



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

Case Reference : **MAN/00BR/LSC/2022/0059**

Properties : **166 Olivia Court & 127 Rosalind Court
Regent Park
Asgard Drive
Salford
M5 4TG**

Applicant : **Mr Louis Smith**

Representative : **D Wood, Counsel**

Respondent : **Regent Park (Salford) RTM Co Ltd**

Representative : **N Goldstein, Counsel**

Type of Application : **Landlord and Tenant Act 1985 – s27A
Landlord and Tenant Act 1985 – s20C**

Tribunal Member : **Judge J Holbrook**

**Date and venue of
Hearing** : **21 October 2022
Manchester**

Date of Decision : **21 October 2022**

DECISION

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- A. Mr Smith's application to the Tribunal is struck out.**
- B. Mr Smith must pay costs to the Respondent in the sum of £1,522.00. If the Respondent notifies Mr Smith that it is unable to recover VAT on its legal costs, then Mr Smith must also pay an additional sum of £304.40.**

REASONS

Background

1. The dispute between Louis Smith and the RTM company which manages the development in which Mr Smith owns two leasehold flats has a long and difficult history. As far as the involvement of this Tribunal is concerned, that history may be summarised as follows:
 - a) In October 2016, Mr Smith applied (under section 27A(1) of the Landlord and Tenant Act 1985) for a determination of his service charge liability for the period up to 2018. Part of the proceedings were struck out at an early stage (to the extent that they concerned service charges which had already been determined by the County Court), but directions were given for the rest of the case to be dealt with at a hearing. Those directions required Mr Smith to particularise his objections to the service charges concerned but he evidently found it difficult to do that and, about a week before a hearing was due to take place in July 2017 to consider a strike out application made by the RTM company, Mr Smith gave notice that he wished to withdraw the application.
 - b) A substantial award of costs was made against Mr Smith notwithstanding the withdrawal of the application. Nevertheless, whilst I was satisfied that Mr Smith's conduct of the proceedings had been unreasonable, I did not at that time accept the RTM company's assertion that his conduct had also been vexatious.
 - c) In October 2017, Mr Smith made a second application for a service charge determination, relating to the years 2015–2019. That application was struck out on 15 November 2017 on the ground that it was an abuse of the process of the Tribunal.
 - d) In September 2019, Mr Smith applied to the Tribunal again, this time seeking a determination in respect of the 2014-2019 service charge years. The RTM company contended that the entire application should again be struck out on the ground that it was an abuse of process. Following a preliminary hearing, I agreed that the application should be struck out to the extent that it concerned the 2014-2016 service charge years. However, I decided that it should be permitted to proceed in respect of the

three later years (because the actual service charge costs for those years had crystallised since the withdrawal of the first application in July 2017).

- e) Compliance with the Tribunal's case management directions was again problematic, and this caused some significant delay but, on 9 December 2020, the matter came before a Tribunal chaired by my colleague Judge White for a final hearing. However, that hearing did not result in a determination of Mr Smith's service charge liability for the service charge years in question. Instead, the Tribunal struck out the proceedings on a number of grounds, including that the application was vexatious and an abuse of process and that Mr Smith had failed to co-operate with the Tribunal or to comply with directions. Essentially, the Tribunal was unable to make a service charge determination because of Mr Smith's pre-occupation with historical matters unrelated to the issues which are relevant to an application under section 27A of the 1985 Act. This pre-occupation was at the expense of any real focus on the service charge itself. The Tribunal subsequently made a further significant costs order against Mr Smith.
 - f) On 11 July 2022, the Upper Tribunal (Lands Chamber) refused Mr Smith's application for permission to appeal against the decision to strike out his 2019 application, or against the related costs order.
 - g) In the meantime, in June 2022, Mr Smith made a fourth application to the Tribunal, this time seeking a determination of his service charge liability in respect of the 2019-2022 service charge years (and an order in respect of costs under section 20C of the 1985 Act).
2. Aside from the proceedings before this Tribunal, Mr Smith has for many years also been involved in various proceedings before the courts relating to his property dispute: not only the County Court proceedings mentioned at 1(a) above, but also forfeiture proceedings initiated by his landlord and a case brought by him against the RTM company in the magistrates' court for allegedly failing to comply with section 22 of the Landlord and Tenant Act 1985.

Current proceedings

3. Although the procedural history outlined above provides relevant context, the immediate issue which I must now address concerns the application made to the Tribunal in June 2022 (mentioned at paragraph 1(g) above). On 18 July 2022, I issued a case management note to the parties in which I said this:

“Given the history of the service charge dispute between the parties, there is a possibility that this latest application should be struck out immediately under rule 9(3)(c) and/or (d), either on the ground that

the case arises out of facts which are similar or substantially the same as those of a previously decided case; and/or that the case (or the manner in which it is being conducted) is “frivolous or vexatious or otherwise an abuse of the process of the Tribunal”.

I therefore propose to decide, as a preliminary issue, whether the application should be struck out on all or any of these grounds. My provisional view is that the application should be struck out unless Mr Smith can demonstrate that the grounds for his latest proposed challenge are materially different from those on which he has sought to challenge his service charges previously. It would not be appropriate, in my view, for Mr Smith to be permitted to re-litigate the complaints he has made several times before.”

4. I directed Mr Smith to explain in writing how this application differs from the previous service charge applications he has made (and he has complied with that direction). I also gave the RTM company opportunity to make written representations, but it did not do so.
5. In addition, the parties were informed that I considered that the question of whether the application should be struck out was suitable for a paper determination, but they were invited to give notice if either of them required an oral hearing to be listed. Mr Smith subsequently confirmed that he did indeed require a hearing to consider the matter.

Hearing

6. A hearing was held at the Tribunal’s hearing centre in Manchester on 21 October 2022. Mr Smith was represented at the hearing by Mr Daniel Wood, and the RTM company was represented by Mr Nathan Goldstein, both of counsel. I am grateful for their assistance.
7. I announced my decision and gave brief oral reasons at the end of the hearing. This document explains those reasons in more detail.
8. I record in passing that, on the afternoon of 20 October, Mr Smith’s solicitors had emailed the Tribunal requesting a postponement. They explained that Mr Wood had only recently been engaged (there had been difficulties in finding counsel who could take the case) and that additional time was required for detailed advice to be obtained from him. I refused this request: the hearing had by then been listed for several weeks (for a date Mr Smith had agreed to) and the reason given did not justify postponing the hearing at such short notice and without the agreement of RTM company.

Discussion

9. On the face of it, Mr Smith’s latest application seeks a determination of his service charge liability for 2019-2022. He has not previously made an application in respect of those years and so there is obviously a presumption that he should be entitled to do so now. However, the case should not be permitted to proceed if the Tribunal considers it, or the

manner in which it is being conducted, to be frivolous or vexatious or otherwise an abuse of the process of the Tribunal. If that is the nature of the application, then it should be struck out pursuant to rule 9(3)(d).¹

10. It is important to remember that the proper purpose of making an application to the Tribunal under section 27A(1) of the 1985 Act is to obtain a determination whether a service charge is payable and, if it is, as to the persons by whom and to whom it is payable; the amount which is payable; the date at or by which it is payable; and the manner in which it is payable. The Tribunal's jurisdiction is limited to these specific issues. However, a recurring theme of the various proceedings brought against the RTM company by Mr Smith has been a focus on matters other than those specific issues. So, for example, in my decision to award costs against Mr Smith in 2017, I made the following observations:

“Mr Smith has, since 2011, been in dispute with the Respondent and others about the Regent Park development. That dispute appears to have concerned matters which included, but were not limited to, the service charge. Mr Smith has become particularly upset about the way he has been treated by the managing agent for the development and by the Respondent's solicitors, and the Respondent believes that the tribunal proceedings have been brought as a means of furthering these wider complaints, without any real intention of focusing on the service charge aspects. It is certainly apparent that Mr Smith has been preoccupied with the wider dispute described above. He has struggled to focus on the issues which were relevant to his application for a service charge determination and has repeatedly referred to issues which were not relevant.”

11. I noted that, because Mr Smith had not produced a statement of case, the RTM company had never had an opportunity to understand the reasons why Mr Smith considered that the service charges he had been asked to pay were unreasonable.
12. I returned to this theme two years later: the decision recording the outcome of the hearing at which I permitted a new challenge to proceed in respect of the 2014-2016 service charge years said this:

“... we discussed the vital importance of ensuring that focus is maintained on issues which are relevant to questions which the Tribunal has power to address. To do otherwise, or to act in a manner which delays the proceedings unreasonably, or which otherwise causes either party to incur unnecessary costs, would not be in the interests of either party and would run the risk of these proceedings being brought to an end without a final determination of service charge liability being made.”

13. Regrettably, this warning evidently went unheeded during the subsequent period of about two years (which is how long it took for that application to reach its final hearing chaired by Judge White). The Tribunal then had this to say in its decision striking out the application:

¹ Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

“Despite some attempts by Mr Smith to focus during the course of the application, the primary facts he wished to rely on related to or flowed from actions taken against him particularly the forfeiture action, his absolute mistrust of the Respondent and Mr Habib, how he was treated compared to the tenants of other properties. The Tribunal had hoped that in an oral hearing Mr Smith would be able to move on from the forfeiture case and set out why the service charges were unreasonable. Unfortunately, he continued to assert that his Witness Statement setting out his chronology was the document he wanted to “walk the Tribunal through.” He asked, “would you pay your service charge if a forfeiture action was taken against you?” It would appear that Mr Smith believed the Tribunal is the appropriate venue for a “third tier compliant” following a negative decision of the ombudsman. The applicant maintained that if only Mr Habib had dealt with his complaint, he wouldn’t have to come to a Tribunal and that he was protecting his assets. When he was asked to focus on his Statement of case and the Scott Schedule Mr Smith stated “it’s not about invoices”.”

14. The Tribunal went on to say:

“[Mr Smith] has been given every chance to concentrate his mind on what he has to establish. Mr Smith has been unable to do so and instead returns to making personal accusations and pursuing a collateral purpose that goes beyond our jurisdiction.”

15. So it is against this background that Mr Smith has now been asked to explain how the latest service charge application he made in June differs from his previous applications. Are there, for example, particular items of service charge expenditure during the last three years which he wishes to challenge because he considers them to be excessive or because the services they relate to have not been of a reasonable standard?

16. Mr Wood said that the points Mr Smith wished me to consider were largely covered by the written representations he had provided in response to my directions. Those representations ran to 19 pages and were accompanied by hundreds of pages of supporting documents. However, they disclosed no specific challenges to the payability or reasonableness of the service charges relating to the 2019-2022 financial years. Instead, Mr Smith outlined his complaints about the way in which the RTM company has been run and about how he has been treated by its officers, agents and advisers; about his concerns that Olivia Court is unsafe and the difficulties he faces in selling his flats; and about demands for payment sent to his mortgage provider. Mr Smith summarised his complaints as follows:

- “The Respondent and BPM [the RTM company’s managing agents] are not enforcing the covenants;
- The Respondent and BPM are constantly blaming the Applicant for causing nuisance;
- The Respondent and BPM are not complying with s.30a and s.22 of the LTA which has incurred the Applicant to suffer losses;
- The Respondent and BPM have failed to deal with his prospective purchaser pack request since November 2020;

- The Respondent and BPM are constantly changing the consent process, clearly treating him differently to others, whilst telling him that he is “wrong ang glazed” blaming it on his “mindset” and thinking it is acceptable to say that they “presume that he must be suffering from memory loss.” The same goes for the complaints handling procedure;
 - The Respondent and BPM are harassing and treating him differently to other leaseholders prior to and at the meetings as recently as 13 June 2022; and
 - The Applicant’s mortgage providers have been misled up to the value of £55,601.01, and BPM are suggesting that money is still owed.”
17. Mr Smith expressed the view that the RTM company is “STILL ... failing on so many levels”, and he said:
- “Had the Respondent got their act together and complied with their obligations then the Applicant believes he would be on sticky grounds to submit another application, but they have not, and they are determined to destroy the Applicant to cover their tracks.”
18. Having considered carefully Mr Smith’s written representations, I conclude that his motivation for making this latest application to the Tribunal is clearly a desire to perpetuate the airing of his various grievances against the RTM company and individuals associated with it. Those grievances do not relate to the 2019-2022 service charges and I have seen and heard nothing to indicate that Mr Smith has a legitimate challenge to make in that regard. In effect, Mr Smith appears to be attempting to pick up from the point at which his previous application to the Tribunal was struck out in 2021, and to pursue more or less the same issues which he was complaining about then and which – as has been explained to him many times – are beyond the Tribunal’s jurisdiction to adjudicate on.
19. Whilst I accept that Mr Smith’s views are genuinely held, there is no doubt that these latest proceedings are an abuse of the process of the Tribunal: by attempting to use an application for a service charge determination as a means of perpetuating other, long-standing, complaints he is seeking to use the tribunal process for a purpose or in a way significantly different from its ordinary and proper use. Given the history of the matter and, in particular, the repetitive and misconceived nature of the applications made by Mr Smith, I am also satisfied that the present proceedings are vexatious. The Tribunal thus has power to strike them out under rule 9(3)(d) and I am satisfied that doing so is appropriate to give effect to the overriding objective of enabling the Tribunal to deal with the case fairly and justly.

Costs

20. Following my decision to strike out Mr Smith’s application. Mr Goldstein made an application for costs on behalf of the RTM company. The amount sought was £4,470.00 plus VAT.

21. The Tribunal's powers to make orders for costs are governed by rule 13 of its procedural rules. The general principle (set out in rule 13(1)(b)) is that the Tribunal may only make an order in respect of costs if a person has acted unreasonably in bringing, defending or conducting proceedings before the Tribunal. The correct application of the rule requires the Tribunal to adopt the following approach when determining an application for costs:
1. Is there a reasonable explanation for the behaviour complained of?
 2. If not, then, as a matter of discretion, should an order for costs be made?
 3. If an order for costs should be made, what should be the terms of that order?
22. The behaviour complained of in this case is the bringing of the proceedings and, given the findings I have made above, there is clearly no reasonable explanation for it. I also consider that it is appropriate to make a costs order against Mr Smith in these circumstances.
23. The RTM company's costs were summarily assessed on the standard basis at the hearing. I allowed £1,000.00 for counsel's fees and £522.00 for solicitors' costs (i.e., two hours work for a Grade A fee earner in central Manchester at the recommended guideline hourly rate of £261.00). In allowing the cost of only a modest amount of time to be recovered from Mr Smith, I had regard to the fact that these proceedings had only reached a very early stage: the RTM company has not had to file a response or make written representations and the time which needed to be spent on the matter should therefore have been limited to giving initial advice and instructing counsel for the hearing.
24. The question of VAT on the costs allowed was also discussed. Mr Goldstein was not in a position to confirm whether the RTM company will be able to recover the VAT it incurs on its costs. However, should it be unable to do so, then it is appropriate that Mr Smith should pay an additional sum in this regard.

Signed: J W Holbrook
Judge of the First-tier Tribunal
Date: 21 October 2022