



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

Case reference : **LON/00BF/LSC/2022/0257**

**County Court
Claim No.** : **249MC013**

Property : **Flat 4, 11 Egmont Road, Sutton, Surrey
SM2 5JR**

Applicant : **11 Egmont Road Freehold Limited**

Representative : **Mr Ruban Selvanayagam, Company
Secretary**

Respondent : **Mr Paul Ward, Company Director**

Representative : **N/A**

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 Tagliavini
Mr Kevin Ridgeway**

**Venue & Date of
Hearing** : **10 Alfred Place, London WC1E 7LR
6 April 2023**

Date of decision : **17 May 2023**

DECISION

Decisions of the tribunal

- (1) The tribunal determines the service charges payable in respect of the period 31 March 2009 to 1 November 2021 in the sum of £3,514.17 have not been validly demanded by the Applicant and are therefore not payable by the Respondent.
- (2) 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.

Decisions of judge Tagliavini sitting as a judge of the county court

- (3) No order for costs and interest.
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The application

1. Proceedings were originally issued on 1 November 2021 in the County Court under claim no. 249MCO13. The claim was transferred to the County Court sitting at Kingston-upon-Thames and then in turn transferred to this tribunal, by order of District Judge Hartley on 5 August 2022 which made provision for the determination all issues including costs and interest of £3,046.26.

The hearing

2. The Applicant appeared was represented by Mr Ruban Selvanayagam at the hearing and the Respondent appeared in person. The Applicant sought permission to rely upon some late evidence to which the Respondent did not object and therefore all evidence submitted by the parties was considered by the tribunal.

The background

3. The property which is the subject of this application is a first floor flat in a building comprising 6 flats of which the Applicant is the freeholder. The Applicant is a leasehold owned freehold company of which the Respondent is a shareholder. The Respondent is the long lessee of Flat 1 under a lease dated 23 October 1985 for a term of 99 years with effect from 24 June 1985. Although other leaseholders of Flats 1, 2, 3, and 5 have been granted new extended leases, the Respondent's interest remains under the terms of the lease granted to him and therefore it is the terms of this lease that the parties must seek to comply. The service charge (Maintenance) year runs from 24th June and ends on 24th June of the following year.

4. 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.
5. The Respondent holds 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

6. At the start of the hearing the parties identified the relevant issues for determination as follows:
 - (i) The payability of service charges in the sum of £3,514.17 for the and in particular whether the demands for payment are valid as they have failed to include the details required by ss. 47 and 48 of the Landlord and Tenant Act 1987.
 - (ii) Whether the sums demanded are payable having regard to s.20B of the Landlord and Tenant Act 1985 i.e. whether the sums were demanded within 18 months of having been incurred.

The Applicant's case

7. The tribunal specifically asked the Applicant to identify the period for which the arrears of service charges were said to have accrued as this was far from clear from the documents provided to the county court. The Applicant told the tribunal arrears had accrued during the period 1 July 2008 to 1 November 2021 although some payments had been made by the Respondent during this period. The Applicant also relied upon a letter dated 22 November 2022 from Brooks & Co Solicitors setting out arrears of service charge said to have been accrued by the Respondent in the period 31 March 2009 to 31 October 2022.
8. Mr Selvanayagam also told the tribunal he was unaware of limitation periods that might limit the recoverability of any arrears and that the leaseholders had held a meeting at which it had been decided the sum of £65 per month towards service charges would be paid with effect from 1 April 2010. Mr Selvanayagam stated no service charges had been demanded from the leaseholders before 2016 and that he had believed the Respondent would pay this sum by way of direct debit when he joined the leasehold freehold company.
9. In a number of letters to the Respondent payment of 4% interest above base rate was also demanded. In a letter dated 16/07/2012 interest on late payments was said increase to 8% above base rate as from 1 April 2012 as agreed by the Freeholder at the last AGM.

The Respondent's case

10. In his written and oral evidence to the tribunal, the Respondent challenged the validity of the demands for payment of service charges. Mr Ward also complained of a lack of maintenance to the property and referred to problems with the old metal gutters. However, despite raising his concerns at several leaseholder/shareholder meetings, his request for works to be carried out were not acted upon.
11. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

The tribunal's decision and reasons

Arrears of service charge in the sum of

12. The tribunal finds no sums are payable by the Respondent in respect of the arrears of service charges claimed in the sum of £3,514.17 for the period 31 March 2009 to 1 November 2021.

Reasons for the tribunal's decision

13. The tribunal finds the Applicant's case to be muddled and unclear as to what sums were being claimed and for what period. The tribunal finds the Applicant is unaware of the landlord's obligations under the terms of the Respondent's lease and seemed to assume that because some leaseholders had agreed among themselves that £65 per month towards service charges, this was sufficient to discharge the landlord's contractual obligation under the terms of the lease.
14. Although the Applicant accepted no service charge demands had been made before 2016, the tribunal finds demands for payment of service charges and arrears were sent to the Respondent. However, the tribunal finds that all demands for payment, whenever sent were not in the correct form and the tribunal finds the demands whenever sent, did not comply with ss. 47 and 48 of the Landlord and Tenant Act 1987 and therefore, were not valid. Further, the tribunal finds that sums not validly demanded within 18 months of having been incurred are no longer recoverable even if the Respondent was sent otherwise valid demands.

Claims for interest

15. Notwithstanding the invalidity of the demands for payment of service charges, the tribunal finds in the absence of the Applicant establishing through the terms of the lease that 4% interest above base rate is payable

by the Respondent, or that the lease has been validly varied to require the Respondent to pay 8% above base rate, no interest under the terms of the lease is due from the Respondent on the sum of the arrears of £3,514.17.

Application under s.20C and refund of fees

15. At the end of the hearing the Respondent applied for an order under section 20C of the 1985 Act. Having heard the submissions from the parties and 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 Applicant may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge.

Decision of Judge Tagliavini sitting as a District Judge of the County Court

16. Having regard to the tribunal's decision as set out above, Judge Tagliavini determines there should be no order for costs or interest.

Name: Judge Tagliavini

Date: 17 May 2023

ANNEX - RIGHTS OF APPEAL

Appealing against the tribunal's decisions

1. A written application for permission must be made to the First-tier Tribunal at the Regional tribunal office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional tribunal 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. All applications for permission to appeal will be considered on the papers

5. Any application to stay the effect of the decision must be made at the same time as the application for permission to appeal.

Appealing against the County Court decision

1. A written application for permission must be made to the court at the Regional tribunal office which has been dealing with the case.
2. The date that the judgment is sent to the parties is the hand-down date.
3. From the date when the judgment is sent to the parties (the hand-down date), the consideration of any application for permission to appeal is hereby adjourned for 28 days.
4. The application for permission to appeal must arrive at the Regional tribunal office within 28 days after the date this decision is sent to the parties.
5. The application for permission to appeal must state the grounds of appeal, and state the result the party making the application is seeking. All applications for permission to appeal will be considered on the papers.
6. If an application is made for permission to appeal and that application is refused, and a party wants to pursue an appeal, then the time to do so will be extended and that party must file an Appellant's Notice at the appropriate County Court (not Tribunal) office within 14 days after the date the refusal of permission decision is sent to the parties.
7. Any application to stay the effect of the order must be made at the same time as the application for permission to appeal.

Appealing against the decisions of the tribunal and the County Court

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

General Form of Judgment or Order

In the County Court at	
Kingston-upon-Thames	
sitting at 10 Alfred Place, London WC1E 7LR	
Claim Number	249MC013
Date	17 May 2023

11 Egmont Road Freehold Limited	Claimant Ref RUBAN SELVANAYAGAM
Mr Paul Ward	Defendant Ref MR PAUL WARD

BEFORE Tribunal Judge Tagliavini sitting as a Judge of the County Court (District Judge),

UPON the claim having been transferred to the First-tier Tribunal for administration on 5 August 2022 by order of District Judge Hartley sitting at the County Court at Kingston-upon-Thames

AND UPON hearing Mr Ruban Selvanayagam for the Claimant and Mr Paul Ward for the Defendant

AND UPON this order putting into effect the decisions of the First-tier Tribunal made at the same time

IT IS ORDERED THAT

1. The claim is dismissed.
2. No order for costs and interest.
3. An order is made under section 20C of the Landlord and Tenant Act 1985.
4. The reasons for the making of this Order are set out in the combined decision of the court and the First-tier Tribunal (Property Chamber) dated 17 May 2023 under case reference LON/00BF/LSC/2022/0257 .

Dated: 17 May 2023