



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

Case reference	:	LON/00AY/LSC/2019/0150
Property	:	Flat 15 Beechcroft Close, Valley Road, London SW16 2EW
Applicant	:	Beechcroft Close Management Limited
Representative	:	Roger Harris (managing agent)
Respondent	:	Sydney Baiden
Representative	:	In person
Type of application	:	For the determination of the reasonableness of and the liability to pay a service charge
Tribunal Members	:	Judge Robert Latham Susan Coughlin MCIEH
Venue and Date of Hearing	:	10 Alfred Place, London WC1E 7LR on 18 September 2019
Date of decision	:	15 November 2019

DECISION

- (1) The Tribunal determines that the sum of £1,752.20 is payable by the Respondent in respect of the service charges for the years 2018/19.
- (2) The Tribunal determines that the Respondent shall pay the Applicant £200 within 28 days of this Decision, in respect of the reimbursement of the tribunal fees paid by the Applicant.

- (3) The parties are agreed that this matter should now be referred back to the Croydon County Court to determine the issues of costs and interest.

The Application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 as to the amount of service charges payable by the Respondent in respect of the service charge year 2018/9. The Claim relates to Flat 15 Beechcroft Close, Valley Road, London SDW16 2EW (the flat).
2. On 9 December 2018, The Applicant issued a claim in the County Court Money Claims Centre under claim no. E19YY519. The Applicant claims £589.35 (wrong specified in the claim as £539.35) for the period 25 March 2018 to 28 September 2018 and £1,162.85 for the period 29 September 2018 to 24 March 2019. The Applicant further claims interest and costs.
3. Despite the information provided in the Claim Form:
 - (i) The Applicant has confirmed that Mr Roger Harris, their managing agent, is acting on their behalf.
 - (ii) Mr Baiden has confirmed that his correct correspondence address is 27 Braxted Park, Streatham Common, London, SW16 3DU. Mr Harris has confirmed that this is the address that the landlord has been using since 2017.
4. On 9 January 2019, the Respondent filed a Defence. The Respondent merely states that the sums claimed are disputed and that the matter should be referred to this Tribunal. No particulars are provided of his defence.
5. On 15 March, the case was allocated to the small claims track. On 15 March, the case was transferred to Croydon County Court. On 3 April, District Judge Keating transferred the case to this Tribunal.
6. On 23 April, the Tribunal gave Directions. On 17 July, the Tribunal amended the Directions. The Procedural Judge did not allocate this to the County Court Pilot Scheme. The Tribunal therefore has no jurisdiction to deal with the claims for interest and costs. On 17 July, the tribunal set the matter down for hearing on 18 September. On 5 September, the Applicant filed a bundle for the hearing.

The Hearing

7. On 18 September 2019, the Case was listed for 10.00. The Applicant was represented by Mr Harris. Mr Baiden did not appear. The Case Officer stated that Mr Baiden had contacted her some two weeks previously to inform her that he was unfit to attend. She told him that he needed to put this in writing. The Case Officer informed the Tribunal that no written request had been received. At the request of the Tribunal, she sought to telephone Mr Baiden, but there was no reply. She then sent an e-mail stating that if no response was received by 11.30, the Tribunal would determine the matter. No response was received and the Tribunal proceeded to determine the matter.
8. Mr Baiden subsequently telephoned the Tribunal and informed the Case Officer that he had submitted an e-mail to the Tribunal on 6 September. The Tribunal has no record of this e-mail on its server. At 12.55, Mr Baiden forwarded a copy of this e-mail. It attached a medical certificate stating that the doctor had assessed the case on 6 September and had concluded that Mr Baiden was unfit to work for a period of three weeks due to “lethargy”.
9. In these circumstances, the Tribunal issued a provisional decision so that Mr Baiden could make any written representations by 18 October. The Tribunal adopted this course because, having perused all the papers which have been filed, we were satisfied that Mr Baiden had not established any defence to the claim.
10. On 18 October, Mr Baiden made written representations. Mr Baiden has confirmed that he does not seek to challenge the reasonableness of the service charges demanded for the years 2018/9. He rather argues that he is owed £4,597.59 as a result of sums which he paid in respect of the replacement of windows in 2013. On 16 December 2013, a Tribunal (in LON/00AY/LAM/2013/0017) had decided that the wording of the leases is ambiguous, and that the windows of the individual flats are the responsibility of the individual lessees. He refers to three payments:
 - (i) A payment on 24 May 2013 of £3,540.55 made by CHL Mortgages of which £2,984.54 related to the windows.
 - (ii) A payment of £1,023.38 which he paid on 22 February 2013 in respect of the windows for Flat 15.
 - (iii) A payment of £589.67 which he paid on 3 June 2013 towards the service charges for Flat 15. He asserts that this sum was paid twice.
11. Mr Baiden does not address either of the two issues which we raised in our preliminary decision, namely:

(i) These issues have already been ventilated by the Respondent in LON/00AY/LSC/2016/0473 and have been determined by a tribunal.

(ii) The payment of £3,540.55 was not a payment in respect of Flat 15, but rather in respect of Flat 29 which Mr Baiden also owned at the material time, but sold in 2017.

Our Determination

12. The Applicant claims £589.35 for service charges payable for the period 25 March 2018 to 28 September 2018. The demand, dated 6 March 2018, is at p.47. The Applicant further claims £1,162.85 for the period 29 September 2018 to 24 March 2019. The demand, dated 24 August 2018, is at p.49. The Respondent does not challenge the reasonableness or payability of the sums demanded. The Tribunal is satisfied that the sums are payable pursuant to the terms of the lease and that the charges are reasonable.
13. The substance of the Respondent's defence is set out in a letter dated 20 May 2019, a Schedule (at p.87 of the Bundle) and his submissions dated 18 October. The Respondent asserts that he is entitled to a refund totalling £4,597.59 and that he is entitled to set-off this sum against the sums demanded. Fuller particulars of the defence are to be found in an e-mail dated 31 July 2019 and the accompanying documents at p.105-122.
14. The Tribunal is satisfied that there is no substance to this defence:
 - (i) First, this issue of set-off has already been ventilated by the Respondent in LON/00AY/LSC/2016/0473 and has been determined by a tribunal. It is a well-established principle that it is not open to a party to relitigate matters which have already been determined by a tribunal (see *Arnold v National Westminster Bank PLC* [1991] 2 AC 93 and *Virgin Atlantic Airways v Zodiac Seats UK Ltd* [2013] UKSC 46; [2014] AC 160).
 - (ii) Secondly, the Tribunal is satisfied that the sum of £2,984.54 was not paid in respect of this Flat, but rather in respect of Flat 29 which he also owned at the material time. Mr Baiden sold Flat 29 in 2017. Any issue relating to the service charges for this flat should have been resolved at the time of the sale.
15. The decision in respect of LON/00AY/LSC/2016/0473 is at p.101 and is dated 20 April 2017. The Tribunal determined that £4,715.12 was payable for Flat 15 for the period 13 March 2013 to 29 September 2016. In this application, Mr Baiden also sought to raise a defence of set-off in respect of payments of £5,969.08. This defence was struck out. The Tribunal recorded that the service charges payable for Flat 29 had now been settled by the tenant's mortgagee prior to the sale of the property.

16. LON/00AY/LSC/2016/0473 was another County Court Referral. On 31 January 2017, the tribunal gave comprehensive directions. The tenant failed to comply with the directions and failed to comply with an order requiring him to produce evidence of the payment of the sums of £5,969.08 for the replacement of the windows to both flats upon which he sought to rely as a set-off. Pursuant to the tribunal's direction, Mr Baiden's defence was struck out. Mr Baiden did not seek to appeal this decision.
17. Pursuant to this decision, the Applicant would have obtained a money judgement in the County Court to enforce the outstanding sums that were due. The Tribunal has been provided with a Statement of Account in respect of Flat 15, dated 3 May 2019 (at p.79). This records a positive balance of £589.35 as at 10 October 2017. It is thus apparent that the that the judgment debt was paid.
18. The Tribunal has had regard to the e-mails filed by Mr Baiden at p.105-122 of the Bundle. An e-mail at p.108 is dated 31 May 2017. This relates to Flat 29. Jonathan Rodaway, from Alder King, records that CHL, Mr Baiden's mortgagee, had made a payment of £3,540.55 on 24 May 2013. £2,984.54 was paid in respect of the window replacement works (which Mr Baiden contends should have been refunded) and £556.01 in respect of service charges. In an e-mail dated 3 December 2014, from Carpenter & Co, the landlord's Solicitors, to Alder King, Mr Colenutt states: "I can confirm that no action will be taken in respect of 29 Beechcroft Close. My client continues to pursue Mr Baiden in respect of arrears of service charges for 15 Beechcroft Close however, the mortgage for which is with a different company".
19. The Tribunal is therefore satisfied that the issue of the set-off has already been determined by another Tribunal. Further, the larger sum of £2,984.54 relates to Flat 29, which Mr Baiden sold in 2017.

Refund of Fees

20. The Applicant made an application for a refund of the fees of £200 that it has paid in respect of the hearing pursuant to Rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. Having regard to our determinations above, the tribunal orders the Respondent to refund the fees paid by the Applicant within 28 days of the date of this decision.

The Next Steps

21. The Tribunal has no jurisdiction over ground rent or county court costs. These matters will be returned to the Croydon County Court.

Judge Robert Latham,

15 November 2019

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).