



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

Case reference : **LON/00AT/LSC/2020/0266**

County Court Ref: : **F48YY202**

HMCTS code : **P: PAPERREMOTE**

Property : **Flat 3, Isabella Cooper House, Edgerton Drive, Isleworth TW7 7FD**

Applicants : **(1) Fitzroy Gate Residents Management Company Ltd
(2) Fitzroy Gate (Lisa Estates) Residents Management Company Ltd**

Representative : **JB Leitch Solicitors**

Respondent : **Mr Oleksii Tereshchenko**

Representative : **Edmans & Co Solicitors**

Type of application : **Reasonableness and payability of service charges under section 27A, Landlord and Tenant Act 1985 and administration charges under schedule 11, Commonhold and Leasehold Reform Act 2002**

Tribunal member : **Judge Robert Latham**

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

Date of decision : **12 August 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a 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 no-one requested the same. The parties have provided a Bundle of Documents which totals 469 pages.

Decisions of the tribunal

- (1) The Tribunal finds that the following sums are payable and reasonable: (i) service charges totalling £3,295.26 and administration charges of £285, a total of £3,580.26.
- (2) Since the tribunal has no jurisdiction over costs and interest, this matter should now be referred back to the County Court at Brentford.

The Application

1. On 12 December 2019 (at p.1), the Applicants issued proceedings in the County Court Money Claims Centre claiming “unpaid service charges, administration charges, interest, fees and legal costs”. The claim relates to Flat 3, Isabella Cooper House, Edgerton Drive, Isleworth TW7 7FD (“the Property”).
2. The Applicants claimed arrears in the sum of £3,580.26. Particulars were not provided of this sum. On 6 February 2019 (at p.83), the Applicant provided a Statement of Account, from which it is apparent that £3,295.26 relates to arrears of service charges and £285 to administration charges. The Applicants further claim costs in the sum of £1,100 (as at the date of issue) and interest pursuant to section 69 of the County Courts Act 1984.
3. On 21 January 2020, the Respondent filed a Defence (at p.5) and Counterclaim (at p.6). In his defence, the Applicant complains that the Respondent failed to provide services to a reasonable standard. On 6 February 2020, the Applicant filed a Reply and Defence to Counterclaim (at p.7).
4. The case was transferred to the County Court at Croydon and then onto Brentford. On 14 August 2020 (at p.430), Deputy District Judge Colquhoun made an Order in the following terms:

“1. Allocated to Small Claim Track. 2. Stay Claim. 3. Transfer to First-Tier Tribunal Property Chamber (Residential) for determination of service and administration charges.”

5. The Judge only transferred the determination of the service charges pursuant to s.27A of the Landlord and Tenant Act 1985 (“the 1985 Act”); and the administration charges pursuant to Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (“the 2002 Act”). The Counterclaim is a set-off to the claim for arrears (see *Continental Property Ventures Inc v White* [2006] 1 EGLR 85; [2007] L&TR 4). This Tribunal has no jurisdiction to determine issues outside those pleaded in the County Court proceedings (*John Lennon v Ground Rents (Regisport) Limited* [2011] UKUT 330 (LC)).
6. The Judge did not transfer the case to the tribunal under the Deployment Scheme. Thus, this tribunal has no jurisdiction to determine the claims for either interest or costs. It seems that the claim for costs in the sum of £1,100 is a claim for legal costs which are claimed pursuant to the terms of the lease. It has not been claimed as an administration charge. This is therefore an issue for the County Court.
7. On 21 October 2020 (at p.434), the Tribunal issued Directions. On 18 December (at p.441), these were amended. Unfortunately, the Tribunal failed to send the first set of Directions to the Applicants. However, the parties agreed to a new timetable as a result of which:
 - (i) On 19 November (at p.451), the Applicant provided the relevant service charge demands and relevant service charge accounts.
 - (ii) The parties have prepared a Schedule of the Disputed Service Charges (“the Scott Schedule”) (at p.465-469).
 - (iii) The Respondent has provided details of his counterclaim in his 1st witness statement at p.94. He claims a total of £4,723.19. However, this includes a claim of £750 for legal costs and £139.86 for interest. These are matters for the County Court.
 - (iv) The Applicants seek to rely on their Statement of Case (at p.145-162) and the witness statement of Jeanine Cohen (11.12.20) at p.372-375.
 - (v) The Respondent relies on his three witness statements, dated 17 November 2020; 1 December 2020 (at p.142-144) and 21 December 2020 (at p.376-381). He also relies on a witness statement from Alix Culbertson, a neighbour, dated 11 December 2020 (at p.420-421).
8. On 12 January 2021, the Applicants filed a Form N260 seeking a summary assessment of costs in the sum of £6,762.20. This is a matter for the County Court.

9. The Procedural Judge set this matter down for a paper determination. No party has requested an oral hearing. The Judge indicated that the application would be determined in the week commencing 1 February 2021. The Tribunal apologises for the delays that have occurred.

The Lease

10. Flat 3, Isabella House (“the Property”) is a two bedroom ground floor flat in a three storey building situated within the St James’ Estate (“the Estate”). It forms part of the Fitzroy Gate development situated in 7 acres of grounds adjoining the north Bank of the Thames between Isleworth and Syon Park. St James and Beachcroft Developments have jointly converted a number of buildings and have constructed a number of new build houses and apartments, with a remit to provide modern high specification living. Isabella House (“the Apartment”) is newly built and was completed in about 2016. The Property has its own patio area. The Apartment has nine flats.
11. The Respondent’s lease is dated 29 July 2016 (at p.15-18) and is for a term of 999 years from 1 June 2016. The Respondent paid a premium of £850k. There are five parties to the lease: (i) Lisa Estates (Isleworth) Limited (“the Landlord”); (ii) Mr Oleksii Tereshchenko – The Respondent (“the Tenant”); (iii) Fitzroy Gate Residents Management Company Ltd – the Second Applicant (“the Apartments Manager”); (iv) Fitzroy Gate (Lisa Estates) Residents Management Company Ltd – the First Applicant (“the Estate Manager”) and (v) St James Group Ltd (“St James”). The lease was granted before the development was completed. The First and Second Applicants assumed their respective responsibilities to provide services after the relevant handover dates from St James, the developer.
12. The Tenant covenants to pay (i) the ground rent (payable to the Landlord); (ii) the Estate Service Charge (payable to the Estate Manager); (iii) the Apartment Service Charge (payable to the Apartments Manager); (iv) the Parking Service Charge (payable to the Apartments Manager); and (v) the other sums specified in the lease. The Respondent is only concerned with the Apartment Service Charge which is payable to the Second Applicant.
13. The Apartments Service Charge is defined by Clause 14.1.3. The Apartment is defined as the Building in Property is situated, namely Isabella Cooper House. By Clause 20.4, the Tenant covenants with the Apartments Manager to pay the charge. By Clause 9, the Apartments Manager covenants to provide the services specified in Schedule 4, Part 3. This includes a covenant to “keep the Main Structures ... maintained and cleaned”. Schedule 2 defines the “Main Structures” as including “the balcony or garden (if any)”.

14. Schedule 6 specifies the formula by which the Respondent's proportion of the Apartment Service Charge is to be computed. This is based on net floor areas. No issue has been raised relating to the Respondent's contribution.
15. The Financial Year for both the Apartment and the Estate Service Charges is the calendar year. Provision is made for an interim service charge. Clause 16 and 17 require the financial statements to be certified. If expenditure exceeds the estimated expenditure, a demand may be issued for the additional payment.
16. Clause 20 specifies additional charges which the Tenant may be required to pay. This includes all expenses which may be incurred in collecting arrears payable by the Tenant, including interest thereon, if not paid within 21 days.

The Background

17. The Applicant have appointed Michael Laurie Magar Limited ("MLM") to manage the Estate. The relevant handover dates when the responsibilities for the Estate and the Apartment services passed from the developer to the First and Second Applicants Managers is not specified. The Applicant states that until 2019, Beechcroft, the developer, was still involved in aspects of the care and maintenance of the development, including replacing (at their own cost) failed hedging which borders the private patio gardens. A report from a site visit on 10 August 2020 (at p.306) illustrates some of the gaps in the yew hedging which was due for replacement in "winter 2020".
18. The Respondent's Statement of Account, dated 26 September 2019, is at p.83. Since 1 January 2017, MLM have been collecting service charges. The Respondent was initially in credit due to funds which had been retained from completion. However, since 1 July 2017, the Applicant has been in arrears. He has made irregular payments, which have been inadequate to meet the sums due. This application only relates to the arrears which subsisted when the Claim Form was issued in the County Court. Subsequent arrears will have arisen.

The Tribunal's Determination

Claim for Service Charges

19. The Applicant claims service charges of £3,295.26 for the following periods:
 - (i) outstanding sum of £701.04 from the £1,632.63 Jan/June 2019 half yearly interim Apartment service charge demanded on 19 December 2018 (at p.164);

(ii) the Jul/Dec 2019 interim Apartment service charge of £1,632.63 and the Estate service charge of £444.79 demanded on 31 May 2019 (at p.169);

(iii) Year end balancing deficits for the Apartment and Estate service charges for 2018, totally £316.80.

20. The Respondent is defending proceedings brought against him by the Applicants. It is only open to him to challenge the service charges which are subject to the claim, namely the final demand for 2018 and the interim demand for 2019. It is a matter of regret that the Applicant had not been more specific as to the sums claimed in its Claim Form. On normal contractual principles, the appropriation of payments to a particular period is the choice of the tenant, as paying party; if the paying party does not appropriate the payment to a particular period when making it, the receiving party is entitled do so as it chooses (see Woodfall “Landlord and Tenant at [7.023.2]).
21. The Directions required the Respondent to provided a Schedule in the form attached to the directions setting out in the relevant column, by reference to each service charge year:
- the item and amount in dispute;
 - the reason(s) why the amount is disputed; and
 - the amount, if any, the tenant would pay for that item.
22. In the Scott Schedule, the Respondent raises the following challenge to the 2018 and 2019 Apartment Service Charge:
- (i) 2018: “Service not provided in full, patio maintenance and patio gardening not done as per the lease”. The Respondent contends that nothing is payable.
- (ii) 2019: “Service not provided in full, patio maintenance and patio gardening not done as per the lease”. The Respondent is willing to pay £933.34.
23. The Applicant’s response is:
- (i) 2018: “Service Charge not included within the Applicant’s application”. We disagree. The Applicant is charging the balancing item for the year.
- (ii) 2019: The Respondent has failed to list the disputed heads of expenditure; the expenditure being listed within the year end accounts.

The Applicants cannot be expected to provide comments in the absence of such information. Further, the Respondent has failed to provide a breakdown of the admitted sum.

24. The Apartment Service Charge Accounts for 2018 are at p.203-204. The apportionment of the Service Charge is at p.207. The Tribunal is unable to identify any item in the service charge account with which the Respondent takes issue. Most of the expenditure relates to services about which the Respondent makes no complaint. It seems that his complaint is about services which have not been provided, rather than services for which he has been charged. The Respondent has had an opportunity in his Witness Statement in Response to the Applicants' Statement of Case (at p.376) to identify the specific service charge items which he disputes. He has failed to do so.
25. The Apartment Service Charge Accounts for 2019 are at p.224-225. The apportionment of the Service Charge is at p.218-219. Again, the Tribunal is unable to identify any item in the service charge account with which the Respondent takes issue. Most of the expenditure relates to services about which the Respondent makes no complaint.
26. The Tribunal is therefore satisfied that the service charges claimed are reasonable and payable.

Claim for Administration Charges

27. The Applicant claims the following administration charges:
 - (i) £105 (£30 + £75) demanded on 15 May 2019 (at p.166);
 - (ii) £180 (£30 + £75 + £75) demanded on 30 September 2019 (p.175).
28. The Respondent seems to admit that arrears have arisen and that the Applicants are entitled to charge a reasonable administration charge in respect of their costs of seeking to enforce the payment of the same. His defence which is specified in the Scott Schedule is that services were not provided and that he was therefore not obliged to pay the sums demanded. The Tribunal disagrees. It has found that the service charges are payable. It is further satisfied that the administration charges demanded are reasonable and payable.

The Respondent's Counterclaim

29. The Respondent counterclaims for damages in the sum of £3,833.33 in respect of the following:
 - (i) Jet Washing (2017-8): £800;

(ii) Plant Watering and Gardening (2018): £2,100;

(iii) Plant Watering and Gardening (2019): £933.33.

The Respondent is claiming for his time in providing these services. He assesses this at £200 per hour. He claims this on the basis that he is a company director, and that a rate which he might reasonably charge for his business activity is an appropriate rate to claim.

30. The Tribunal rejects this counterclaim for three reasons:

(i) The Respondent has not satisfied the Tribunal that the Respondent has been in breach of its covenants under the lease. In their Statement of Case, the Applicants set out the gardening service that they have provided. The Tribunal is not satisfied that the Apartments Manager was obliged to jet wash the Respondent's private patio or to maintain the plants on his patio. It has a discretion to provide such a service which it has now decided to do having discussed the matter at a residents' meeting.

(ii) Whilst a tenant has a right at common law to set off the cost of remedying any breach of covenant by a landlord, he must first give notice to his landlord of his intention to do so (see *Lee-Parker v Izzet* [1971] 1 WLR 1688). There is no evidence that the Respondent has given sufficient notice to the Second Applicant in this case. The correspondence at p.366-371 all seems to postdate the work for which the Respondent claims.

(iii) The sums claimed are manifestly unreasonable. A sum closer to £20 per hour would be reasonable for gardening duties.

31. The Respondent has raised further complaints of disrepair. However, these were not included in the Counterclaim which he filed in the County Court. Any party requires the consent of a County Court Judge if they wish to amend their claim.

32. The Tribunal therefore dismisses the Counterclaim and finds that the Respondent has no claim for damages which he is entitled to set off against the sums claimed.

Further Matters

33. The Respondent applied for an order under section 20C of the 1985 Act. In the light of the above findings, it would be inappropriate to make such an order.

The next steps

34. This Tribunal has no jurisdiction over the claims for interest and for costs. These matters are therefore referred back to the County Court sitting at Brentford.

Judge Robert Latham
12 August 2021

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).