



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

Case reference : **LON/00AF/LSC/2015/0153**

Property : **11 Gainsborough Court, Homesdale Road, Bromley, BR2 9NB**

Applicant : **Freehold Portfolio Limited**

Representative : **Brethertons Solicitors**

Respondent : **Christopher Johnson**

Representative : **In person**

Type of application : **For the determination of the reasonableness of and the liability to pay service charges**

Tribunal members : **Judge Robert Latham**

Date and venue of determination : **17 July 2015 at 10 Alfred Place, London WC1E 7LR**

Date of decision : **17 July 2015**

DECISION

Decisions of the Tribunal

- (1) The Tribunal is satisfied that that interim services charges of £2,050 and £2,550 are payable for the years 2013 and 2014.
- (2) Since the Tribunal has no jurisdiction over claims for administration charges and/or legal costs, ground rent, statutory interest or County Court costs, these are referred back to the Bromley County Court.

The Application

1. On 1 August 2014, The Applicant (referred to in this decision as “the Landlord”) issued proceedings in the Northampton County Court (Case No.A83YM241) seeking a money judgement in the sum of £7,912.60 together with interest and costs against Mr Christopher Johnson (“the Tenant”). The claim includes two advance service charges, namely “Estimated Service Charge 2013”: £2,050 and “Estimated Service Charge 2014”: £2,550. The case was subsequently transferred to the Bromley County Court.
2. On 24 October 2014, the County Court entered judgement in default for the Landlord. On 13 February 2015, Deputy District Judge Phillips set the judgment aside, upon being satisfied that the Tenant had not received the court papers from the Northampton County Court. He further directed the Tenant to file and serve a fully pleaded defence by 4pm on 13 March 2015. Upon receipt of the Defence, the Claim was to be referred to the First-tier Tribunal (“FTT”) for “the service charge to be determined”. A Defence was filed dated 25 February 2015. This was not fully pleaded as required by the Directions. However, the matter was referred to the FTT on 31 March. On such a referral, the Tribunal only has jurisdiction in respect of the matters which have been transferred (see *John Lennon v Ground Rents (Regisport) Limited* [2011] UKUT 330 (LC)).
3. On 16 April, the FTT gave Directions. The Landlord was represented by Counsel. The Tenant did not appear. He had sent an e-mail on the morning of the hearing stating that he was unable to attend as he had only recently learnt of the hearing. Judge Dickie was satisfied that notice of the hearing had been sent out by the FTT and decided to proceed. The Landlord alerted her to a jurisdictional point, namely that there had been previous proceedings before the FTT which had been struck out on 8 April 2014.
4. Judge Dickie directed that the Landlord, if so advised, should file written representations on the jurisdiction of the FTT by 1 May 2015. In the event that such submissions were made, the Tenant was permitted to file written submissions in response by 15 May. In the event that the FTT retained jurisdiction to determine the service

charges referred by the County Court, Judge Dickie gave further Directions to enable this dispute to be determined.

5. On 6 May, the Landlord filed submissions on the jurisdictional issue. On 31 October 2013, the Tenant had issued an application (Case No.LON/00AF/LSC/2013/0747) to determine his liability to pay services charges for the years 2008-2012 and the advance service charges for the years 2013 and 2014. On 18 February 2014, Judge Hewitt issued Directions. The Tenant failed to comply with those Directions. In particular, the Tenant was required to file his Reply to the Landlord's Case by 21 March. Further, by a letter dated 18 February, he was required to pay a hearing fee of £180 which he failed to pay.
6. On 8 April, the FTT issued a Notice that it was Minded to Strike Out the Tenant's application pursuant to Regulation 9(1) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the Tribunal Rules"). The Notice recorded that the Tenant had been ordered to serve a Reply in response to the Landlord's Statement of case, but had failed to do so. Further, the Tenant had failed to pay the hearing fee of £190 by 4 March. The Tenant was required to serve its Reply and pay the hearing fee by 5pm on 22 April. The Notice provided that in default, the proceedings would be struck out. The Tenant failed to comply.
7. In its representations, the Landlord contends that the Tenant's application was struck out on 22 April. The effect of the strike out is that the Tenant is no longer able to challenge his liability to pay the advance service charges for 2013 and 2014.
8. In her Directions, Judge Dickie permitted the Tenant to file any written submission in response by 15 May. The Tenant failed to do so. On 20 May, the FTT wrote to the Tenant in these terms:

"A Procedural Judge has directed me to inform you that it is important that you comply with Directions and file a response to the jurisdiction points raised. If you agree to the Landlord's submissions, you must say so, or if not why. The Procedural Judge has further directed that you must reply to the Tribunal by 26 May 2015 so that this matter may proceed as necessary".
9. On 22 May 2015, the Tenant acknowledged receipt of this letter. The Tenant complained about a problem with his door buzzer and asked for any submissions received from the landlord to be sent to an e-mail address. Subsequently, no formal response was made to the jurisdictional issue.

10. On 29 May, Judge Andrew issued further Directions on the jurisdictional issue. He noted that the Landlord's Submissions had been served on the Tenant by post, fax and e-mail. Having read the Submissions, Judge Andrew was satisfied that the FTT should consider as a preliminary issue both the extent of its jurisdiction and the Landlord's request for a summary determination of the disputed service charges. He directed the Tenant send any submissions in response to the Landlord's submissions by 12 June. He noted that this was a third and final opportunity for the Tenant to respond to the Landlord's representations.
11. Both parties were permitted to request an oral determination of this jurisdictional issue. If neither party requested an oral hearing, the FTT notified the parties that it would determine the extent of its jurisdiction and whether it should summarily determine the service charge dispute during the week commencing 29 June. The Tenant has not sent in any written representations. Neither party has requested an oral determination.
12. The FTT has been concerned that the determination of the substantive issue should not be delayed by the jurisdictional issue that has arisen. On 16 April, Judge Dickie also made Directions in respect of the substantive issue in dispute. On 1 May, the Landlord served copies of the service charge accounts and estimates for 2013 and 2014, together with demands and details of payments made. The Tenant did not provide his Schedule of Disputed Service Charges by 22 May, the date specified in the Directions. On 6 June, a Procedural Judge gave further Directions. On 12 June, the Tenant sent a Schedule of Disputed Service Charges. This Schedule seems to go much wider than the interim service charges for the years 2013 and 2014.

The Tribunal's Determination

13. Rule 9 of the Tribunal Rules provides:
 - (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.

14. The Tribunal is satisfied that the Tenant's application in LON/00AF/LSC/2013/0747 was struck out on 22 April 2014 pursuant to the Notice issued by the FTT on 8 April 2014 pursuant to Rule 9(1). The Tribunal is further satisfied that this application related to the service charges for the years 2008 to 2012 and the advance service charges for 2013 and 2014. The Tenant has made no application to have this application re-instated pursuant to Rule 9(5). Any such application should be made within 28 days of the strike out (Rule 9(6)). In the absence of such an application, the Tribunal has no jurisdiction to determine any challenge by the Tenant to either the payability of reasonableness of those service charges.
15. Given that the Tribunal no longer has jurisdiction to determine the Tenant's challenge to the advance service charge for the years 2013 and 2014, the Tribunal has no option but to strike out the Tenant's case pursuant to Rule 9(2)(a). The Tribunal therefore summarily determines under Rule 9(8) that interim services charges of £2,050 and £2,550 are payable for the years 2013 and 2014.
16. The hearing fixed for 17 August 2015 is vacated, there no longer being any substantive issue to be determined.

Judge Robert Latham

17 July 2015