



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

Case reference : **LON/00BK/LSC/2019/0065**

Property : **Flat 69 and 70 Raynham, Norfolk Crescent, London W2 2PQ (“the flats”)**

Applicant : **Raynham Freehold Company Ltd (“the landlord”)**

Representative : **Dale & Dale Solicitors Ltd**

Respondent: : **Abdul Razak Dhamba**

Representative : **Amphlett Lissimore Solicitors**

Type of application : **For orders limiting the ability of the landlord to recover the cost of proceedings**

Tribunal members : **Judge Angus Andrew
Andrew Lewicki BSC (Hons) FRICS
FCABE**

Date and venue of determination : **6 November 2019
10 Alfred Place, London WC1E 7LR**

Date of decision : **3 December 2019**

DECISION

Note: in this decision figures in [] are reference to page numbers in the document bundle.

Decision

1. We decline to make orders preventing the landlord from recovering the costs of the tribunal proceedings either through the service charge or as an administration charge.

The applications and the determination

2. On 15 August 2019 the tribunal received two applications from Mr Dhamba under section 20C of the Landlord and Tenant 1985 Act and under paragraph 5A of schedule 11 to the Commonhold and Leasehold Reform Act 2002. By these applications Mr Dhamba sought to limit the landlord's ability to recover its costs incurred in these proceedings either through the service charge or as an administration charge under the terms of his leases.
3. On 3 September 2019 Judge Andrew gave directions for the disposal of the applications. The directions provided for a paper determination unless either party requested an oral hearing. No such request was received and we have therefore determined the applications on the basis of the documents bundles that have been provided by Mr Dhamba in accordance with Judge Andrew's directions.

Background

4. The background can be found in our substantive decision of 8 July 2019 and we do not propose to repeat it here.

Reasons for our decision

5. In his directions Judge Andrew gave his preliminary view that the applications are limited to the costs of the tribunal proceedings and that any costs incurred in the County Court will be a matter for the Court judiciary. In its response the landlord endorses that view. In his reply Mr Dhamba suggests that the applications extend to the costs of the court proceedings so that we may limit the landlord's ability to recover its costs incurred in those proceedings.
6. District Judge Shakespeare made a limited transfer order: that is, he did not transfer the whole of the court proceedings to the tribunal. Consequently, the transferred proceedings were not accepted under the deployment pilot and as the landlord correctly points out Judge Andrew sat only as a tribunal judge and not also as a county court judge. Costs incurred in the court proceedings including any enforcement proceedings are therefore entirely for the court and this tribunal has no jurisdiction to limit the recovery of those costs by either party.

7. On the basis of more recent guidance issued by the Upper Tribunal we must first consider whether under the terms of the leases the landlord can recover its costs incurred in these tribunal proceedings either as a service charge or an administration charge.
8. As the landlord points out we decided in paragraphs 37 to 42 of our substantive decision that the landlord may recover legal costs through the service charge and there is no more to be said. As far as recovery as an administration charge is concerned the landlord points to paragraph 12 of the Fifth Schedule to the leases, which includes a lessee's indemnity in respect of all liabilities incurred by the lessor arising from the lessee's default, including "*....costs expenses actions proceedings claims....*".
9. In this case Mr Dhamba was undoubtedly in default in not paying the service charges that we found to be due from him. Consequently, we are satisfied that the costs of these tribunal proceedings are recoverable as an administration charge and indeed Mr Dhamba does not appear to suggest otherwise.
10. Mr Dhamba gives three reasons in support of his application and we consider them briefly.
11. The first is that the landlord declined his offers to settle the matter. There is a difference between the parties as to the extent of those offers. However even on the Mr Dhamba's own case he offered at most £50,000, which is substantially less than the sum we found to be due. Consequently, the landlord was perfectly entitled to refuse those offers.
12. The second is that the landlord's claim in the county court was based on a rolling account. Shortly before the hearing Judge Andrew considered the bundles and directed the landlord to provide a schedule showing the disputed service charges for each year. The direction concluded with a costs warning if the schedule was not supplied.
13. Lessors invariably rely on rolling accounts to justify claimed arrears in court proceedings. That is not inherently unreasonable because rolling accounts are usually comprehensible to the lessee who should have received the relevant demands and will know what payments have been made. They do not however assist this tribunal, which is required to determine whether a service charge is payable. The direction was made to assist the tribunal rather than by way of a criticism of the landlord's conduct.
14. The third is that there was an ambiguity in a previous tribunal decision [see paragraphs 8 and 17, 18, 20 and 21 of our substantive decision]. In the first place we do not accept that an ambiguity in a previous decision is a sufficient ground for depriving a lessor of a property right. However, even if we are wrong about that, paragraph 20 of our substantive decision makes it clear that the interpretation of the previous tribunal decision advanced by Mr Dhamba was not tenable.

15. The landlord draws our attention to the Tenants of Langford Court v Doren Limited [LRX/37/2000]. In his concluding remarks His Honour Judge Michael Rich QC said:

“Oppressive and, even more, unreasonable behaviour however is not found solely amongst landlords. Section 20C is a power to deprive a landlord of a property right. If the landlord has abused its rights or used them oppressively that is a salutary power, which may be used with justice and equity; but those entrusted with the discretion given by s. 20C should be cautious to ensure that it is not itself turned into an instrument of oppression”.

16. There is nothing before us to suggest that the landlord has acted unreasonably, let alone oppressively. Indeed, if there was any unreasonable behaviour it was on the part of Mr Dhamba who, as we pointed out in paragraph 26 of our substantive decision, became fixated by an unsupportable belief that the landlord had failed to credit payments to his account.

17. Ultimately the landlord was wholly successful in these proceedings and it would be both unjust and inequitable to deprive the landlord of its property rights. We decline to make the orders sought.

Name: Judge Angus Andrew

Date: 3 December 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).