



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

Case reference : **LON/00AG/LSC/2019/0448**

Property : **23 Palace Court, 250 Finchley Road, London NW3 6DN.**

Applicant : **Palace Court Residents (Finchley Road) Limited.**

Representative : **In person.**

Respondent : **Mr. T. O. Okunowo**

Representative : **Calices, Solicitors.**

Type of application : **S.27A, Landlord & Tenant Act 1985.**

Tribunal member(s) : **Ms. A. Hamilton-Farey
Mr. T. Sennett**

Date and venue of hearing : **10 June 2019 at 10 Alfred Place,
London WC1E 7LR**

Date of decision : **10 June 2019**

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the application for a determination of the service charge liability of the respondent contained within the County Court Proceedings (E60YX575) be struck-out, with the exception of the admitted sum below.
- (2) The respondent Mr. Okunowo has accepted liability for the sum of £8,000.00 of the claim. This admission is contained within his admission on form N9A in the County Court Proceedings. It is not known whether the respondent has made payment of this amount, but if not, the sum should be paid within 28 days of the date of this decision.

The application

1. The applicant seeks a determination pursuant to S.27A of the Landlord & Tenant Act 1985 of the respondent leaseholder's obligation to pay service charges amounting to £17,081.80, plus costs and fees.
2. The applicant commenced proceedings in the County Court on or around 4 July 2018. The particulars of claim alleged that the respondent leaseholder was obliged by Clause 2 of Schedule 4 to the lease, to pay service charges by way of additional and further rent. The applicant stated that the respondent had not made payment in breach of that Clause and owed £17,081.80.
3. The matter was transferred to this tribunal by Order of Deputy District Judge Rand. That Order was dated 26 November 2018.

Directions:

4. Directions were issued by the tribunal on 6 December 2018 which required the respondent to provide a statement of case, setting out those matters that were disputed and why and to state how much he would be willing to pay for that item/service.
5. A Notice of Strike-Out was served on 7 March 2019 following the non-payment of the hearing fee by the applicants.
6. The Directions of 6 December 2018 were varied by Order of Judge Hewitt dated 29 March 2019. Those variations gave alternative dates

for the 6 December 2018 Directions, including a variation of the hearing date to 10 June 2019 at 10:00am.

7. The original Direction of 6 December 2018, contained a warning that, if the applicant did not comply with those Directions, then their case may be struck-out, and if the respondent did not comply, that he might be barred from continuing with the proceedings.
8. Neither party has complied with the Directions.
9. The Applicants stated in their letter to the tribunal 21 March 2019 that, due to the non-compliance with Direction 1, by the respondent they were unable to make a statement in reply and provide the documents on which they wished to rely.
10. The Respondent sought advice from the tribunal by an e-mail of 7 March in which he said that he had not received any documents from the Applicants.

The Hearing:

11. This application came before this tribunal on 10 June at 10.00am. The Applicants did not attend and were not represented. The Respondent was represented by Mr. Diavewa, legal executive of Calices, Solicitors. The tribunal considered that given the previous delays with this application, that they should proceed without the Applicants' presence.
12. Mr. Diavewa first of all informed us that, he considered the Applicants were not able to make the application because they were the managing agents for the development. However, the tribunal satisfied itself that the lease, names the Applicants as 'Landlord' and that the Clauses in the lease enabled the landlord to demand and receive service charges.
13. Mr. Diavewa also informed us that his client had been unable to comply with the Directions because he had not received the documents required from the Applicants. However, we pointed out that the first Direction from 6 December 2018, required the Respondent to set out his objections to the service charge to enable the Applicants to provide any relevant documents, and in breach of those Directions the Respondent had not done so. The Applicants were therefore at some disadvantage in understanding the case they had to answer.
14. Mr. Diavewa conceded that his client had not complied with the Directions and confirmed that we should make the decision in any event. He also accepted that the Admission form signed by his client confirmed the agreement to the Respondent's liability of £8,000.00.

Reasons for the Decision:

15. Although the Respondent did not provide a statement setting out his objections to the service charge, we consider the Applicants could have produced the documents required by the Directions. This would have included copies of accounts, invoices and receipts etc, from which the Respondent could have seen how the service charges had been calculated and apportioned.
16. We are not satisfied the Applicants have sufficiently particularised their claim. They have made no attempt to explain how the sum claimed has been calculated, and the short running balance on the account is not, in our view, sufficient to show how the tenant's liability can be ascertained.
17. It is for the Applicant to prove their case, whether the Respondent co-operates or not, the Applicants have not complied with the Directions and the tribunal is therefore unable to determine the matter fully. The tribunal gave adequate warning of the consequences of non-compliance by the Applicants in the Directions of 6 December 2018, and therefore strikes-out this application, under Rule 9(3)(a) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, with the exception of the £8,000.00 agreed by the Respondent.

Tribunal: Ms. A. Hamilton-Farey

Date: 10 June 2019.

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then 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 tribunal sends written reasons for the decision to the person making the application.

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 identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).