



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

Case Reference : **LON/00AN/LSC/2020/0103
P: PAPERREMOTE**

Property : **32 Ravillous House, 273 King
Street, London W6 9QF**

Applicant : **Ms Xiaoling Chen**

Representative : **In person**

Respondents : **FirstPort Property Services No.4
Limited**

Representative : **J B Leitch Solicitors**

Type of Application : **Reimbursement of Tribunal fees
Section 20C Landlord and Tenant
Act 1985**

Tribunal Members : **Judge Donegan**

**Date of Paper
Determination** : **02 September 2020**

Date of Decision : **03 September 2020**

DECISION

This has been a remote hearing on the papers which has not been objected to by the parties. The form of remote hearing was P: PAPERREMOTE. A face to face hearing was not held because it was not practicable and all issues could be determined on paper. The documents that I was referred to are in a determination bundle of 150 pages, the contents of which I have noted.

Decision of the Tribunal

- (a) **The respondent shall pay the applicant £100 within 28 days of this decision, in reimbursement of the Tribunal application fee, pursuant to Rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2012.**
- (b) **The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 ('the 1985 Act') so that 50% of the respondent's costs of these proceedings may not be passed to the applicant through any service charge.**

The background

1. The applicant is the long leaseholder of 32 Ravillous House. The respondent manages Ravillous House and is the successor to Pentland Estate Management Limited, being the Manager party the applicant's lease.
2. This case concerns an end of year 'adjustment payment' of £932.66 for 2016/17, demanded in March 2019. The applicant disputed liability but paid the demand in full. She subsequently made a complaint to The Property Ombudsman ('TPO'), who issued a proposed decision on 03 January 2020. This required the respondent to pay compensation of £360 and the TPO directed the respondent "*...to provide a clear and understandable step-by-step explanation of how the payment of £932.66...was calculated.*" Both parties accepted the decision and the compensation has been paid.
3. The respondent failed to provide an explanation of the adjustment payment and applicant submitted an application under 27A of the 1985 Act on 25 February 2020, received by the Tribunal on 27 February. In the application form she sought a determination of service charges for the period October 2016 to December 2017 ('the Service Charge Application') and asked the Tribunal to decide:
"...whether I am liable for the 'adjustment' payment, in light of FP's failure to provide a reasonable explanation, and whether the adjustment amount demanded was correct, taking account the fact that I did not own the Property for the whole of the 2016-2017 service charge period and the calculation done by myself showing a 'refund'."
4. The applicant also sought:
 - reimbursement of Tribunal fees;
 - an order limiting the respondent's costs in the proceedings under section 20C of the 1985 Act; and
 - an order reducing or extinguishing her liability to pay an administration charge in respect of litigation costs, under

paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.

5. Ms Melanie Rayner, the Group Head of Customer Relations for FirstPort Limited, rang the applicant on 28 February 2020 and explained that the adjustment payment had been demanded in error. She confirmed this in an email of the same date, which stated that there should have been a service charge credit of £310.09 on the transfer of the flat and a sum of £1,242.75 would be refunded. This sum was paid to the applicant on 06 March 2020.
6. A detailed explanation of the respondent's accounting error was given in an email from Mr Joyarul Islam of FirstPort to Ms Rayner dated 27 February 2020. However, this email was not disclosed to the applicant until 05 May 2020, when it was appended to the respondent's first statement of case.
7. The Tribunal acknowledged the application in a letter to the applicant dated 04 March 2020.
8. A telephone case management hearing took place on 07 July 2020, attended by the applicant and counsel for the respondent, Mr Paul Sweeney. At the start of the hearing, Judge Donegan explained that the adjustment payment had been withdrawn so there was no service charge to determine. He also explained that the Tribunal had no jurisdiction to order further clarification of this demand. In the light of these explanations, the applicant withdrew the Service Charge Application but said she wished to pursue the cost applications. Mr Sweeney explained that the respondent would seek to recover its costs from the service charge account, rather than applicant individually. This meant a paragraph 5A order was unnecessary and Judge Donegan then gave directions on the section 20C and fee refund applications ('the Costs Applications'). He allocated the case to the paper track, to be determined upon the basis of written representations, with the agreement of the parties. Neither party has requested an oral hearing and the paper determination took place on 02 September 2020.
9. The relevant legal provisions are set out in the appendix to this decision.

The parties' submissions

10. The respondent produced a determination bundle in accordance with the directions. This included copies of the application and supporting documents, the parties' statements of case and appendices (including the lease) and other relevant correspondence and documents.
11. The applicant seeks reimbursement of the Tribunal application fee (£100) and a section 20C order. Her detailed grounds were set out in a

statement of case dated 20 July 2020, with nine appendices. In summary, she contends that the respondent acted unreasonably in:

- (a) erroneously demanding the adjustment payment;
- (b) failing in its management duties;
- (c) failing to respond to her communications and complaints;
- (d) failing to implement the TPO decision within a reasonable period;
- (e) failing to rectify the erroneous demand for more than two years; and
- (f) failing to disclose Mr Islam's email, explaining the accounting error, until 05 May 2020.

The applicant contends that the Tribunal fee and the respondent's costs were incurred as a direct consequence of these failings and could have been avoided if the respondent had "*worked with due diligence*".

- 12. The applicant pointed out that other leaseholders, with less resilience and financial knowledge, might not have discovered or pursued the respondent's failings. She also referred to the parties' unequal access to legal advice and suggested the respondent "*...should pay for its own mistakes and learn a lesson from the weakness identified.*"
- 13. The applicant did not challenge the respondent's ability to recover its costs from the service charge account, under her lease. Section 1 of part 1 of the fifth schedule sets out various expenses that can be recovered by the Manager, including:
 - "4. *The fees and disbursements paid to any accountant solicitor or other professional person in relation to the preparation auditing or certification of any account of the costs expenses outgoings and matters referred to in this Schedule and the collection of the rents service and other charges reserved by this lease and the rent service and other charges reserved respectively the leases and transfers of other Properties within the Estate and in obtaining professional advice and representation in respect of any matters arising under this lease or the transfers of leases of the other Dwellings together with standard capping fees including those relating to company secretarial.*"
- 14. The respondent relies on two statement of case (and appendices), dated 05 May and 03 August 2020. It contends that the Service Charge Application should never have been made, as the adjustment payment was determined in the TPO decision. If correct, the Tribunal had no jurisdiction to determine this service charge by virtue of section 27A (4) of the 1985 Act. The respondent also contends that the applicant should have withdrawn the Service Charge Application on 28 February 2020, being the date of the Ms Rayner's telephone call and email. Alternatively, the application should have been withdrawn on 06 March 2020, being the date of the refund, or 05 May 2020, when Mr Islam's

email was disclosed. Had the application been withdrawn on any of these dates then the respondent's costs could have been avoided. Had the application been withdrawn on 28 February or 06 March 2020 then the application fee could have been avoided, as the application had not been processed at that time.

The Tribunal's decision

15. The respondent shall reimburse the Tribunal application fee paid by the applicant.
16. 50% of the respondent's costs of these Tribunal proceedings shall not be regarded as relevant costs to be taken into account when determining the applicant's service charges.

Reasons for the Tribunal's decision

17. When considering a section 20C application, the Tribunal may make such order as it considers just and equitable in the circumstances. This involves the exercise of discretion and relevant factors will include "*the conduct and circumstances of all parties as well as the outcome of the proceedings in which they arise*" (HH Judge Rich QC in ***Tenants of Langford Court Limited v Doren LRX/37/2000 Lands Tribunal***).
18. The Tribunal first considered whether the respondent's legal costs of these proceedings are contractually recoverable under the applicant's lease. These come within the paragraph 4 of section 1 of part 1 of the fifth schedule, being costs of "*representation in respect of any matters arising under this lease*".
19. It is convenient to deal with the section 27A (4) point next. It is clear from the decision dated 03 January 2020 that the TPO did not determine the adjustment payment. On page 6 the Ombudsman stated: "*I am ultimately unable to conclude that the Complainant is not legally liable for the adjustment payment, since this is a matters (sic) that can only be determined by the Tribunal or a Court.*"

This means the Tribunal had jurisdiction to determine the Service Charge Application when the application was submitted on 25 February 2020.
20. The Tribunal finds that the respondent acted unreasonably in demanding the erroneous balancing payment in March 2019 and then failing to withdraw this demand, despite the applicant's communications and the involvement of the TPO, until 28 February 2020. It follows that the applicant was entirely justified in making the Service Charge Application.

21. The respondent belatedly withdrew the demand on 28 February 2020 and refunded the overpayment on 06 March. The applicant should have withdrawn the Service Charge Application within a few days of the refund. By this stage it was clear that the disputed service charge had been withdrawn and the application was redundant. The Tribunal finds that the Service Charge Application should have been withdrawn by 13 March 2020, at the very latest.
22. The delay in disclosing Mr Islam's email of 27 February 2020 does not alter the position. The applicant knew the disputed service charge had been withdrawn on 28 February and received her refund a week later. It was unnecessary to await a detailed explanation of the respondent's accounting error, before withdrawing the Service Charge Application. In the application form she asked the Tribunal to decide if she was liable for the adjustment payment. Once this demand was withdrawn, there was nothing for the Tribunal to decide.
23. The Tribunal accepts that the application fee was incurred as direct consequence of the respondent's failings. Had the applicant withdrawn the Service Charge Application by 13 March 2020 then she would still have incurred the £100 application fee, which was paid by cheque. This would have been banked on the day the application was received (27 February) or shortly thereafter. The application had been processed by 13 March, as evidenced by the Tribunal's acknowledgment letter dated 04 March. The application fee was reasonably incurred and the respondent should reimburse this fee.
24. The respondent's costs up to 13 March 2020 were also attributable to its failings. However, the costs from 14 March onwards arose from the applicant's delay in withdrawing the Service Charge Application and her continued pursuit of the Costs Applications. Part of these costs relate to the contested fee refund application, which has been decided in her favour.
25. Having regard to the conduct and circumstances of both parties and the outcome of the case, it is appropriate to make a section 20C order but this should not extend to all of the respondents' costs. Rather, the just and equitable order is that half the costs should be disallowed.

Name: Tribunal Judge Donegan **Date:** 03 September 2020

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).

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 20C

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.
- (2) The application shall be made—
 - (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
 - (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
 - (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
 - (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
 - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

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.

The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013

Orders for costs, reimbursement of fees and interest on costs

Rule 13

- 13.-** (1) The Tribunal may make an order in respect of costs only –
- (a) under section 29(4) of the 2007 Act (wasted costs) and the costs incurred in applying for such costs;
 - (b) if a person has acted unreasonably in bringing, defending or conducting proceedings in –
 - (i) an agricultural and land drainage case,
 - (ii) a residential property case, or
 - (iii) a leasehold case; or
 - (c) in a land registration case.
- (2) The Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor.

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