



**FIRST-TIER TRIBUNAL PROPERTY
CHAMBER (RESIDENTIAL
PROPERTY) and IN THE COUNTY
COURT AT EDMONTON, sitting at 10
Alfred Place, London WC1E 7LR**

Case reference : **LON/00AK/LSC/2020/0115**

County court claim number : **F26YY031**

HMCTS code (paper, video, audio) : **V: CVPREMOTE**

Property : **Flat 21 Dunraven Drive, The Ridgeway, EN2 8LH**

Applicant/Claimant : **Lonsto Investment Ltd**

Representative : **PDC Law**

Respondent/Defendant : **Sheila Monica Forteau**

Representative : **Ms Carol Douglas-Forteau, daughter**

Type of application : **Transfer from County Court – Service & Administration Charges, Ground Rent, Interest and Costs**

Tribunal members : **Judge Nicol
Mr ON Miller**

Date of decision : **8th October 2020**

ORDERS AND REASONS

Determination of the Tribunal:

- (1) The Tribunal determines that the sum of £3,640.64 (£3,678.14 less ground rent of £37.50) is payable by the Respondent in respect of the service charges for the period prior to the issue of proceedings.
- (2) The Tribunal further determines that the sum of £250 is payable by the Respondent in administration charges.

Order of the county court:

- (3) The Defendant shall pay to the Claimant the sum of £37.50 in ground rent.
- (4) The Counterclaim for a refund of overpaid service charges is dismissed.
- (5) Each party shall, within 2 weeks of this order, send to each other and to the Tribunal office any written representations as to who should pay the costs of the court proceedings and in what amount.

Relevant legal provisions are set out in the Appendix to this decision.

Reasons

1. The Applicant, the freeholder of the subject property, seeks a determination pursuant to section 27A of the Landlord and Tenant Act 1985 and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 as to the amount of service charges and administration charges payable by the Respondent.
2. Proceedings were originally issued in the county court. Following the filing and service of a Defence and Counterclaim, they were transferred to the Tribunal by order of District Judge Cohen on 10th March 2020. On 16th March 2020 the Tribunal directed that all matters would be dealt with by the Tribunal, with the Tribunal judge also sitting as a District Judge to determine matters within the exclusive jurisdiction of the county court. Therefore, the Applicant's further claims for ground rent and costs (interest was not claimed) have also been addressed within these proceedings without the need for the case to be referred back to the county court.
3. The hearing took place by remote video conference on 7th October 2020. The attendees were:
 - Mr Matthew Tonnard, counsel for the Applicant;
 - Ms Jessica Maidman, a director of the Applicant's agents, J Nicholson & Son Ltd, and a witness;
 - The Respondent; and
 - Ms Carol Douglas-Forteau, the Respondent's daughter who has been assisting her mother in this matter, including corresponding with the agents from time to time.
4. Most of the documents before the Tribunal were contained in a 337-page bundle prepared by the Applicant. The Respondent also provided several small bundles, labelled B1-5, and a Schedule of Payments aimed at showing she had paid the service charges. Mr Tonnard provided a Skeleton Argument on behalf of the Applicant.
5. The Respondent holds a lease of the subject property for a term of 87 years from 8th October 1997. It was assigned to her on 12th March 2001.

Under clauses 4(1) and 7 of the lease the Respondent is required respectively to pay the ground rent and the service charges to meet her share of the costs incurred by the Applicant in maintaining and managing the property.

6. The ground rent of £15 per year is demanded half-yearly in arrears. The service charges are demanded half-yearly in advance based on estimated costs. Any debit or credit left at the end of the year after actual expenditure has been accounted for is carried over to the following year.
7. The Respondent has sought to pay her ground rent and service charges by monthly payments in arrears. Neither the Applicant nor their agents have ever objected to her paying in this way.
8. The Applicant's case is that the Respondent's ground rent and service charge account was last in balance on 12th January 2005 when her mortgagee paid off the then arrears of £1,227.20. Since then, the total of debits on the account prior to the issue of proceedings on 4th November 2019 was £17,810.76 while the total of all the Respondent's payments over the same period was £14,132.62, leaving a shortfall of £3,678.14. This is different from the figure of £4,257.04 in the Particulars of Claim because the Respondent paid £578.90 shortly before the issue of proceedings which had not yet been accounted for.
9. The Respondent did not understand this calculation. After discussing it with her during the hearing, the Tribunal believes she still doesn't understand it. As far as she is concerned, she noted each sum demanded of her and made sure she paid enough in her monthly instalments to cover those sums. When she was told she owed £4,257.04, she looked at the breakdown which listed 5 payments of ground rent and 6 half-yearly service charge instalments for the period from 24th June 2016 to 25th December 2018. She then compiled comprehensive evidence, including bank statements, copies of cheques and cheque stubs, that her payments made during that period exceeded the sum allegedly owed. On that basis, she was adamant that she had paid what she owed.
10. However, the Respondent's reasoning contains a fundamental error. The amounts she paid during the relevant period were not applied to the amounts falling due in the same period but to older arrears. While she thought she was paying her current debts, the Applicant was applying her money to her older debts, as they were entitled to do.
11. The Respondent complained that the Applicant had refused to accept her recent payments but this is standard procedure by the agents whereby they put the account on hold after debt collection procedures have started. Further ground rent and service charges would have fallen due since then, and they are noted on the account, but they have not yet been formally demanded and so the Respondent does not yet owe them.
12. The Applicant had provided to the Respondent, and included in the bundle before the Tribunal, a comprehensive statement of account running from before she became the lessee to beyond the period now

being claimed for. Both parties accepted that it listed all the debits incurred from ground rent and service charges and all the payments made by the Respondent during her time as lessee (other than the £578.90). There were no apparent mathematical errors in the account. The running balance says that the Applicant owed £4,257.04. In order to demonstrate that she does not owe this sum, it was necessary for the Respondent to be able to point to debits on her account which should not be there or credits which should be there but weren't. During the hearing, the Tribunal did its best to explain this to the Respondent and to draw out points she could make in this context.

13. The Applicant's bundle included all the service charge demands which they say their agents sent to the Respondent. The bundle did not include the requisite Summary of Rights and Obligations but Ms Maidman explained that they were always included with demands as a matter of routine operating procedure across the entire portfolio managed by J Nicholson & Son, which the Tribunal accepts. The Respondent asserted that she had not received most of the demands.
14. The Tribunal accepts the Applicant's assertion that the demands were sent and likely received, based on the following matters:
 - (a) The demands the Respondent says she did not receive date back as far as March 2011. It would be surprising if she actually remembered receiving them.
 - (b) The demands are sent as part of routine practice by experienced managing agents. There is no reason to think their routines failed on such a scale that the Respondent's demands would not have been sent to her for so many years.
 - (c) The demands were correctly addressed.
 - (d) They would have been returned if the Royal Mail could not have delivered them. Ms Maidman explained that undelivered mail returned by the Royal Mail is noted on the relevant file as a matter of standard practice. None of the Respondent's demands were so returned.
 - (e) It is not disputed that the Respondent received other mail from J Nicholson & Son without a problem.
 - (f) The demands were sent on a regular basis, twice a year. If one had not arrived, the Respondent would have known that it was missing. There is no evidence she ever chased allegedly missing or undelivered demands.
 - (g) The Respondent did not suggest she had any problem with mail from anyone else or any reason which might explain why the demands might have gone astray.
15. The account included a period back to 1998 before the Respondent became the lessee. In correspondence, the Applicant's debt collection agency, PDC, purported to calculate the Respondent's arrears inclusive of that period. The Respondent protested that the Applicant was wrongly chasing her for the arrears of her predecessor-in-title. Her assertion is not well-founded for two reasons:

- (a) If the lessee before the Respondent had left arrears on the account, the Applicant would have been entitled to ask the Respondent to pay those arrears in any event. That is why any prudent purchaser makes sure the account is clear before buying or retains part of the purchase price in order to ensure it is cleared.
 - (b) The Respondent's predecessor did clear their account. The last date on the account before the Respondent's purchase shows the balance at zero. Therefore, the calculation of the arrears now claimed by the Applicant does not include anything dating from before the Respondent became the lessee.
- 16. The Respondent noted that sums had been incorrectly recorded on her account:
 - (a) On 5th July 2001, £441.48 for external decoration;
 - (b) On 12th June 2012, £105.60 for window repair.
- 17. However, the Respondent also conceded that these sums had been promptly refunded and were not part of the calculation of her arrears. They were put forward as "examples" which show that the agents can make mistakes with the account. Unfortunately, this does not take the Respondent's case any further forward. The Tribunal has no problem with the idea that there might be mistakes on the account but the Respondent needed to identify one or more which would actually change the calculation of her arrears.
- 18. The Respondent also alleged that £552.94 had been wrongly credited to her account, rather than the account of another lessee, on 7th July 2007 but the Tribunal could not find such a sum on the account around that date.
- 19. The Respondent had complaints about how the Applicant's agents had chased the arrears. She said she had asked them to specify when and how the arrears had arisen but claimed they never did. However, the problem with the kind of running balance shown on the Respondent's account is that it is not possible to tie the arrears down to any particular date or debt. The debt is simply what is left after all debits and credits have been accounted for.
- 20. The Respondent's daughter strongly asserted that the agents could have been clearer but the Tribunal reviewed the parties' correspondence and it is difficult to see how the various breakdowns and accounts could have been any clearer. The problem here is not the agents' lack of clarity but the Respondent's aforementioned inability to understand how her account has been calculated.
- 21. The Applicant's debt collection agency, PDC, incurred costs of £250 writing to the Respondent about her debt. The Tribunal is satisfied that this is a reasonable charge in the circumstances.

22. The Applicant indicated that they wished to recover the costs of the proceedings and had provided a Statement of Costs in Form N260 for a total sum of £5,326.40. However, it is not possible to determine costs until after judgment. The parties may now make written submissions within 14 days on who should pay the costs and in what amount and Judge Nicol will rule on this issue on the papers.
23. The Respondent had a Counterclaim. In his order of 10th March 2020, District Judge Cohen struck it out save for the Respondent's claim that she had overpaid her service charges. The Tribunal has held that she has not overpaid and, therefore, the Counterclaim must be dismissed.

Name: Judge Nicol

Date: 8th October 2020

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).

Appendix of relevant legislation

Landlord and Tenant Act 1985

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.

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

- (1) In this Part of this Schedule “administration charge” means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
 - (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
 - (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
 - (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
 - (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.
- (2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.
- (3) In this Part of this Schedule “variable administration charge” means an administration charge payable by a tenant which is neither—
 - (a) specified in his lease, nor
 - (b) calculated in accordance with a formula specified in his lease.
- (4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Schedule 11, paragraph 5

- (1) An application may be made to the appropriate tribunal for a determination whether an administration 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) Sub-paragraph (1) applies whether or not any payment has been made.
 - (3) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.
 - (4) No application under sub-paragraph (1) 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.
 - (6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
 - (a) in a particular manner, or
 - (b) on particular evidence,of any question which may be the subject matter of an application under sub-paragraph (1).

Schedule 11, paragraph 5A

- (1) A tenant of a dwelling in England may apply to the relevant court or tribunal for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs.
- (2) The relevant court or tribunal may make whatever order on the application it considers to be just and equitable.
- (3) In this paragraph—
 - (a) “litigation costs” means costs incurred, or to be incurred, by the landlord in connection with proceedings of a kind mentioned in the table, and
 - (b) “the relevant court or tribunal” means the court or tribunal mentioned in the table in relation to those proceedings.