



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

**IN THE COUNTY COURT at Bromley,
sitting at 10 Alfred Place, London
WC1E 7LR**

Tribunal reference : LON/00AZ/LSC/2019/0443

Court claim number : FoQZ761A

Property : 27B Brockley Grove, London SE4 1QX

Applicant/Claimant : Beitov Properties Ltd

Representative : LMP Law Ltd

Respondent/Defendant : Felix Henry

Tribunal members : Judge Nicol
Mr MC Taylor FRICS

In the county court : Judge Nicol

Date of decision : 17th February 2020

DECISION

Those parts of this decision that relate to County Court matters will take effect from the 'Hand Down Date' which will be:

- (a) If an application is made for permission to appeal within the 28-day time limit set out below – 2 days after the decision on that application is sent to the parties, or;
- (b) If no application is made for permission to appeal, 30 days from the date that this decision was sent to the parties

Relevant legislation is set out in an Appendix to this decision.

Summary of the decisions made by the Tribunal

1. The following sums are payable by the Respondent to the Applicant:
 - (i) Interim service charge: £400;
 - (ii) Interim service charge: £407.50;
 - (iii) Insurance premium: £364.66
 - (iv) Agents' fees: £100

Summary of the decisions made by the Court

2. The following sums are payable by the Defendant to the Claimant:
 - (v) Legal costs under clause 3(j) of the lease: £3,000;
 - (vi) Interest of £233.06.

The proceedings

3. Proceedings were originally issued against the Respondent on around 23rd January 2019 in the County Court Business Centre under claim number FOQZ761A. The Respondent filed a Defence dated 25th October 2019, in response to which the Applicant filed a Reply dated 5th November 2019. The claim was transferred to the County Court at Bromley and then in turn transferred to this Tribunal, by order of District Judge Cridge on 12th November 2019.
4. Directions were issued on 22nd November 2019 and the matter eventually came to hearing on 14th February 2020. After the proceedings were sent to the Tribunal offices, the Tribunal had decided to administer the whole claim so that the Tribunal Judge at the final hearing performed the role of both Tribunal Judge and Judge of the County Court (District Judge). No party objected to this.

The hearing

5. The Applicant freeholder, was represented by Mr Clive Moys of counsel, accompanied by his instructing solicitor, Ms Aqueelah Mohammed. The Respondent leaseholder appeared in person.

The background

6. The subject property is one of two flats in a converted terraced house. The Respondent holds a long lease of the property, which requires the landlord to provide services and for the lessee to contribute towards their costs by way a variable service charge. The specific provisions of the lease will be referred to below, where appropriate.

The issues

7. The sums claimed by the Applicant were as follows:
- | | | |
|--------|------------------------|---------|
| (i) | Ground rent | £300 |
| (ii) | Insurance 2015 | £312.73 |
| (iii) | Insurance 2016 | £342.45 |
| (iv) | Insurance 2017 | £364.66 |
| (v) | Interim service charge | £400 |
| (vi) | Interim service charge | £407.50 |
| (vii) | Arrears recovery fee | £50 |
| (viii) | Agents referral fee | £150 |
| (ix) | Interest | £233.06 |
| (x) | Contractual costs | |
8. At the start of the hearing Mr Moys conceded that the first three items had been paid on 11th July 2019 and were no longer pursued.
9. In his submissions, the Respondent conceded the following matters:
- (a) The amount of the insurance for 2015 and 2016 had been the subject of a Tribunal determination on 15th September 2017 (case ref: LON/00AZ/LSC/2017/0137). Mr Moys was unable to produce any documentation supporting the figure for 2017 but the Respondent said he had no problem with it. He accepted that the property had been insured during the relevant period and said his understanding was that the figure was actually an extrapolation from the Tribunal's figures, not the actual amount paid. Therefore, he conceded he should pay the sum claimed of £364.66.
- (b) The Respondent challenged the interim service charges. They were based on estimates of £1,000 per year for insurance and £300, rising to £315, for the fee of the agents, BLR Property Management, who had been appointed after the last Tribunal hearing to provide some distance between the parties. The Respondent felt that both figures were excessive, the insurance when compared to the Tribunal's determination and the management fee when compared to what BLR actually did for the money. However, he could not suggest alternative figures and reluctantly conceded he would pay the sums rather than continue a dispute with which he was so thoroughly fed up.
10. Therefore, only the last four issues remained.

Agents' fees

11. BLR's practice is to send out a first letter chasing arrears for which they do not charge but, if there has to be a second letter, they charge £50. If the money remains unpaid, they collate the papers and refer them on to solicitors, at a further charge of £150.
12. The Tribunal asked Mr Moys to specify the basis on which the Respondent would be liable for these items. He referred to clause 3 of the Fifth Schedule. The Fifth Schedule lists items which may be recovered from the service charge – clause 3 refers to the managing agents' costs. The Tribunal pointed out that this meant they could only claim the Respondent's apportionment of the service charge, namely 50% but Mr Moys maintained his submission.
13. The Respondent objected to paying on the basis that he was justified in withholding payment of the service charges. His unchallenged evidence (the Applicant had not served any witness statements and brought no witness of fact) was that:
 - (a) He had frequently asked to see the insurance policy but had always been refused. The credibility of this allegation is bolstered by the fact that the policy was not disclosed in these proceedings nor included in the hearing bundle prepared by the Applicant's solicitors.
 - (b) He could not understand what the sums demanded were for. He had been served with estimates, included in the hearing bundle, which had suggested that BLR would seek advance funds for cleaning, maintenance and a fire risk assessment. The property has only a small communal area which the lessees have usually cleaned and maintained themselves with the Applicant's agreement. The Respondent also stated that, when he had wanted the roof replaced, the Applicant had firmly asserted that this was the Respondent's responsibility (despite the clear terms of clause 5(4) of the lease which said otherwise). The Respondent did not see the point of the proposed charges. It was only when Mr Moys explained the situation to the Tribunal that either the Respondent or the Tribunal realised that the interim service charges were limited to insurance and management fees.
 - (c) He had made offers of payment as far back as 2017 but they had all been rejected. The hearing bundle included a letter dated 3rd October 2018 from the Respondent presenting a cheque in part-payment of the ground rent but the cheque was returned.
14. In fact, on the Respondent's best case, he did owe something, even if he did not owe the full amount demanded. The likelihood is that the agents' charges would have been incurred in any event. The Tribunal is satisfied that the sum of £100 is payable by the Respondent through the service charge in this regard.

Interest

15. The Applicant sought interest under section 69 of the County Courts Act 1984 on the sums found to be owing. This is in the exclusive jurisdiction of the county court and so Judge Nicol considered it sitting alone.
16. In order to avoid a relatively complex calculation, Mr Moys informed the Tribunal that the Applicant would forego any interest additional to the sum of £233.06 pleaded in the prayer to the Particulars of Claim.
17. The court is satisfied that any calculation of interest, even using a low rate of interest, would at least meet the figure claimed and, therefore, the Applicant is awarded the sum of £233.06.

Costs

18. Mr Moys submitted that the Respondent should pay the Applicant's costs of the proceedings, summarised in Form N260 and totalling £8,734.88, based on clause 3(j) of the lease which allows the recovery of costs incurred in contemplation of and incidental to the preparation and service of a notice under section 146 of the Law of Property Act 1925. Such a notice must be served prior to forfeiture of a lease and the Tribunal accepts that the Applicant was contemplating this because the letter before action dated 4th September 2018 stated so.
19. The court accepts that it has the power to award such costs in accordance with the authority relied on by Mr Moys, *Chaplain Ltd v Kumari* [2015] EWCA Civ 798 and that it should be on an indemnity basis. Having said that, the Applicant was represented at the hearing by two lawyers, an expense which was unnecessary and wholly disproportionate to the amount in dispute – it is not accepted that the lay client would have accepted that they had to pay for this.
20. The recovery of such costs is subject to the Tribunal's power under paragraph 5(A), Schedule 11, Commonhold and Leasehold Reform Act 2002 to reduce or extinguish the costs if it is just and equitable to do so.
21. The Tribunal is satisfied that the Applicant's costs, to be just and equitable, should be no more than £3,000, inclusive of VAT:
 - (a) It would not be just and equitable to extinguish the costs entirely because, as referred to above, the Respondent was liable to pay at least some of the sums claimed and, indeed, the Tribunal has determined that.
 - (b) However, the Respondent's criticisms set out in paragraph 14 above are justified. Mr Moys put his lay client's lack of co-operation in resolving issues down to a "personality clash" between the Respondent and Mr Geoffrey Abrahams but, from the evidence, that both makes light of a serious lack of professionalism on Mr Abrahams's part (as recorded in

the Tribunal's previous decision) and seeks to lay blame equally on both parties in a way which is unjustified. Even if the Respondent were being difficult to some extent, dealing with the occasional leaseholder who behaves in that way is a normal part of the work of a managing agent who should never lose sight of the need to manage property in a way which is cost-effective and proportionate.

(c) The costs incurred are not proportionate to the sums in dispute.

Name: Judge Nicol

Date: 17th February 2020

ANNEX - RIGHTS OF APPEAL

Appealing against the tribunal's decisions

1. A written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional office within 28 days after the date this decision is sent to the parties.
3. 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.
4. The application for permission to appeal must state the grounds of appeal, and state the result the party making the application is seeking.

Appealing against the decisions made by the Judge in his/her capacity as a Judge of the County Court

5. Any application for permission to appeal must arrive at the tribunal offices in writing within 28 days after the date this decision is sent to the parties.
6. The application for permission to appeal must state the grounds of appeal, and state the result the party making the application is seeking.
7. If an application is made for permission to appeal and that application is refused, or if no application for permission to appeal is made but, in either case, a party wants to pursue an appeal, that party must file an Appellant's Notice at the County Court office (not the tribunal office) within 28 days of the Hand Down date.

Appealing against the decisions of the tribunal and the decisions of the Judge in his/her capacity as a Judge of the County Court

8. In this case, both the above routes should be followed.

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.

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.