

12174



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

Case Reference : LON/00BG/LSC/2016/0470

Property : 6 Cambria House, Salmon Lane
London E14 7PL

Applicant : The London Borough of Tower
Hamlets

Representative : Anjum Iqbal

Respondent : Mr Jivaraj Ali Khan

Representative :

Type of Application : Section 27A Landlord and Tenant
Act 1985

Tribunal Members : Judge Carr
Mr Gowman
Mr J Francis

**Date and venue of
Hearing** : 27th March 2017
10 Alfred Place, London WC1E 7LR

Date of Decision : 9th May 2017

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the sum of £3,663.78 is payable by the Respondent in relation to the service charge demands for the years 2012 – 13 - 2015 – 16 inclusive.
- (2) The tribunal makes the determinations as set out under the various headings in this decision
- (3) The parties are invited to make any applications in relation to costs within ten days of the receipt of this decision.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 (“the 1985 Act”) as to the amount of service charges payable by the Applicant in respect of the service charge years 2012/13, 2013/14, 2014/15 and 2015/16.
2. Proceedings were originally issued in the Northampton County Court Business Centre under claim no. CoDE35P1. The claim was transferred to the County Court at Clerkenwell and Shoreditch and then in turn transferred to this tribunal, by order of District Judge Murch on 20th October 2016.]
3. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

4. The Applicant was represented by Ms Anjum Iqbal at the hearing and the Respondent appeared in person together with his McKenzie friend, Ms Elaine Kemp. Mr Schooling, Mr Brown and Mr Adecko attended for the Applicant.
5. The start of the hearing was delayed until 11.00 am at the request of the respondent.
6. Immediately prior to the hearing the parties handed in further documents, namely a skeleton argument and witness statement from Ms Iqbal and photographs and a statement in connection with the receipt of the bundle from Mr Khan.

The background

7. The property which is the subject of this application is a three bedroom maisonette in a block of eight, four on each level. The block is situated on Brunton Wharf Estate.
8. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.
9. The Respondent holds a long lease of the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease will be referred to below, where appropriate.

The issues

10. The Applicant provided a statement of case in which it identified the relevant lease provisions and explained the outstanding service charges for the years in dispute. The statement also helpfully identified the issues it believed were of concern to the Respondent. These were as follows:
 - (i) The payability and/or reasonableness of service charges totalling for service charges 2013 – 2016 taking into account issues relating to
 - a. Repairs and maintenance
 - b. Caretaking
 - c. Grounds and Maintenance
 - d. Bulk Waste
 - e. Bin Hire
 - f. Community Electricity
 - g. Leasehold Management
 - h. Household Management
 - i. Anti-Social Behaviour

Preliminary applications

11. The respondent applied to the tribunal for an adjournment of the hearing. He had originally applied for an adjournment on Friday 24th March. This was refused by a procedural judge. He repeated the application on the basis that he had not received the bundle of documents until 22nd March 2017 when it was left outside of his property. He also informed the tribunal that when he received the bundle it had been thrown upstairs and was in a dishevelled state as indicated by photographs that he showed to the tribunal. He stated that because he had no legal representation, and had disabilities that he was severely prejudiced by the delay in service of the bundle. He also informed the tribunal that the bundle was originally only 33 pages long and now it was over 500 pages and that was too long for him to be able to digest in the short time frame between the 22nd March and the hearing date. He referred the tribunal to the overriding objective and argued that an adjournment should be granted.
12. The applicant strongly resisted the application for an adjournment pointing out that considerable public resources had been spent in preparing the case and in assembling the tribunal.
13. The applicant also made a preliminary application, that the applicant be debarred from defending the proceedings on the basis of the respondent's failure to comply with directions and in particular to provide the applicant with a statement as required by Direction 9 of the original directions. The applicant pointed to the decision of the tribunal dated 8th March 2017 when the applicant was given a further opportunity to provide a statement to the applicant.
14. The respondent argued that he had provided a statement to the tribunal and that he fully intended to copy that to the applicant when he was clear on its case. He also repeated his argument in connection with the overriding objective and his status as an unrepresented litigant.
15. The tribunal adjourned briefly to consider both applications.

Decision on preliminary applications

16. The tribunal considered the wording of the overriding objective and the arguments made by the parties carefully. It determined (a) not to debar the respondent from defending the application and (b) to grant a short adjournment to enable the applicant to consider the statement the respondent had sent to the tribunal and for the respondent, with the aid of his McKenzie friend, to read the bundle of documents.

Reasons for its decision

17. The tribunal reached its decisions for the following reasons:
 - (a) an adjournment for longer than two hours at this stage would be disproportionate to the issues in dispute,
 - (b) the applicant has been attempting to recover outstanding service charges for some time and it is appropriate that the matter be resolved as soon as possible
 - (c) there are very few documents in the bundle that the respondent has not already seen and an adjournment for two hours should be sufficient for him to peruse the bundle and bring the attention of the tribunal to any relevant issue
 - (d) the tribunal has extensive experience in ensuring that an unrepresented party is not disadvantaged. It has already noted the issues that the respondent wished to raise as revealed by the bundle of documents provided
 - (e) the interests of both parties and justice are served by providing the applicant with a copy of the statement sent to the tribunal but not copied to the applicant.
 - (f) Although the tribunal notes that the respondent has been told by the tribunal very clearly that he must comply with directions, and has been told that failure to comply would result in him being debarred from defending, the tribunal is very reluctant to debar the respondent from defending the case and wishes to give him every opportunity, within reason, to do so effectively.
18. After the tribunal announced that it intended to proceed that day at 2.00pm the respondent indicated that this would put him in some difficulty as he had not brought his medications with him and that he was required to attend work. He also announced his intention to appeal the decision on the preliminary applications.
19. The tribunal informed both parties it would proceed to a determination of the substantive case at 2.00 pm and that it expected both parties to be in attendance.

20. The tribunal reconvened at 2.00 pm. The respondent did not attend but submitted a statement in connection with his inability to attend the tribunal that afternoon. This confirmed his need to attend work.
21. The tribunal heard evidence from the applicant in connection with the amount of its claim and the manner in which it had treated the respondent's monthly payments of £50.
22. It determined that the amount claimed by the applicant was payable and reasonable.
23. Both parties are requested to make any submissions about costs, including any application in connection with Rule 13 costs within ten days of the receipt of this decision. If the applicant intends to claim its costs it is asked to refer the tribunal to the relevant clauses of the lease.

The next steps

24. The tribunal has no jurisdiction over ground rent or county court costs. This matter should now be returned to the County Court at Clerkenwell and Shoreditch.

Name: Judge Carr

Date: 9th May 2017