



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

Case reference : **LON/00BJ/LSC/2020/0371**

Property : **13A Thrale Road London SW16 1NS**

Applicant : **Little Linguists Nursery School Limited**

Representative : **Luke Gibon (Counsel)
Jamieson Alexander Legal**

Respondents : **Pritash Vinodchandra Patel**

Representative : **Georgia Whiting (Counsel)
Hanne & Co**

Type of application : **Service charges – section 27A Landlord
& Tenant Act 1985**

Tribunal : **Judge Mullin
Ms. Flynn MA MRICS**

Date of Decision : **17th May 2021**

REASONS FOR DECISION GIVEN ORALLY ON 17th MAY 2021

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has been not objected to by the parties. The form of remote hearing was V:CVPREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The order made is described below.

DECISION

- (1) The Respondent's oral application to rely on a bundle of evidence filed and served out of time is refused.
- (2) The Respondent is debarred from defending the application.
- (3) The Application is determined summarily in favour of the Applicant. The Service charges set out in the application amounting to £2432.02 are determined to be reasonable and payable.
- (4) The Respondent's application pursuant to s.20C of the Landlord and Tenant Act 1985 is dismissed.

REASONS

1. The Tribunal gave its decision orally at the hearing on 17th May 2021. This written decision sets out its reasons. The Tribunal apologises to the parties for the length of time it has taken to produce this decision. It has been delayed due to an administrative oversight on the part of the Tribunal.
2. The Applicant made this application in an application form dated the 1st December 2020.
3. The Tribunal gave directions for its disposal in a decision dated 12th January 2021. In the usual way the Applicant was to provide initial disclosure of certain documents, the Respondent was then ordered to do the following:

By 1 March 2021 the tenant shall send to the landlord by email:

- ***a schedule in the form attached to these directions, completed by the tenant setting out in the relevant column, by reference to each service charge year:***
 - *the item and amount in dispute;*
 - *the reason(s) why the amount is disputed; and*
 - *the amount, if any, the tenant would pay for that item.*

- ***copies of any alternative quotes or other documents*** (including any colour photographs) upon which the tenant intends to rely.
- a ***statement*** (if not already contained within the tenant's comments in the schedule) setting out:
 - *the relevant service charge provisions in the lease;*
 - *any legal submissions in support of the challenge to the service charges claimed, including argument, if liability to pay is at issue.*
 - *In respect of the insurance premium alternative premium quotations on a like-for-like basis;*
 - *the grounds for any objection to the premium;*
 - *the grounds for any objection to the level of sum insured;*
 - *comparable evidence from any broker you have contacted;*
- *any **witness statements** of fact upon which the tenant relies should identify the name and reference number of the case, have numbered paragraphs and end with a statement of truth and the signature of the witness. Original witness statements should be brought to the hearing. In addition, witnesses are expected to attend the hearing to be cross-examined as to their evidence, unless their statement has been agreed by the other party.*

4. The directions went on to provide that, once it had received the Respondent's case, the Applicant should complete the relevant column in the Respondent's schedule and file and serve its own statement of case and evidence. There was then also provision for a reply from the Respondent. A hearing date was set for 17th May 2021.
5. The directions contained the usual warning that:

“If the respondent fails to comply with these directions the tribunal may bar them from taking any further part in all or part of these proceedings and may determine all issues against it pursuant to rules 9(7) and (8) of the 2013 Rules.”
6. The Respondent failed to file or serve any schedule, statement of case or evidence in line with the directions.

7. On 7th May the Respondent applied to the Tribunal by email to postpone the hearing on 17th May 2021. That application was refused by judge Vance on 10th May 2021.
8. The Respondent then filed and served a bundle of documents including a witness statement and “reply to application” on 14th May 2021.
9. At the hearing the Respondent sought permission to rely on that bundle arguing that the hearing could go ahead and that there was no (or very little) prejudice to the Applicant in the Respondent being permitted to rely on that evidence notwithstanding its lateness. The reason for the lateness was said to be that the Respondent had intended to be represented by a family member who was a property barrister but had been “let down”.
10. The Applicant opposed that application and argued that the Respondent should be debarred from defending the application as a result of its failure to comply with the directions. The Respondent argued that there was no meaningful detail about the family member who was alleged to have been representing the Respondent, such as their identity or when their assistance was sought, and no documents or correspondence to substantiate that claim. They submitted that there was no evidence of any good reasons for the failure to comply with the directions.
11. The Applicant further argued that there was no prospect of the hearing taking place today if the application was granted because the further steps envisaged by the directions had not taken place because they were contingent upon the Respondent having served his statement of case and evidence in sufficient time for the Applicant to consider them and respond to them. That severely prejudiced the Applicant.
12. The Tribunal agrees entirely with the submissions made by the Applicant. The failure to comply with the directions was a serious breach because it effectively prevented the application from progressing in line with the directions which followed them. It meant that the Applicant did not know what the Respondent’s case was until very shortly before the hearing of the application and meant that today’s hearing could not be an effective trial because the Applicant had not had a sufficient period of time to consider and respond to it evidentially.
13. There was no good reason for the failure to comply with the directions. There is no meaningful detail about the alleged failure by a family friend to assist or represent the Respondent or any correspondence or documentation to support the Respondent’s narrative. In any event the Respondent has had from 12th January 2021 to arrange suitable representation or to make applications to extend time if he was in difficulty with complying with the directions. He failed to do so.
14. It is not in the interests of justice to grant the Application. If the application were acceded to, it would necessitate an adjournment so that the rest of the directions could be complied with. Given the conduct of the Respondent thus far, the relatively modest sums which are the

subject of the application and the undesirability of an adjournment and the consequent delay and expense to the parties and the Tribunal, it is not in the interests of justice for the application to be allowed.

15. The Tribunal also agrees that because of his failure to comply with the directions and because of the lack of any good reason for that failure, the Defendant should be debarred from defending the application.
16. The Tribunal then, having reviewed the bundle of evidence put forward by the Applicant, determines the matter summarily pursuant to rules 9(7) and (8) of the 2013 Rules.
17. The Tribunal also refuses the Respondent's oral application pursuant to s.20C of the Landlord and Tenant Act 1985. Although the Respondent has paid the service charges in dispute, he made clear he did so "under protest" (i.e. without accepting liability for them) and the Applicant was therefore entitled to proceed with this application. It is also relevant that he has been entirely unsuccessful in challenging the reasonableness of those charges.

Name: Judge Mullin

Date: 28th September 2021

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). **9(7) and (8) of the 2013 Rules.**