12492

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00AC/LSC/2017/0103**
Property	:	**Flat 6, Clarence Court, 135 The Broadway, London NW7 4RP**
Applicant/landlord	:	**H Stain Ltd**
Representative	:	**Richard Davidoff, of Aldermartin, Baines & Cuthbert, managing agents, and Tammy Davidoff, work experience**
Respondent/tenant	:	**Kamlesh Janani**
Representative	:	**In person assisted by Sejal Janani**
Interested parties	:	**Carol Richmond (Flat 8), Ila Nath (Flat 7)**
Representative	:	**Ms Richmond in person; Mrs Nath in person assisted by Pretap Nath**
Venue	:	**10 Alfred Place, London WC1E 7LR**
Date of decision	:	**27th November 2017**
Tribunal members	:	**Tribunal Judge Adrian Jack and Tribunal Member Sue Coughlin MCIEH**

Background

1. 133 and 135 The Broadway, London NW7 4RP is part of a terrace of houses known collectively as Clarence Court. No 133 has a shop on the ground floor and Flats 5 and 7, Clarence Court, on the first and second floors respectively. No 135 likewise has a shop on the ground floor and Flats 6 and 8, Clarence Court on the first and second floors respectively. All four flats share the same entrance and staircase. The landlord of No 133 is a Ms Stanley and a Ms Gomez. The landlord of No 135 is H Stain Ltd. (The Particulars of Claim and therefore the earlier directions of the Tribunal wrongly state that Flat 6 is in No 133.)

2. On 20th May 2016 H Stain Ltd issued a claim form in the County Court Money Claims Centre under action number C06YM058 against Mr Janani in respect of Flat 6 for interim service charges in the 2015-16 service charge year and a £90 arrears collection fee. (The service charge year for this and for the leases of the other flats runs from 25th March of each year.) The total claimed was £2,262.44. Probably the same day H Stain Ltd issued a claim form making similar claims against Ms Richmond in respect of Flat 8. The action number was C05YM478. Likewise at about the same time Ms Stanley and Ms Gomez issued a similar claim against Ms Nath in respect of Flat 7 under action number CO6YM105.

3. On each tenant indicating a challenge to the claim, the action against Mr Janani was automatically transferred to the County Court sitting at Willesden, that against Ms Richmond to the County Court sitting at Central London and that against Ms Nath to the County Court sitting at Liverpool. In Willesden, District Judge Middleton-Roy ordered that the matter be transferred to this Tribunal. The learned District Judge also made orders transferring the actions in Central London and Liverpool to this Tribunal. The files, however, have never been sent to the Tribunal from Central London or Liverpool. Despite the Tribunal chasing both Court centres, it has been impossible to obtain the files. They appear to have disappeared into a black hole.

4. On 19th September 2017, Judge Latham in this Tribunal gave directions for the trial of Janani action. He ordered that Ms Nath, Ms Richmond, Ms Stanley and Mr Gomez be added as interested parties. He gave case management directions. These included a direction that the landlord prepare the bundle of *relevant* documents which was to be in a file with an index and page numbering. Copies were to be sent to Mr Janani and any interested party who wanted a copy. We deal below with compliance with this order. The order warned the landlord that failure to comply with the order may result in the Tribunal striking out all or part of its case pursuant to rule 9(3)(a) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

5. On 16th November 2017 Ms Richmond on her own behalf and on behalf of Mr Janani and Ms Nath applied for an order striking out the landlord's case for failure to comply with the directions.

6. At the hearing before us on 27th November 2017, the tenants repeated their application for the landlord's claim to be struck out.

The notice point

7. As part of the Tribunal's discussion with the parties as to the reasons for and consequences of the landlord's failure to comply with directions, the Tribunal examined the issues which stood to be determined. As will be seen, if the Tribunal had to determine all the issues, the chaotic nature of the bundle and the absence of an index would have made an adjournment inevitable. However, there was a short point, which it seemed to us was potentially determinative of the case against Mr Janani.

8. The point is this. Mr Janani holds Flat 6 on a 90 year lease from 25th March 2011. This lease is, however, a lease extension which extends an earlier 99 year lease granted in 1977. It is the terms of this 1977 lease which govern the relations between the parties.

9. Clause 3(6) of the 1977 lease provides:

> "The Tenant shall pay to the Landlord upon demand a rateable or due proportion... [of*] such sums as may be incurred or provided by the Landlord in accordance with the covenants on that behalf hereinafter contained for the maintenance and repair from those parts of the building and the block not forming part of this demise but of which the Tenant has the benefit and use thereof in common with the Landlord and other owners or occupiers thereof and any other parts of the building and block used in connection with or supporting and protecting the flat including if so required a contribution in advance and/or to a sinking fund on account of expense and payment anticipated Provided that if the Tenant so requires the amount any such contribution is certified as being fair and reasonable by the Landlords [*sic*] Chartered Accountant and that no less than six months [*sic*] notice of such advance payment or contribution is given to the Tenant."
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> *The "of" is not in the original, but the interpolation is necessary to make the sub-clause grammatical.

10. Mr Davidoff said that the notice on which he relied was an invoice dated 18th August 2015, which appears at page 15 of the bundle. There are four heads of claim amounting to £2,395. Three heads are described as "service charges 25/03/2015 to 24/03/2016" and one is described as "reserve fund 25/03/2015 to 24/03/2016". The invoice required payment within 30 days.

11. There are two potential problems with this notice. The first is that it is an interim demand based on the budget prepared on the landlord's behalf, but the service charges include past periods of time. Clause 3(6) only permits a landlord to demand (a) monies actually expended or (b) monies to be expended. The demand does not distinguish between the two. Mr Davidoff's firm took over management in July 2015, so there is past expenditure, which the landlord is seeking to recover.

12. The second is that the proviso to clause 3(6) requires the landlord to give six months' notice of an intention to demand an advance payment or sinking fund contribution. Mr Davidoff made three points on this. The first was that the six month period was plainly a mistake. Ms Richmond's lease of Flat 8 required only one month's notice of a contribution in advance or sinking fund contribution. He had not actually seen the lease of Flat 6 when he issued the demand and assumed it was in the same form as Ms Richmond's. The Tribunal has some sympathy with Mr Davidoff on this. In most cases leases will be in an identical form, so Mr Davidoff's mistake was understandable. However, Mr Janani's lease is in the form it is. (There is no evidence whatsoever to support Mr Davidoff's suggestion that the lease may have been altered.) In our judgment Mr Janani is entitled to six months' notice of an advance payment or sinking fund demand.

13. Mr Davidoff's second point was that the demand should be treated as effective, but only payable after six months. We do not accept that. Under the lease the landlord was required to give six months for a valid notice to exist.

14. His third point (if we were with him on his second point) was that the demand could be treated as a contribution in respect of works from the date of the invoice, namely 18th August 2015, rather than works from the expiry of the six month notice period, namely some time on or after 18th February 2016. We do not accept that either. The payment in advance has to be before the works are done. Insofar as the landlord carries out works between 18th August 2015 and 18th February 2016, it can recover the actual cost of those works under the covenant in clause 3(6) to pay the cost "on demand".

15. In our judgment the notice given by the invoice dated 18th August 2015 is bad and has no legal effect. Accordingly we can determine that no service charges are due under the demand in the invoice of 18th August 2015. Nothing is owing in respect of the service charges referred to the Tribunal by the County Court.

16. This leaves a small claim of £90 in respect of an administration fee, said to have been incurred in respect of attempts to recover the service charges in dispute. Since we have held that the interim service charges are not payable, it necessarily follows that the administration charge is irrecoverable. Accordingly we disallow the administration charge as well.

Striking out

17. The directions provided for the landlord to prepare four copies of the bundle for the Tribunal. The bundle provided to the Tribunal consisted of three sections. The first section comprised 589 pages, the second section (the "C" section) 15 pages and the third section (the "D" section) 188 pages. On any view 792 pages of documents is excessive for a case about interim service charges dispute where the landlord claims £2,262.44.

18. Large numbers of irrelevant documents are included. The bundles provided to the Tribunal were not in a file; they were bound with treasury tags. There was no index. The organisation of the documents is chaotic. Key documents, such as the County Court order transferring the case to the Tribunal and the directions of Judge Latham, were missing.

19. The cumulative effect of these breaches of the directions of Judge Latham as regards bundles was that the Tribunal could not fairly have tried the matter in the one day set aside for the hearing. The tenants said, accurately in our judgment, that "it is impossible to navigate through these hundreds of pages."

20. Further the tenants say that they did not receive hard copies of the bundles at all. Instead they said that Mr Davidoff's firm sent seven emails with attachments comprising documents in the bundle. They had to print out the attachments themselves. Mr Davidoff said that his secretary had sent hard copies of the bundles to the tenants by first class post. The sending of emails was merely a "belt and braces" exercise, he said. He accepted, however, that he was not in the office when the bundles were prepared and sent out. None of the tenants received copies of the bundles. In these circumstances we do not accept that hard copies of the bundles were sent. It is inherently improbable that all of the bundles went missing.

21. Under the Overriding Objective (regulation 3 of the Tribunal's Procedure Rules) we are required to deal with cases "in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties and of the Tribunal." We also need to avoid "delay, so far as compatible with proper consideration of the issues."

22. Our starting point is that this is a low value claim for interim service charges. Whatever our determination would have been, it would have been open to the parties to apply for a determination of the final service charge demands. Accordingly, striking out the claim does not give the tenants any form of windfall gain: sooner or later they will have to pay the sums actually incurred by the landlord (subject always to payability and reasonableness).

23. Forcing the Tribunal to adjourn the case would be wholly disproportionate to this modest claim. The breaches of the Tribunal's directions are serious. No adequate explanation has been provided.

24. If we erred in our conclusion on the notice point, we would have had no hesitation in striking the landlord's case out.

Costs

25. We turn then to costs. Costs in the County Court are a matter for that Court. So far as the landlord's costs before the Tribunal are concerned, Mr Davidoff accepted that the landlord would not be able to recover these. It is appropriate to make an order under section 20C of the Landlord and Tenant Act 1985 that the landlord's costs and expenses are irrecoverable.