



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

Case reference : **LON/00AC/LSC/2022/0163**

Property : **Flat 9, 41 The Grove, London N3 1QT**

Applicants : **Andy Astle and Amanda Dean**

Representative : **In person**

Respondent : **41 The Grove Limited**

Representative : **Mr Ali Razm Ahang**

Type of application : **For the determination of the liability to pay service charges under section 27A of the Landlord and Tenant Act 1985**

Tribunal members : **Judge Dutton**
Mr J Naylor MRICS FIRPM

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

Date of Hearing : **9 May 2023**

Date of Decision : **18 May 2023**

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the sum of £3,456.15 is not payable by the Applicants in respect of the service charges for the years 2019, 2020 and 2021 for the reasons set out below.
- (2) The Tribunal determines that the Respondent should reimburse the Applicants with the service charges they have paid for the years 2019 and 2020 totalling £3,079.44 and the sum of £77.21 in respect of the balancing charge for the year 2021 within 28 days.
- (3) The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge.

The application

1. The Applicants seek a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Applicant in respect of the service charge years 2019, 2020 and 2021.
2. The basis of the dispute was that the freeholder respondent and its managing agent, Ringleys, had ceased communicating with the Applicants. There had been no documentation provided to support the sums said to be payable and no gas or electrical safety checks. This was the second application to the tribunal, a case having been considered for the year 2018 under claim number LON/00AC/LSC/2020/0212, which related to accounting failings on the part of the Respondent in a decision dated 14 December 2021.

The hearing

3. The Applicant appeared in person at the hearing and the Respondent was said to be represented by Mr Razm Ahang. No notice was provided by the Respondent under rule 14 of the Tribunal Rules indicating that Mr Razm Ahang was entitled to represent its interest at the hearing. He told us that he was de facto owner of the Respondent, he having entered into a purported share agreement with Mr Tafaghodi, who is recorded as director of the Respondent. Nothing was produced to support this. We will deal with this element in more detail in due course.
4. Prior to the commencement of the hearing, we had been provided with a digital bundle of papers that the Applicants wished to rely upon. This bundle included the Application, the directions, communications with the Tribunal and with the Respondent, a statement of case, a schedule of amounts in dispute, with proof of payment, such service charge documents as existed, the lease and some documents from Companies House. We noted all.

5. In contrast the Respondent did not provide any documentation prior to the hearing.

The background

6. The property which is the subject of this application is a one bedroomed ground floor flat in a converted garage containing two flats, to the side of the main building, which itself contains a further seven flats.
7. Neither party requested an inspection, and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.
8. The Applicants hold a long lease of the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease will be referred to below, where appropriate.

The issues

9. At the start of the hearing the parties identified the relevant issues for determination as follows:
 - (i) The payability and/or reasonableness of service charges for the three years having regard to the terms of the lease and the requirements of the Act.
 - (ii) The status of Mr Razm Ahang.
10. We shall deal firstly with the status of Mr Razm Ahang as this is of relevance to the resolution of the issues. He told us that he was the true owner of the Property and that he had reached an agreement with Mr Tafaghodi as to the share ownership of the Respondent Company. He presently owns two flats at the Property. He said he had returned to Iran before the pandemic to look after his sick mother. Whilst there it seems that his father was taken ill, as was he. He did not return to the UK until the middle of 2022. In the period of his absence, he had arranged for Ringleys to manage the Property. He asserted that they had not done a good job, although he indicated that Ringleys were threatening proceedings against the Respondent. There was no representation from Ringleys and therefore we cannot comment further. He did however accept that the Respondent was responsible for any failing of Ringleys, in so far as the Applicants were concerned.
11. He then indicated that on behalf of the Respondent he had wished to reach a compromise with the Applicants, stating that he had been speaking with Mr Astle, who uses the property, it would seem, as a pied-à-terre, and put forward proposals to settle. These proposals were set out in a letter he produced at the

hearing purportedly from the Respondent Company in which the service charges for the years 2019 in the sum of £2,006.10 and for 2020 in the sum of £1,073.34 would be repaid, together with the tribunal fees of £300 giving a total refund of £3,379.44.

12. The sums due for 2021, being, it is said, £376.71 as shown on the only account that was within the papers at page 70 of the bundle, produced by Rosecroft Estates Limited, who appear for a brief time to have been the managers, remains due and owing. In fact, it would seem that this sum is not due as there is an Income and Expenditure analysis at page 62 of the bundle in which credit is given for £299.50, being the sum the tribunal in 2021, in the above case, found was not payable. On that basis the only amount said to be due for 2021 is £77.21.
13. We agreed that the parties could have a few minutes to see whether the offer to settle would be accepted by the Applicants.
14. Following this short adjournment and speaking for herself and her husband M Dean said that they would have been happy to reach a compromise with a refund of the years in dispute. She did not consider that they should be required to pay for the costs alleged to have been incurred in 2021, as there was no evidence of that liability. She told us that they had not seen the certificates of costing required under the Fourth Schedule paragraph 2 of the lease. This states that *"....as soon as possible following the end of each such financial year the Landlord shall provide the Tenant with a summary of such expenses certified by the Landlord's accountant, Surveyors of Managing Agents..."*
15. It is said by M Dean that no such certificate has ever been produced. In their statement of case they recount the lack of response to their queries and the uncertainty as to whom they should be dealing with. Indeed, it seems to have come as a surprise to them when Mr Razm Ahang said he appeared on behalf of the Respondent and explained his relationship with the company. She was not satisfied that he had the authority to bind the Respondent and did not want to agree a compromise which could be resiled from by the Respondent in the future.
16. As Mr Razm Ahang had attended and asserted that he was entitled to represent the Respondent we took the opportunity to enquire as to whether he was able to produce to us, copies of any demands that complied with s21B of the Act. He could not. We asked him whether he was able to produce any of the certificates, required under the Lease to confirm sums claimed by the Respondent, but he could not. We asked whether he had any evidence of the sums said to have been paid by the Respondent in respect of each year, but he did not. He told us that they would be held by Ringleys, but that the Respondent was in dispute with them and so they had not been produced.

Findings

17. We have heard all that was said and set out in the bundle before us. The schedule of service charge payments at page 53 of the bundle sets out the sums that have been paid and the position in respect of the 2021 'accounts' as we highlight at paragraph 22 above.
18. The status of Mr Razm Ahang is unclear and, on the information, or rather lack of it, before us, we are unwilling to accept a compromise in the form of the letter he produced at the hearing without something in writing from the Respondent confirming his ability to reach such an agreement.
19. There is no doubt that the Applicants have for some time past been asking the Respondent to provide evidence as to the payments made by the Company for services for each of the years in dispute and for compliance with the terms of their lease. There appears to be no challenge to the fact that the Applicants have made payment on account against these alleged expenses. Equally it is clear from the papers before us and the evidence of the Applicants that the Respondent has continued, as it did in the year 2018, to disregard the terms of the Lease and the Act and failed to provide any evidence of payment of monies representing service charges for which the Applicants had responsibility.
20. It was clear that the Applicants and Mr Ramz Ahang purportedly on behalf of the Respondent wished to reach a settlement. However, as we were unwilling to accept Mr Ramz Ahang's status as representative we must proceed on the evidence before us. We find that the Respondent has not been able to satisfy us that the costs said to have been incurred in the years in dispute have been proved. It is also clear that the Respondent has not complied with the Lease regarding the supply of accounting information, in particular the lack of the annual certificates. In addition, we have not seen evidence of compliance with s21B of the Act, as the scant documentation does not include the statutory wording required.
21. We therefore find that the sums which were demanded from the Applicants in the years 2019 and 2020 were not payable for the reasons stated above. The sum for 2021, on the Respondent's own limited documentation provided to the Applicants is, after allowing for the credit for the year 2018, only £77.21, but again this has not been supported by any documentation. We find therefore that the Respondent owes to the Applicants the sum of £3,079.44 for the year 2019 and 2020 and £77.21 for the year 2021, which according to the summary of payments was paid by the Applicants in April 2022. Such sum should be repaid in 28 days, or such other period agreed between the parties.
22. At the end of the hearing, the Applicants confirmed that in a gesture of goodwill, they would not seek to recover the tribunal fees of £300.
23. In the application form the Applicant applied for an order under section 20C of the 1985 Act. Taking into account the determinations above, the tribunal determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the Respondent may not pass

any of its costs incurred in connection with the proceedings before the tribunal through the service charge.

Name: Judge Dutton

Date: 18 May 2023

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)