



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

Case Reference : LON/00AM/LSC/2014/0059

Property : Flat B, 204 Millfields Road, London
E5 0AR

Applicant : Barron Properties

Respondent : Claudia Hunte

Type of Application : For the determination of the
payability of service charges

Tribunal Members : Judge Nicol
Mrs S Redmond MRICS

**Date and venue of
Hearing** : 30th April 2014
10 Alfred Place, London WC1E 7LR

Date of Decision : 30th April 2014

DECISION

Decisions of the Tribunal

- (1) The Tribunal determines that the sum of £368.86 (£633.86 less £265 paid) is payable to the Applicant by the Respondent in respect of the service charges for 2012 and £525.45 for 2013.
- (2) The Respondent shall reimburse the Applicant the application and hearing fees of £125 and £190 respectively.
- (3) The Respondent shall further pay the sum of £180 in respect of the Applicant's costs of these proceedings.

The application

1. The Applicant has applied for a determination under section 27A of the Landlord and Tenant Act 1985 that the Respondent is liable to pay service charges of £633.86 for 2012 and £525.45 for 2013 (the service charge year runs from 1st January to 31st December).
2. Relevant legislation is set out in the Appendix to this decision.

The proceedings

3. The Tribunal issued directions on 27th February 2014. As explained in the directions order, the Respondent had arrived too late to participate in the case management hearing. Nevertheless, there is no doubt that she received a copy of the directions.
4. The Respondent did not comply with the directions. She says that this is because she did not understand them. The Tribunal does not accept this. The directions are set out as simply as possible so as to make them comprehensible to unrepresented litigants.
5. Even if the Respondent did not understand the directions, her lack of response was completely inappropriate. The Important Note set out in bold at the top of all directions orders emphasises the importance of compliance. She apparently contacted two solicitors who said they did not represent litigants before the Tribunal but it is not necessary to employ someone to represent them for a litigant to get their advice on what the directions require them to do. She could simply have asked someone, including the Tribunal clerk, what she was supposed to be doing. Instead, she did nothing.
6. It appears that the Respondent did not receive the material the Applicant was supposed to send her in accordance with the directions. The disclosure required by paragraph 1 of the directions was sent by e-mail. Although the Respondent had replied in 2012 to an e-mail sent to the same e-mail address, she now says that that address is not hers and that she did not receive the disclosure.
7. The Applicant sent the hearing bundle to the Respondent by recorded delivery on 10th April 2014. According to the tracking facility on their website, Parcelforce tried to deliver the bundle on 12th April 2014 but, being unsuccessful, left a card. The Respondent claims to have received neither the bundle nor the card.
8. The Tribunal is satisfied that the Applicant acted in good faith in using the attempted methods of service. Any failure in service did not cause the Respondent's failure to comply with the directions. If the Respondent had sought to respond to the directions in any way, even

just to ask questions for clarification, the chances of any problems of service being resolved would have increased significantly.

The hearing

9. The Tribunal heard the application on 30th April 2014. The Applicant was represented by Mr Chuni Kahan who has personally dealt with the Respondent in the past. The Respondent appeared in person.
10. The Respondent admitted both her failure to comply with the directions and her failure to pay the service charges, save that she asserted she had paid £265 on 13th August 2012 towards that year's service charges. On checking his accounts, Mr Kahan accepted that the £265 had been paid and that the Applicant's claim should be reduced accordingly.
11. Although she asserted that the services she received were not "up", she did not object to any part of her liability to the amounts claimed. She had not paid simply due to a lack of funds which she said was primarily due to having to fund her niece's cancer treatment in the USA before she died. She says she phoned Mr Kahan to try to explain why she was not paying but was shocked by his unsympathetic response.
12. The Applicant's bundle included the demands for the actual expenditure incurred and the invoices justifying them. The Tribunal is satisfied that the expenditure was incurred and demands were served on the Respondent for her to pay her service charges arising from that expenditure. The Respondent conceded that she was aware of her liability.
13. Having said that, the lease requires the Applicant to estimate the forthcoming service charge expenditure each year and the Respondent to pay half of the estimated sums in June and December. The Applicant did not include either the estimates or the demands based on them in the disclosure or the bundle. They should have been included and the Tribunal does not understand why they were not. However, the failure had no consequences either for the conduct of the proceedings or the determination of liability.

Costs

14. The Applicant sought reimbursement of their hearing and application fees and payment of their costs of the proceedings. The fees were said to be £125 and £190 respectively and the other costs were said to be £180. The Tribunal's power to order payment of such costs is set out in rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (see the Appendix to this decision).

15. The Tribunal is satisfied that the Respondent should reimburse the Applicant for the Tribunal fees. The Applicant issued these proceedings because the Respondent had failed to pay anything since August 2012 without any reasonable excuse. If the Respondent had paid or at least presented a realistic payment plan, then these proceedings, and the fees, would have been avoided.

16. The Tribunal may only order the Respondent to pay the Applicant's costs other than the fees if satisfied that the Respondent acted unreasonably in defending or conducting the proceedings. The Respondent's complete failure to respond to the directions, despite the note on the directions warning her of the consequences, was unreasonable so that an order for costs is justified. The amount is clearly reasonable and so the Tribunal orders the payment of costs of £180.

Name: NK Nicol

Date: 30th April 2014

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.

The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013

Orders for costs, reimbursement of fees and interest on costs

- 13.—**(1) The Tribunal may make an order in respect of costs only—
- (b) if a person has acted unreasonably in bringing, defending or conducting proceedings in—
 - (ii) a residential property case, or
 - (iii) a leasehold case; ...
- (2) The Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor.
- (3) The Tribunal may make an order under this rule on an application or on its own initiative.
- (4) A person making an application for an order for costs—
- (a) must, unless the application is made orally at a hearing, send or deliver an application to the Tribunal and to the person against whom the order is sought to be made; and
 - (b) may send or deliver together with the application a schedule of the costs claimed in sufficient detail to allow summary assessment of such costs by the Tribunal.
- (5) An application for an order for costs may be made at any time during the proceedings but must be made within 28 days after the date on which the Tribunal sends—
- (a) a decision notice recording the decision which finally disposes of all issues in the proceedings; or
 - (b) notice of consent to a withdrawal under rule 22 (withdrawal) which ends the proceedings.
- (6) The Tribunal may not make an order for costs against a person (the “paying person”) without first giving that person an opportunity to make representations.
- (7) The amount of costs to be paid under an order under this rule may be determined by—

- (a) summary assessment by the Tribunal;
 - (b) agreement of a specified sum by the paying person and the person entitled to receive the costs (the "receiving person");
 - (c) detailed assessment of the whole or a specified part of the costs (including the costs of the assessment) incurred by the receiving person by the Tribunal or, if it so directs, on an application to a county court; and such assessment is to be on the standard basis or, if specified in the costs order, on the indemnity basis.
- (8) The Civil Procedure Rules 1998, section 74 (interest on judgment debts, etc) of the County Courts Act 1984 and the County Court (Interest on Judgment Debts) Order 1991 shall apply, with necessary modifications, to a detailed assessment carried out under paragraph (7)(c) as if the proceedings in the Tribunal had been proceedings in a court to which the Civil Procedure Rules 1998 apply.
- (9) The Tribunal may order an amount to be paid on account before the costs or expenses are assessed.