



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

**IN THE COUNTY COURT at
CLERKENWELL and
SHOREDITCH , sitting at 10 Alfred
Place, London WC1E 7LR**

Tribunal reference : LON/00AG/LSC/2022/0385

Court Claim Number : J25YJ635

HMCTS code : Face-to-Face Hearing

**Property : Flat 43, Trinity Court, 254 Gray's
Inn Road, London, WC1X 8JX**

**Applicant/Claimant : Trinity Court RTM Company
Limited**

Representative : Martin Comport (Solicitor)

**Respondent/Defendant : Victor Richard Stockinger and
Irma Maria Stockinger**

Representative : In Person

**Tribunal members : Judge Robert Latham
Marina Krisco FRICS**

In the county court : Judge Robert Latham

Date of hearing : 21 April 2023

Date of decision : 9 June 2023

DECISION

Summary of the decisions by the Tribunal

1. Service charges of £4,471.91 payable for the years 2020/21 to 2021/22 are reasonable and payable.

Summary of the decisions made by the Court

2. The Court assesses interest at £1,156.80 as at 9 June 2023.
3. The Court assesses the Court costs in the sum of £555.00.

The Proceedings

1. On 27 June 2022, the Applicant issued proceedings in the County Court Business Centre claiming arrears of service charges and interim service charges of £4,471.91, interest of £563.43 (and continuing at a daily date of £1.71) and costs.
2. On 10 August 2022, the First Respondent filed a Defence. He argued that the Applicant had failed to credit the sums which he had paid to his account. A sum of £466.05 had not yet become payable. He contended that the reserve fund contributions should have been reduced during the Covid pandemic. The interest calculations were incorrect. He asked for the case to be allocation to the Small Claims Track and by transferred to the County Court at Clerkenwell and Shoreditch.
3. On 2 September 2022, the case was allocation to the Small Claims Track. On 26 October 2022, the case was transferred to the County Court at Clerkenwell and Shoreditch. On 14 November 2022, DDJ Clarke made the following Order:

“Transfer to First Tier Tribunals [sic] Property Chamber to be listed before a Judge with both Tribunal as [sic] County Court jurisdictions.”
4. On 16 December 2022, Judge Martynski gave Directions. He directed that the proceedings would be administered by the Tribunal. Any necessary County Court orders would be made by a Tribunal Judge sitting as a Judge of the County Court (at District Judge level). He noted that the issue in the case seemed to be the reserve fund contributions that had been demanded.
5. On 27 January 2022, the Applicant emailed his Statement of Case to the Tribunal and to the Respondent. At the hearing, Mr Stockinger stated that he was uncertain whether he had received it. We are satisfied that he did.
6. By 24 February 2023, the Respondent was directed to serve his Statement of Case. He failed to do so.
7. On 13 March 2023, the Applicant served a witness statement from Daniel Weil, who is a director of Parkgate Aspen Ltd, the managing agents. Again,

Mr Stockinger stated that he was uncertain whether he had received it. We are satisfied that he did. The Respondent did not serve any witness statements.

8. On 6 April 2023, the Applicant emailed the Respondent a draft Bundle. The Respondent admitted that he received this. The Respondent's Bundle extends to 172 pages. References to this bundle will be pre-fixed by "A.__").
9. On 17 April, the Respondent served a Bundle of 17 pages. This includes the Respondents' Outline Submissions. References to this bundle will be pre-fixed by "R.__").

The Hearing

10. Mr Martin Comport, a Solicitor with Dale & Dale Solicitors, appeared for the Applicant. He adduced evidence from Mr Weil, a director with Parkgate Aspen Ltd, the managing agents. Mr Comport provided a Skeleton Argument. Mr Comport stated that the Applicant had returned any payment received after 27 June 2022, as it did not want to compromise its right to forfeit the Respondent's lease.
11. Mr Victor Stockinger appeared for the Respondents. The Second Respondent is his elderly mother. Mr Stockinger stated that he had failed to comply with the Directions because he had not received a number of documents. We do not accept this. We allowed him to give evidence, despite his failure to file a witness statement. His defence had been attested by a Statement of Truth. Mr Stockinger is a solicitor.

The Lease

12. The Respondents occupy Flat 43, Trinity Court ("the Flat") pursuant to a lease dated 24 May 1988 (at A.10-36). They are the original lessees. The Flat is on the fourth floor. It is a studio flat with one room, a bathroom and a kitchen. The lease grants a term of 99 years from 24 June 1979.
13. By Clause 2(a), the Lessee covenants to pay a service charge of 1.11% of the expenses incurred for the Building as set out in sub-clauses 2(a)(i) to 2(a)(xv). The Lessor operates a financial year 1 April to 31 March. By Clause 2(b)(i) to 2(b)(viii), the service charges are to be certified. Two half yearly interim service charges are payable. At the end of the financial year, the Lessee is either entitled to a credit or becomes liable to pay an additional sum when the actual expenditure is reconciled against the budgeted expenditure.
14. By Clause 2(3), the Lessee covenants to pay interest at 14% on any arrears that remain unpaid after 28 days. Clause 2(v) makes provision for the Lessor to collect a reserve fund.

The Background

15. Trinity Court (“the Building”) was constructed over 9 floors between 1934 and 1935 in the modernist “sun trap” style in front of St Andrew’s Holborn burial garden to designs of Taperell and Haase. There are 90 flats, all of which were originally studio flats. There are two lifts and two staircases. There are art deco features. It is within a conservation area.
16. The landlord is the Metropolitan Properties Co (FGC) Limited. However, since 2008, the Building has been managed by the Applicant RTM Company. Sixty of the 90 lessees are members of the RTM Company. The Applicant appointed Parkgate Aspen Ltd (“Parkgate Aspen”) to manage the Building. In 2008, the Building was in a poor state of repair. Parkgate Aspen were tasked to put it in a proper state of repair.
17. The Tribunal notes that there have been two previous applications involving these parties:
 - (i) On 16 May 2013, a Tribunal issued its decision in LON/00AG/LSC/2011/0692 and LON/00AG/LSC/2012/0284 (at A.120-164). The Applicant brought these proceedings against the Respondents and the tenant of Flat 8. There was a four day hearing. The Tribunal found that most of the service charges were payable. The Tribunal made a penal costs order against the Respondents being satisfied that they had acted “frivolously, vexatiously, abusively, disruptively or otherwise unreasonably”. This Tribunal notes that one of the issues raised was the right of RTM company to collect a reserve fund and the reasonableness of the sums demanded. The Tribunal was satisfied that the lease made provision for a reserve fund and that the sums demanded were reasonable (see [192] – [198]).
 - (ii) On 18 December 2014, issued its decision in LON/00AG/LSC/2014/0421. The Applicant brought these proceedings against the Respondents. The Tribunal found that all the sums demanded had been reasonable and payable (at A.165-169). Mr Stockinger again sought to argue that the lease did not permit the RTM Company to collect a reserve fund. In a subsequent decision, dated 24 February 2015 (at A.170-172), the Tribunal made a further penal costs order against the Respondents being satisfied that they had no reasonable grounds to defend the proceedings.
18. The sums claimed by the Applicant are specified in the schedule at A.38:
 - (i) On 22 September 2020 (at A.107), the Applicant issued a service charge demand for £700.83, namely an advance service charge of £423.33 and a reserve fund contribution of £277.50 for the period 29 September 2020 to 31 December 2020. This sum became due on 29 September. £466.05 remains outstanding.

(ii) On 7 October 2020 (at A.108), the Applicant issued a service charge demand for £398.56, namely an advance service charge for the period 1 January to 24 March 2021. This sum became due on 1 January 2021.

(iii) On 4 March 2021 (at A.109), the Applicant issued a service charge demand for £1,126.31, namely an advance service charge of £848.81 and a reserve fund contribution of £277.50 for the period 25 March to 28 September 2021. This sum became due on 25 March 2021.

(iv) On 17 September 2021 (at A.110), the Applicant issued a service charge demand for £1,140.11. This included an excess service charge of £13.80, which became payable forthwith, and an advance service charge of £848.81 and a reserve fund contribution of £277.50 for the period 29 September 2021 to 24 March 2022. This sum became due on 29 September 2021.

(v) On 8 March 2021 (at A.111), the Applicant issued a service charge demand for £1,340.88, namely an advance service charge of £952.38 and a reserve fund contribution of £388.50 for the period 25 March to 28 September 2022. This sum became due on 25 March 2022.

No further demands have been issued as the Applicant does not wish to prejudice its right to forfeit the Respondent's lease.

The Tribunal's Determination (the Service Charges that are Payable)

19. The Respondent's Defence is at A.44-47. His first point is that the Applicant has failed to give him credit for the £100 per month that he has paid by standing order. The Respondent's statement of account (at A.105-106) shows that the standing orders have been credited. The last payment was accepted on 11 April 2022, as the Applicant has not wanted to prejudice its right to forfeiture. On 29 September 2020, when the first sum demanded became due, there were arrears of £1,665.22. The Applicant has applied the sums subsequently paid towards the historic arrears.
20. The Respondent contends that the sum of £466.05 was not due until 29 September 2022. It is apparent that there was a typographical mistake in the Schedule at p.38. The sum rather became due on 29 September 2020. This is quite apparent from the demand at p.107.
21. The Respondent contends that the reserve fund contributions should have been reduced during the Covid-19 lockdowns. He refers to his letters dated 6 April and 12 November 2020 (at R.188 and 189). He stated that when the Covid lockdown was imposed in March 2020, he had been required to be accommodated by a client in Manchester and had been unable to return to London.
22. The Applicant responds that it still needed to build up a reserve fund for future works. Mr Stockinger has adduced no evidence of his financial difficulties. He rather suggests that other lessees faced financial

difficulties. He adduced no evidence on this. The Applicant is a RTM Company. A majority of the lessees are members of the Company. The Tribunal is satisfied that the Applicant made an informed decision as to the reserve contributions that it was appropriate to collect during the Covid-19 lockdown. Had there been any reduction during the lock-down, there would have been to recoup these once the lock-down was lifted.

23. A number of questions were raised at the hearing about the current level of the reserve fund and the future works that are planned. Mr Stockinger sought to challenge the manner in which the RTM Company is managed. We were told that there is currently some £350k in the reserve fund, but that major works are planned. The level of reserve funds is a matter for the Applicant. The Respondent has failed to satisfy us that the reserve fund contributions have been unreasonable. This is the third occasion on which Mr Stockinger has sought to challenge the reserve fund contributions before this Tribunal.
24. The Respondent suggests that the schedule attached to the Particulars of Claim does not differentiate between the sums due for ordinary service charges and the reserve fund contributions. This is correct. However, all the service charge demands make this quite clear.
25. The Respondent state that they are unaware of the management functions that the RTM Company has assumed. The Tribunal find this surprising, given the previous litigation involving these parties. As a solicitor, Mr Stockinger should understand the statutory regime whereby the Applicant is now responsible for the management of the Building.
26. The Tribunal is satisfied that the service charge and reserve fund contributions which have been demanded are payable and reasonable. The Applicant has maintained an accurate record of the sums that have become payable and the sums paid. When the claim was issued on 27 June 2022, arrears of £4,471.91 were due. Since that date, no further sums have been accepted.

The Court's Determination (Interest and Costs)

27. Interest is claimed at 14% pursuant to the terms of the lease. The Schedule (at A.38) computes that £563.43 was payable on 27 June 2022 and thereafter has increased at £1,71 per day. DJ Latham computes that the additional interest payable as at 9 June 2023 is £593.37. Thus the total interest payable is £1,156.80.
28. DJ Latham assesses the court costs in the sum of £555, namely the court costs specified on the Claim Form. It will be for the Applicant to determine whether it seeks any further costs pursuant to the terms of the lease or the tribunal rules.

Judge Robert Latham
9 June 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 by the decision maker 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 the decision maker's decision 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. Upon the receipt of the decision maker's decision on an application for permission to appeal, if a party wishes to pursue an appeal, the time to do so is extended and that party must file an Appellant's Notice at the appropriate County Court (not Tribunal) office within 21 days after the date the refusal of permission decision is sent to the parties.

7. If no application to the decision maker is made for permission to appeal, any application for permission must be made to an appeal court/centre within 42 days of the hand-down date on an Appellant's Notice.
8. 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.