



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

**Case reference** : **LON/00BB/LSC/2019/0259**

**HMCTS code (paper, video, audio)** : **P:PAPERREMOTE,**

**Property** : **Flat 19, The Renovation, 4 Woolwich Manor Way, London E16 2GE.**

**Applicant** : **ION Residents Management Co. Ltd**

**Representative** : **PM Legal Services.**

**Respondent** : **Mr. A. N. Atarid**

**Representative** : **In person.**

**Type of application** : **Application for permission to appeal**

**Tribunal member(s)** : **Ms. A. Hamilton-Farey  
Mr. P. Roberts DipArch RIBA  
Mr. N. Miller**

**Venue** : **10 Alfred Place, London WC1E 7LR**

**Date of decision** : **20 October 2020.**

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**DECISION ON LEAVE TO APPEAL AND CONSIDERATION OF  
DOCUMENTS SUBMITTED BY THE PARTIES IN RELATION TO  
THE CASH ACCOUNTING EXERCISE.**

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**Covid-19 pandemic: description of hearing**

This has been a remote determination on the papers which has not been objected to by the parties. The form of remote determination was PAPERREMOTE, on the respondent's application for leave to appeal the tribunal's decision of 12 February

2020. The Covid-19 situation has delayed the tribunal access to documents and has therefore delayed this decision. A face-to-face hearing was not practicable, and all issues could be determined on the papers.

#### **BACKGROUND:**

- a. The tribunal issued its decision following the substantive hearing of this matter on 12 February 2020.
- b. At the hearing the tribunal was unable to deal with the cash accounting exercise requested by the respondent due to a lack of documentation. That documentation has now been supplied and considered by the tribunal which now makes the following decision.
- c. The respondent also appeals against the determinations made by the tribunal under number (1) page 2 and 18a,b,c,d,e,f,g,h,i,j,l,m,n,o,p,and r in relation to the years 2015, 17 and 2018, and says that the amounts awarded by the tribunal are not the same as those which equate to his service charges for the years in question. He also says that the applicant has failed to provide relevant invoices and that both he, and the tribunal have been deprived of the opportunity to scrutinise the documents. That accounts have not been provided to support the expenditure and they have not been certified in accordance with the lease. Finally, the respondent says that £15,696.08 be removed from the tribunal's 12 February decision, because he is not liable for this sum.

#### **THE TRIBUNAL'S DECISION ON LEAVE TO APPEAL:**

- d. The tribunal refuses the application for leave to appeal the decision of 12 2020, on the basis that the tribunal considered the parties submissions, which were poor at best, and did the best it could with that information. There was no evidence before the tribunal that the figures provided to us were incorrect in terms of the service charges claimed.
- e. With relation to the cash account, the tribunal had been unable to make a decision in this matter because no evidence was supplied to it at the hearing. Having now been provided with further documentation, together with the previous tribunal decision dated 1 June 2011 relating to this property, we find that, given the new documentation provided we will review our decision and amend it as follows:

#### **THE TRIBUNAL'S REVISED DECISIONS:**

1. The decision of the tribunal dated 12 February 2020 stands, with the exception that the service charges determined are not payable until the accounting certificates have been properly signed.
2. Having received the cash account documents, and the statements of the applicants and respondent, the tribunal determines that the cash account as at 30/6/2009 had a zero balance.

3. That various credits detailed below should be applied to the respondent's cash account.
4. That where identified, no further credits are due on this account.

## **REASONS FOR THE REVISED DECISIONS:**

### **The previous tribunal decision:**

5. By a decision dated 12 July 2011, the LVT dealt with a transfer from the County Court in relation to a claim of £17, 191.59 plus costs and interest. This sum was in relation to service charge arrears for the years 2003- 30 June 2009 inclusive, and according to the account history statement provided was the sum outstanding on 30 June 2009 and included 'on-account' sums demanded. However, the respondent has taken the sum outstanding at the end of June 2009 to be £17, 894.58, the increase being due to the application of administration and legal fees to the balance at the end of June.
6. It appears that shortly before that hearing the applicants increased the sum claimed to £28,575.39, which, the tribunal was told, were the arrears of service charge at the date of the hearing. The tribunal was unable to deal with the increase claimed because it had neither been referred by the County Court, nor had been the subject of a stand-alone application, and therefore confined itself to the original claim.
7. Of the £17,191.59, the tribunal determined that some sums were not payable or reasonable and set out percentage deductions for the years 2003 and 2007 of 30%, but confirmed that the on-account demand for 2008 was payable in full, subject to a 10% reduction.
8. Using the tribunal's deductions, the respondent was liable to pay:
  - a. £5,841.65 (1/1/03 – 31/12/2007)
  - b. £5196.27 (1/1/08-31/12/08)
  - c. £2,788.00 (1/1/09 – 30/6/09)

A total of £13,825.73. The respondent admits that he paid £9,391.18 and the County Court Order dated 3 July 2013 confirmed that he had a zero balance as at 30 June 2009, but also made a costs award against the respondent of £2,039.14.

9. In our view the discrepancy between what the LVT determined as payable and the amount paid by the respondent, could be explained by the lack of information to the tribunal of the sums claimed for interest/fees.

10. We disagree with the applicant's comment in paragraphs 9 – 12 of their latest submission.
11. The LVT did determine that £17,191.59 was not reasonable or payable, in contract to the applicants' view that it did not make such a statement, and given the deductions above said that £13,825.73 was reasonable and payable.
12. Given the payment by the respondent and the discrepancy/lack of clarity around the amount of interest/fees claimed during the 2011 hearing, we find that the respondent's account was at zero on 30 June 2009.
13. **The tribunal determines that the sum of £17,191.50 should be removed from the cash account and be substituted with the sum of £9,391.18, and that this was paid by the respondent on 12 May 2012.**
14. **The tribunal determines that, in accordance with the Court Order the respondent was liable to pay costs of £2,039.14, and this should be recorded on the cash account.**
15. **This deals with the decision of the LVT in July 2011.**

#### **FURTHER QUERIES:**

The tribunal has used the documents supplied by the parties and finds as follows:

#### **Legal Fees:**

16. From the cash account provided, the tribunal is satisfied that the legal fees of £640.43 (2/3/2009), £532.06 (21/4/2009), £562.92 (1/7/09), £701.18 (23/7/2009) and £156.00 (22/6/12), have already been credited to the respondents account and **no further credits are due.**
17. The applicants should credit the respondents account with the £54.00 (25/3/11) and £236.00 (20/1/12) as per the correspondence from Dean Jackson. **The applicants should credit the respondent's cash account with £290.00 in relation to these fees.**

#### **Incorrect allocation of £2,504.00 13 December 2011.**

18. The tribunal confirms that this sum did not form part of the service charge for the period 2003 – 2007, and the cash account records that the service charges for 2003 – 2007 have been reduced. In our view this payment has been taken into consideration in the zero balance as at 30 June 2009. **A further credit against these years is therefore not required.**

**Payment of £2,039.14 2 October 2013.**

19. This payment relates to the costs of the County Court proceedings awarded to the applicants and is not part of the service charge, but is properly included within the cash account. **No further action is required.**

20. A credit of £460.86 was also credited to the account at the same time. Giving a total of £2,500.00 taken with the previous item. This item was entered as a credit on 17 September 2015. **No further action is required.**

#### **Land Registry/Debt collection Fees:**

21. No determination was made on these fees by the LVT in 2011. This tribunal finds the amount to be reasonable and payable by the Respondent. **No credit should be applied for the £24.00 claimed.**

#### **General application of credits in line with the LVT determination:**

22. This tribunal is satisfied that all the credits ordered by the LVT have properly been applied to the respondent's cash account.

#### **Service charge application determination of February 2020.**

23. The tribunal confirms its previous decisions in relation to the service charges payable by the respondent following the hearing in January 2020.

24. However, until the applicant has had the certificates of expenditure/accounting certificates properly signed by the accountants, nothing is payable by the respondent.

25. The tribunal confirms that, as soon as the certificates are signed, the sums claimed are properly due.

#### **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).