



**FIRST-TIER TRIBUNAL  
PROPERTY CHAMBER (RESIDENTIAL  
PROPERTY) and  
IN THE COUNTY COURT AT CENTRAL  
LONDON, sitting at 10 Alfred Place,  
London WC1E 7LR**

**Tribunal Reference** : **LON/00AG/LSC/2019/0363**

**Court claim number** : **064MC399**

**Property** : **71-75 Fortress Road, Kentish Town,  
London NW5 1AG**

**Applicant/Claimant** : **71-75 Fortress Road Freehold Ltd**

**Respondent/  
Defendant** : **Deona Demming**

**Type of Application** : **Reasonableness of and liability to pay  
service and administration charges**

**Tribunal Members** : **Judge Nicol  
Mr TW Sennett FCIEH**

**In the county court** : **Judge Nicol (sitting as a Judge of the  
County Court [District Judge])**

**Date and venue of  
Hearing** : **3<sup>rd</sup> February 2020  
10 Alfred Place, London WC1E 7LR**

**Date of Decision** : **3<sup>rd</sup> February 2020**

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**DECISION**

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**Summary of the decisions made by the Tribunal**

1. The Tribunal having decided that the claimed service charges are not currently payable, the claim for service charges is dismissed.

**Summary of the decisions made by the Court**

2. The following sums are payable by the Defendant to the Claimant by 16<sup>th</sup> March 2020:

- (i) Ground rent: £125;
- (ii) Legal costs: £150;
- (iii) Interest at 2% calculated in the case of ground rent from 29<sup>th</sup> December 2018 to the date of judgment: £2.75.

**Reasons**

- 3. The order of the court, incorporating the order of the Tribunal, has been provided with these reasons which explain the basis for those orders. Relevant legislation is set out in the Appendix to these reasons.
- 4. The parties are hereafter referred to by their Tribunal designation, namely Applicant and Respondent.
- 5. The Applicant is a company which owns the freehold of the subject property, a three-storey building containing 7 flats and one commercial unit. The 7 leaseholders (one owns 2 units), including the Respondent, all have equal shareholdings in the Applicant. All the leaseholders are directors of the Applicant, other than the Respondent and one who is relatively recently deceased.
- 6. The Applicant issued a claim in the county court (claim no: 064MC399) for the following:
 

(a) Service Charges	£173.69
(b) Ground rent	£125
(c) Interest	
(d) Costs	
- 7. These are modest amounts but the Applicant is keen to establish the principle of liability which will govern liability for other service charge years which are not part of these proceedings.
- 8. On 9<sup>th</sup> September 2019 District Judge Avent ordered that the claim be transferred to the Tribunal. There was no Counterclaim.
- 9. The Tribunal held a case management conference on 25<sup>th</sup> September 2019, attended by both parties. Amongst other matters, the directions provided that the Judge chairing the Tribunal at the final hearing would also sit as a judge of the county court. This is because the Tribunal only has jurisdiction to deal with the service charges – the other 3 items are exclusively within the jurisdiction of the court and, by sitting as a county court judge, the Tribunal judge would be able to dispose of all items in dispute.
- 10. Unfortunately, the Applicant misunderstood the directions and failed to comply with those relating to the bundle of papers to be used at the final hearing. The hearing listed for 18<sup>th</sup> December 2019 was instead used as a further case management hearing and further directions were issued.

11. At the hearing on 3<sup>rd</sup> February 2020, the Applicant was represented by Mr Steve Rodley, a director, accompanied by Mr Pushpinder Khaneka, another director, and the Respondent attended in person, accompanied by her husband, Mr Derek Halstead.
12. As the Respondent expanded on her case, it became clear that her defence to the demands for ground rent and service charges rested almost entirely on a set-off. She accepted that her lease specified the ground rent and that all the works which constituted the basis for the service charges had been done at a reasonable price. However, she argued that her contributions for the past 20 years or so had not been applied for proper purposes under her lease and the sums claimed in these proceedings should be paid out of those funds.
13. The Respondent first raised her concerns with her fellow lessees and directors of the Applicant company by email in February 2018. Despite what she says was a lack of any response, she did not take legal advice, issue her own proceedings or raise this explicitly as a Counterclaim and set-off in the current proceedings. As at the hearing on 3<sup>rd</sup> February 2020, there was no valid Counterclaim or set-off. As Judge Nicol explained to the Respondent, in the absence of such, it would be unfair on the Applicant to try to determine this now but it would be open to the Respondent to pursue her claims at a later date. Nothing in this decision constitutes any comment on the merits of any such claims.
14. In relation to the ground rent, the Respondent pointed to the Applicant's practice of waiving it in previous years. The Applicant's thinking was that their expenses were adequately covered by the service charges but, when they could not go ahead with their plans due to the Respondent's non-payment of the ground rent or service charges for 2017-18, they called an EGM in November 2018 and changed their plans. They decided that, pending resolution of the dispute with the Respondent, they would only seek the ground rent and service charges to cover sums already incurred. The lessees other than the Respondent had paid service charges in advance so these were refunded, less amounts equal to the revised liability for the ground rent and service charges.
15. The Respondent could not be refunded in the same way because she had not paid. In relation to the ground rent, the Applicant served a formal demand for the amount of £125 specified in the lease. There did not appear to the Tribunal to be any basis on which the past practice of waiving the ground rent for each previous year could bind the Applicant for this year, nor did the Respondent propound any. Therefore, the court is satisfied that the ground rent is owing as claimed.
16. In relation to the service charges, the Tribunal asked to see the relevant demand. Mr Rodley pointed to documents which did not comply with the following statutory requirements:

- Under section 47 of the Landlord and Tenant Act 1987, any written demand for service charges must contain the name and address of the landlord – the name was specified but not the address.
  - Under section 21B of the Landlord and Tenant Act 1985 a demand for the payment of a service charge must be accompanied by a summary of the rights and obligations specified in the Service Charges (Summary of Rights and Obligations, and Transitional Provision) (England) Regulations 2007. The summary was not attached.
17. The service charges are not payable unless and until these provisions are complied with. As of the date of the hearing and this decision, the service charges claimed by the Applicant are not payable. This might change if the Applicant attempts compliance later but that is not relevant to this decision.

*Interest*

18. The county court has the power under section 69 of the County Courts Act 1984 to award interest on the sums found to be owing by the Respondent. Mr Rodley sought interest from the date of issue of proceedings, 19<sup>th</sup> December 2018. The claim put the rate of interest at 8% but the court is satisfied that 2% is sufficient with current low rates.
19. The court calculates the interest payable to the Applicant by the Respondent as £2.75 (£125 x 401 days x 2%).

*Costs*

20. Mr Rodley sought the court fee of £300 pursuant to the court's powers under the Civil Procedure Rules. The Applicant having failed on part of its claim, the court awarded £150.

*Permission to appeal*

21. The Respondent objected strongly to having to pay anything, in particular the court fee, in the light of her set-off claim. The court treated this as an application for permission to appeal.
22. For reasons already set out above, there was not valid claim for a set-off in front of the court or Tribunal. The Respondent is free to seek legal advice and pursue that claim in due course but, in these proceedings, she failed to succeed in part of her defence. Therefore, permission to appeal is refused.

**Name:** NK Nicol

**Date:** 3<sup>rd</sup> February 2020

## **Appendix – relevant legislation**

### **Landlord and Tenant Act 1985**

#### **Section 18**

- (1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
  - (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
  - (b) the whole or part of which varies or may vary according to the relevant costs.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose -
  - (a) "costs" includes overheads, and
  - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

#### **Section 19**

- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
  - (a) only to the extent that they are reasonably incurred, and
  - (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard; and the amount payable shall be limited accordingly.
- (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

#### **Section 27A**

- (1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to -
  - (a) the person by whom it is payable,
  - (b) the person to whom it is payable,
  - (c) the amount which is payable,
  - (d) the date at or by which it is payable, and
  - (e) the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
  - (a) the person by whom it would be payable,
  - (b) the person to whom it would be payable,
  - (c) the amount which would be payable,
  - (d) the date at or by which it would be payable, and

- (e) the manner in which it would be payable.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which -
  - (a) has been agreed or admitted by the tenant,
  - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
  - (c) has been the subject of determination by a court, or
  - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

## **Commonhold and Leasehold Reform Act 2002**

### **Schedule 11, paragraph 5A**

- (1) A tenant of a dwelling in England may apply to the relevant court or tribunal for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs.
- (2) The relevant court or tribunal may make whatever order on the application it considers to be just and equitable.
- (3) In this paragraph—
  - (a) “litigation costs” means costs incurred, or to be incurred, by the landlord in connection with proceedings of a kind mentioned in the table, and
  - (b) “the relevant court or tribunal” means the court or tribunal mentioned in the table in relation to those proceedings.

## **ANNEX - RIGHTS OF APPEAL**

### *Appealing against the tribunal's decision*

1. A written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional office within 28 days after the date this decision is sent to the parties.
3. 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.
4. The application for permission to appeal must state the grounds of appeal, and state the result the party making the application is seeking.

### *Appealing against the decisions made by the Judge in his capacity as a Judge of the County Court*

5. The Defendant's application for permission to appeal having been refused at the hearing, if a party wants to pursue an appeal, that party must file an Appellant's Notice at the County Court office (not the Tribunal office) within 28 days.

*Appealing against the decisions of the tribunal and the decisions of the Judge in his capacity as a Judge of the County Court*

6. In this case, both the above routes should be followed.