



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

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

Case Reference : **LON/00AP/LSC/2020/0092A**

Court Claim No. : **F7QZ11MC**

HMCTS code : **P: PAPERREMOTE**

Property : **Flat 40, Chedworth House, West
Green Road, London N15 5EH**

Applicant/Claimant : **London Borough of Haringey**

Representative : **N/A**

Respondent/Defendant : **Kwaku Asare-Konadu**

Representative : **N/A**

Type of Application : **For the determination of the
reasonableness of and the liability
to pay service charges**

Tribunal Member : **Tribunal Judge I Mohabir**

In the County Court : **Judge Mohabir**

Date of Decision : **30 April 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote hearing on the papers, which has not objected to by the parties. The form of remote hearing was P: PAPERREMOTE. A face-to-face hearing was not held because no one requested the same and all issues could be determined in a remote hearing on paper. The documents that I was referred to those which have been filed by the Applicant, the contents of which I have noted. The order made is described at the end of these reasons.

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.

Introduction

1. The Claimant/Applicant (“Applicant”) commenced proceedings in the County Court to recover estimated service charge arrears totalling £1,135.75 for the period 1 April 2018 to 25 November 2019 in respect of Flat 40, Chedworth House, West Green Road, London N15 5EH (“the property”) together with statutory interest and costs.
2. The Defendant/Respondent (“the Respondent”) filed a Defence to the claim in which he asserted that the service charges were not payable because the Applicant had failed to clean the stairs in his block of flats. In addition, he asserted that the building is not properly managed by the Applicant because non-residents have access to sell, trade and smoke drugs on the premises. Furthermore, there is anti-social behaviour, non-residents intimidate residents and there is human waste in the common parts, which pose a health and safety risk.
3. By an order dated 12 February 2020 made in the County Court at Edmonton, District Judge Cohen transferred the case to the Tribunal for determination.

4. On 25 August 2020, the Tribunal issued Directions in which it was ordered that This case will be dealt with under the Tribunal's Deployment Project whereby the Tribunal judge will also sit as a District Judge of the County Court so that any matters, such as costs and interest, which are exclusively within the court's jurisdiction, may be dealt with at the same time as the Tribunal determines the payability and/or reasonableness of the sums claimed.
5. The Tribunal's determination takes place pursuant to section 27A of the Landlord and Tenant Act 1985 (as amended) ("the Act").
6. The Respondent is the long leaseholder of the property by a lease granted to the Respondent dated 25 January 1991 for a term of 125 years ("the lease"). The Applicant is the freeholder.
7. As the Tribunal understands it, the Respondent does not challenge his *contractual* liability to pay the service charges in issue. His challenge is only to the reasonableness of the disputed costs.
8. It is, therefore, not necessary to set out the relevant lease terms that give rise to the Respondent's contractual liability to pay service charges. It is sufficient to summarise those terms in the following way.
9. By Clause 4(1) & (2) of the lease, the Respondent covenanted to pay "...without any deduction... (a) a proportionate part of the reasonable expenses...incurred ...in the repair maintenance renewal...of the building and the Estate and the provision of services therein and the other heads of expenditure as the same are set out in the Third Schedule hereto such further and additional rent (hereinafter called the "Service Charge")".
10. Under the Third Schedule of the lease, the Respondent is obliged to pay a "proportionate part of the expenses incurred...or estimated to be incurred...by the Corporation in.....the carrying out of any maintenance

repairs renewals..”. The Tribunal was satisfied that the cleaning and management costs challenged by the Respondent fall within the scope of the Third Schedule.

11. Paragraph (f) in the Fourth Schedule of the lease permits the Applicant to recover the estimated or incurred service charges annually. The service charge year operated under the lease is from 1 April in each year to 31 March in the following year.
12. Paragraph (g) in the Fourth Schedule requires the Respondent to pay the annual service charges by equal quarterly payments on the usual quarter days.
13. The estimated service charge costs claimed by the Applicant are in relation to the years 2018/19 and 2019/20. The relevant demands served on the Respondent are dated 1 April 2018 and 6 April 2019 for the sums of £1,431 and £1,556 respectively. As the Tribunal understands it, the sum of £1,135.75 represents the outstanding balance for the quarterly payments for the period 1 April 2018 to 25 November 2019.

Relevant Law

14. This is set out in Appendix to this decision.

Decision

15. The determination took place on 30 April 2021 and was based solely on the witness statement of Mr Michael Bester dated 23 November 2020 filed on behalf of the Applicant, the witness statement of the Respondent dated 6 April 2021 and documentary evidence filed by both parties.

Cleaning & Management Charges

16. The overall estimated cleaning charges for 2018/19 and 2019/20 for the estate and block were £11,716 and £8,978 and £13,701 and £22,739 for which the Respondent’s service charge contribution is £450 and £553 respectively.

17. It should be noted that the Tribunal is not concerned with the other heads of expenditure contained in the estimated service charge budget for each year because they are not challenged by the Respondent.
18. It should also be noted that the Tribunal determination is limited to the issue of whether the estimated costs at the time the service charge demands were served on the Respondent were reasonable because they were prospective costs. Therefore, the Tribunal did not approach its determination on the basis of the actual non-performance or adequacy of the cleaning and management carried out by the Applicant.
19. Based on the evidence contained in the witness statement of Mr Bester for the Applicant, the Tribunal found that it was reasonable for it to make provision in the service charge budgets for cleaning and management costs for the years 2018/19 and 2019/20 and that the estimated amounts are also reasonable.
20. The Respondent had not provided any evidence to show that the *estimated* amounts for cleaning and management costs were unreasonable. His evidence was about the actual non-performance or adequacy of these services, which is not the correct basis for challenging the prospective costs. It is open to the Respondent to make an application under section 27A of the Act to challenge the reasonableness of the costs incurred by the Applicant based on the actual non-performance or adequacy of these services in both years, but that is not within the scope of this application.
21. Accordingly, the Tribunal concluded that the Respondent was liable for the service charge arrears of £1,135.75 claimed by the Applicant for the years 2018/19 and 2019/20.

Interest

22. The Applicant has claimed both contractual interest at a rate of 8%. The rate to be awarded is within the Tribunal's discretion and it concluded that a rate of 2% was reasonable from 1 April 2018 to date. Therefore, the sum of £65.88 is awarded to the Applicant for statutory interest.

Costs

23. The Applicant has filed a statement of costs in the sum of £830. However, had this case remained in the County Court, it would have been allocated to the Small Claims track and the only costs that would be recoverable by the Applicant are the fixed costs permitted under CPR 27.14.
24. By analogy, the Tribunal adopted the same approach in relation to the Applicant's costs and awarded it the costs of issuing the claim in the sum of £70 and fixed legal costs of £80 on commencement of the claim making a total of £150.
25. The amounts awarded for the service charge arrears, interest and costs are to be paid by the Respondent within 14 days of service of this decision on him.

Tribunal Judge I Mohabir
30 April 2021

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

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 a leasehold valuation 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 a leasehold valuation 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.