



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

**IN THE COUNTY COURT at  
Clerkenwell and Shoreditch, sitting  
at 10 Alfred Place, London WC1E  
7LR**

<b>Tribunal reference</b>	<b>: LON/ooAR/LSC/2020/0014</b>
<b>Court claim number</b>	<b>: F1DE3D1F</b>
<b>HMCTS code</b>	<b>: V: CVPREMOTE</b>
<b>Property</b>	<b>: 10 Rothbury House, Kings Lynn Drive, RM3 8BY</b>
<b>Applicant/Claimant</b>	<b>: The London Borough of Havering</b>
<b>Representative</b>	<b>: Cheryl Reid (Counsel)</b>
<b>Respondent/Defendant</b>	<b>: Tolu Olubanjo</b>
<b>Representative</b>	<b>: No appearance</b>
<b>Tribunal members</b>	<b>: Judge Robert Latham Peter Roberts, Dip Arch, RIBA</b>
<b>In the county court</b>	<b>: Judge Robert Latham</b>
<b>Date of hearing</b>	<b>: 23 July 2021</b>
<b>Date of decision</b>	<b>: 29 July 2021</b>

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**DECISION**

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## **Covid-19 pandemic: description of hearing**

This has been a remote video hearing which has not been objected by the parties. The form of remote hearing was V: SKYPERREMOTEOURT. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The tribunal has had regard to the bundle of documents prepared by the applicant for the hearing and to which reference is made in this decision.

## **Summary of the decisions by the Tribunal**

1. The claimant/applicant has established that service charges of £2,789.53 are payable and reasonable. However, the Applicant has failed to satisfy the tribunal that there are any arrears in respect of the sums claimed.

## **Summary of the decisions made by the Court**

2. The Court is satisfied that a total of £2,789.53 (including ground rent of £30) is payable. However, the defendant/respondent has paid £3,093.43 towards this sum and is therefore £303.90 in credit.
3. The Court dismisses the claim with no order as to costs.

## **The proceedings**

1. On 18 July 2019, the applicant landlord issued proceedings against the respondent in the County Court Business Centre under claim number F1DE3D1F. The applicant claims arrears of service charges in the sum of £2,871.51 which were payable on 1 September 2018 together with contractual costs of £87.50. The applicant further claimed interest at 8% on the arrears and costs pursuant to the lease.
2. On 16 August 2019, the respondent tenant filed a defence. Ten issues were raised. These included averments that the applicant had not kept proper accounts and that lawful demands have not been made.
3. The proceedings were transferred to the County Court at Clerkenwell and Shoreditch. On 2 September 2019, the case was allocated to the small claims track. On 10 December 2019, DJ Bell transferred the case to this tribunal.
4. On 10 January 2020, the tribunal gave directions. The Procedural Judge noted that respondent had not made a formal counterclaim; the issues raised in her defence were rather raised by set-off.

5. The Tribunal Directed the applicant to serve (a) a breakdown of all the charges claimed; (b) service charge accounts for the years in question; and (c) copy demands for service, administration and rent charges. The case was set down for hearing on 1 May 2020.
6. On 29 January, the applicant served (a) a statement of account, dated 28 January (at p.89-90); (b) five service charge demands dated 27 February (at p.91); 26 September 2017 (p.95), (c) 26 February 2018 (at p.101); (d) 1 October 2018 (at p.98); and (e) 27 February 2019 (at p.104). The demands attached the relevant service charge accounts.
7. By 28 February, the respondent was directed to serve her statement of case. She failed to do so. On 19 March, the tribunal postponed all cases because of Covid-19. On 13 October 2020, the tribunal issued further directions and set the matter down for hearing on 18 January 2021. Pursuant to these Directions, the applicant served a further set of the service charge demands (at p.133-57).
8. By 17 November 2020, the respondent was directed to serve her statement of case. She failed to do so. On 29 October, the respondent applied to the tribunal to adjourn the hearing fixed for 18 January 2021 on grounds of ill-health within her family. On 17 December 2020, the tribunal acceded to this request.
9. On 11 June, the tribunal set the matter down for hearing today. This was emailed to the respondent. The tribunal also emailed the hearing arrangements to her.
10. On 21 July 2021, the applicant emailed a schedule of costs in the sum of £5,880. The applicant also served a witness statement from Claire Bailey, a Home Ownership Officer as Randeep Sama, the Housing Services Income Officer was on annual leave.

## **The hearing**

11. The applicant was represented by Ms Cheryl Reid (Counsel) instructed by Judge and Priestley, Solicitors. She adduced evidence from Ms Bailey. Ms Denise Hall observed the proceedings.
12. There was no appearance from the respondent. The tribunal is satisfied that the respondent was aware of the hearing and had taken an informed decision not to attend.

## **The background**

13. The Flat at 10 Rothbury House, Kings Lynn Drive, RM3 8BY has two bedrooms. The lease, granted under the Right to Buy provisions, is

dated 25 August 1997. On 15 September 2004, the respondent acquired the leasehold interest. She has not occupied the flat, but has let it to tenants. It is currently occupied by a family.

14. Ms Reid stated that the applicant did not know where the respondent lives. She has only provided business addresses.
15. There have been previous proceedings before this tribunal in LON/ooAR/LSC/2013/0433. It seems that there may also have been previous County Court proceedings. Substantial costs have been awarded against the respondent. On the Statement of Account (at p.89), there is an entry for an “adjustment” in respect of legal costs of £6,357.80, the effect of which was to put the respondent’s account, which had been in credit in the sum of £2,028.70 into arrears of £4,329.10. Ms Reid was unable to provide any adequate explanation about this adjustment.

### **The claim for arrears**

16. The applicant claims arrears of service charges of £4,071.51 which is stated to have become due on 1 September 2018. This claim is reduced to £2,871.51 as a result of payments of £1,200 which had been made. The problem is that it is impossible to reconcile these figures with Statement of Account (at p.89-90). A figure of £3,871.51 appears as the balance due on 26 September 2018. However, this was the balance after payments had been credited of £1,000 (11.5.18) and £200 (25.9.18). Ms Bailey explained that some of the difficulties in tracking the Statement of Account is that the applicant changed from a “Anite OHMS” to and “Open Housing” accounts system.
17. In his statement at p.161, Mr Samra states that the principal debt of £3,871.57 “is comprised of the sum of money owing to the Claimant by the Defendant for her service charges, accrued from 1 April 2017 to 1 April 2019 as of 28 January 2020”.
18. Ms Bailey explained that arrears of £367.22 were owing on 13 January 2017. It is to be noted that this arose before 1 April 2017.
19. Ms Bailey relies on five service charge demands:
  - (i) 27 February 2017 (at p.91): This demand includes three elements (a) advance service charge 2017/8: £658.44; (b) insurance: £106.03; (c) ground rent: £10, a total of £776.47. This debit appears in the Statement of Account (27.2.17).

- (ii) 26 September 2017 (p.95): This is a reconciliation between the actual and estimated expenditure for 2016/7 and result in a credit of £136.14. This appears in the Statement of Account as a credit of £918.64 (20.9.17) and a debit of £782.50 (21.9.17).
- (iii) 26 February 2018 (at p.101): This demand includes three elements (a) advance service charge 2018/19: £660.36; (b) insurance: £130.26; (c) ground rent £10, a total of £800.62. A debit of £790.62 appears in the Statement of Account (21.2.18). The ground rent of £10 is not included.
- (iv) 1 October 2018 (at p.98): This is a reconciliation between the actual and estimated expenditure for 2017/18 and results in a debit of £87.93. This seems to be reflected in the Statement of Account as five entries dated 1.4.18 (£117.21; -£6.37; £4.03; -£0.31 and £6.11) and a later credit of £32.74 (26.9.18). No explanation was provided as to why the account was constructed in this way.
- (v) 27 February 2019 (at p.104). This demand includes three elements (a) advance service charge 2019/20: £753.17; (b) insurance: £130.26; (c) ground rent: £10, a total of £893.43. This debit appears in the Statement of Account (1.4.19).

20. Taking into account the arrears of £367.22 which were carried forward and the five sums specified above, the Tribunal computes the total claimed to be £2,789.53, of which £30 relates to ground rent. The Tribunal is satisfied that the service charges demanded have been payable and reasonable. Whilst the respondent has raised a number of issues in her Defence, none of these have been proved.
21. Against this, the respondent has made four payments, namely £1,000 (11.5.18); £200 (25.9.18); £1,000 (10.5.19); and £893.43 (26.11.19), a total of £3,093.43. This exceeds the service charges and ground rent which the Tribunal has found to be payable.
22. Mr Reid sought to argue that the landlord had decided to appropriate some of these sums towards the unspecified liability for legal costs. The Tribunal is satisfied that this argument is unsustainable. On normal contractual principles, the attribution or appropriation of payments of rent to a particular period is the choice of the tenant as the paying party. It is only if the paying party does not appropriate the payment to a particular period or debt, that the receiving party is entitled to do so as it chooses (see Woodfall “Law of Landlord and Tenant” at [7.023.2]).

23. In the Particulars of Claim (at p.70), the applicant gives the respondent credit for the two payments of £1,000 and £200. In her defence (at p.73), the respondent pleads that the further payment of £1,000 is made in satisfaction of the sums claimed in these proceedings. She states: "I recently made a £1,000 payment to the Claimant in order to maintain good relations, but this is NOT an admission that I owe them/the Claimant anything". The final payment of £893.43 was paid in response to a demand for this precise sum, albeit that it was made some months after it was due.
24. The Tribunal dismisses this claim as the applicant has not satisfied us that the sums claimed have not been paid. We have rather computed that the respondent is in credit by a sum of £303.90. This Tribunal is used to dealing with litigants in person. The Tribunal gives Directions so that a respondent understands the nature of the claim against her. Having analysed the documents which have been disclosed, the Tribunal is satisfied that no sum is payable. We also dismiss the modest claim of £87.50 for costs pursuant to the lease. Whilst some of the payments made by the respondent may have been paid late, her statement of account has not provided an accurate record of the sums that are payable.
25. The Tribunal accepts that the respondent may have some historic liability for costs arising either from a previous County Court action or the previous application before this tribunal. Such debts have not been raised in this claim, which has been framed as a claim for arrears of service charges.

### **Costs**

26. The Respondent claims contractual costs in the sum of £5,880. In the light of the Tribunal's decision on the merits of the claim, Judge Latham is satisfied that this action should be dismissed with no order as to costs.

**Judge Robert Latham**  
**29 July 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 tribunal office which has been dealing with the case.

2. The application for permission to appeal must arrive at the Regional tribunal 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. All applications for permission to appeal will be considered on the papers
5. Any application to stay the effect of the decision must be made at the same time as the application for permission to appeal.

*Appealing against the County Court decision*

1. A written application for permission must be made to the court at the Regional tribunal office which has been dealing with the case.
2. The date that the judgment is sent to the parties is the hand-down date.
3. From the date when the judgment is sent to the parties (the hand-down date), the consideration of any application for permission to appeal is hereby adjourned for 28 days.
4. The application for permission to appeal must arrive at the Regional tribunal office within 28 days after the date this decision is sent to the parties.
5. The application for permission to appeal must state the grounds of appeal, and state the result the party making the application is seeking. All applications for permission to appeal will be considered on the papers.
6. If an application is made for permission to appeal and that application is refused, and a party wants to pursue an appeal, then the time to do so will be extended and that party must file an Appellant's Notice at the appropriate County Court (not Tribunal) office within 14 days after the date the refusal of permission decision is sent to the parties.
7. Any application to stay the effect of the order must be made at the same time as the application for permission to appeal.

*Appealing against the decisions of the tribunal and the County Court*

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