlesex TW5 0RP ("the Flat"). In a substantial defence and counter-claim dated 20 November 2013, Mr Ahmad denied that he was indebted to the applicant freeholder and counter-claimed by way of set-off for very substantial disrepair damages of up to £20,000.
2. By order of Deputy District Judge Atkin sitting at the County Court at Brentford on 2 July 2014, three items in the claim were transferred to the tribunal in order for it to determine the question of recoverability. These were: two interim service charges dated 24 June 2012 totalling £405.56, an insurance rent of £172.63 (for the period 24 June to 24 December 2012) and administration charges relating to the recovery of arrears, in the sum of £141.15. The questions transferred to the tribunal were limited to those raised in paragraphs 22 and 23 of the counter-claim. The disposal of the remainder of the claim (which includes ground rent, interest and county court costs) and the counter-claim itself were retained by the county court and stayed pending the determination of the tribunal.
3. The tribunal gave directions for the determination of these issues on the 1 October 2014, including at paragraph 8 that the tribunal did not consider that there was a need for expert witnesses. While, despite this, both parties filed expert evidence about the disrepair to the roof of the block affecting the Flat, no evidence relating to disrepair was admitted at the eventual tribunal hearing on 4 December 2014. Accordingly, and for the avoidance of doubt, none of the costs relating to expert evidence should be considered as part of the parties' costs before the tribunal (though, no doubt, they can be considered in due course as being part of the costs before the county court).
4. At the tribunal hearing on 4 December 2014, the applicant freeholder was represented by Mr Wijeyaratne of counsel, supported by Mr Kelly as managing agent. The respondent leaseholder was represented by Ms Anifowoshe of counsel, with Mr Ahmad himself attending along with three witnesses and his solicitor, Mr Alam.
5. At the outset of the hearing Ms Anifowoshe confirmed that, subject to the counter-claim by way of set-off in the county court, Mr Ahmad did not challenge the *amounts* in the claim form that had been transferred to the tribunal, namely: £405.56 interim service charges, £172.63 insurance rent and £141.25 administration charges. It therefore follows that those sums are reasonably incurred within the meaning of section 19 of the Landlord and Tenant Act 1985 and are payable by Mr Ahmad - but the question of whether they should in fact be paid by him is left to

the county court on the determination of the counter-claim by way of set-off.

6. Initially, Ms Anifowoshe pursued an application for an order under section 20C of the Landlord and Tenant Act 1985 in respect of the freeholder's costs before the tribunal. This was on the basis that Mr Ahmad had now agreed the transferred service and administration charges. Her application was opposed by Mr Wijeyaratne for the applicant freeholder. He pointed to the respondent's absolute denials of liability for the sums claimed set out in his defence and counter-claim, including (at paragraph 9) putting the freeholder "to strict proof" of the charges and that they complied with the requirements of sections 47 and 48 of the Landlord and Tenant Act 1987. The freeholder had come to the tribunal ready to prove these matters and it was only at the hearing that Mr Ahmad had agreed the costs were reasonably incurred and, subject to any counter-claim by way of set-off, payable by him. In any event, the defence and counter-claim had included a claim for an order under section 20C of the 1985 Act (at paragraph 13) and this was not one of the matters which had been transferred to the tribunal by the county court.
7. After discussion, both counsel agreed that no order should be made by this tribunal under section 20C of the 1985 Act, but that, once again, the question of whether an order should be made should be left to the county court upon the determination of the disrepair counter-claim.
8. **This matter should therefore now be transferred back to the county court so that directions can be issued as soon as possible to bring the matter to a hearing in relation to the remaining items in the claim and the counter-claim.**
9. Although the tribunal is not in the position now to make any further directions, it recommends that the parties' experts meet at the earliest opportunity, in order to narrow the issues between them and to prepare a signed statement of agreements and disagreements, both as an aid to possible settlement and to ensure that there is no further delay in relation to the determination of the disrepair aspects of this matter.

Name: Judge Timothy Powell

Date: 4 December 2014