



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

Case Reference : **LON/00AL/LSC/2021/0178**

Property : **Flat 15, Rennets Wood House, Bexley
Road, London SE9 2NE**

Applicant : **Timothy Simpson**

Respondent : **Lillywhite Investments Ltd**

**Type of
Application** : **Service charges**

Tribunal Members : **Judge Nicol
Mrs A Flynn MA MRICS**

**Date and venue of
Hearing** : **10th October 2022;
10 Alfred Place, London WC1E 7LR**

Date of Decision : **11th October 2022**

DECISION

The application is struck out.

The Tribunal's reasons

1. The Applicant is the lessee of a ground floor flat in a modern extension to a purpose-built block of flats. The Respondent is the freeholder.
2. The Applicant sought a determination of the reasonableness and payability of service charges for the 4 years 2018-21. Tribunal heard the application on 10th October 2022. The attendees were:
 - The Applicant; and
 - Mr Simon Wolanski for the Respondent, accompanied by Mr Eli Rosenblatt, his new managing agent.

3. The Applicant had been directed to provide a single bundle of documents for the hearing. He was unable to do this. Instead, the Tribunal had before it 4 separately indexed and paginated bundles, one for each year in dispute. The bundles contained nothing from the Respondent because nothing had been produced.
4. The Tribunal originally issued directions on 10th June 2021 with the final hearing listed for 27th October 2021. However, it became apparent that the case was not ready for hearing and further directions were issued on the day intended for the hearing. A case management hearing was held on 5th April 2022 when Judge Shepherd accepted the Respondent's reasons for having failed to comply with the previous directions and issued new directions.
5. Amongst other matters, the Applicant had been directed from the start to put into his statement of case the amounts which he would pay for each item in dispute. Mr Wolanski sent a number of emails to the Tribunal reiterating his point that he could not set out the Respondent's case unless and until the Applicant complied with this direction. He applied on behalf of the Respondent for the Applicant's case to be struck out.
6. The Tribunal responded by email on 24th June 2022. Judge Tagliavini had decided to refuse the strike-out application and made yet further directions. Somewhat plaintively, she ordered,

The parties are to comply with the Tribunal's Directions of 5 April 2022 to the greatest extent possible and are to adopt a common-sense approach to any adjustment to the now out of date timetable. Judge Tagliavini considers the parties are unlikely to comply with an amended timetable considering the history of this application.

7. However, yet again, the Applicant did not provide the missing information and Mr Wolanski again decided it was therefore impossible to set out the Respondent's case. He reiterated this in an email on 7th October 2022, the Friday before the hearing began on the Monday.
8. Rule 9 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 provides:
 - (3) The Tribunal may strike out the whole or a part of the proceedings or case if—
 - (a) the applicant has failed to comply with a direction which stated that failure by the applicant to comply with the direction could lead to the striking out of the proceedings or case or that part of it;
 - (b) the applicant has failed to co-operate with the Tribunal such that the Tribunal cannot deal with the proceedings fairly and justly; ...

- (7) This rule applies to a respondent as it applies to an applicant except that—
- (a) a reference to the striking out of the proceedings or case or part of them is to be read as a reference to the barring of the respondent from taking further part in the proceedings or part of them...
9. Although the Applicant's case was not set out in a way which made it easy to respond to, it did contain the details of what service charge items he objected to. The absence of the amounts which the Applicant would allege constituted a reasonable payment instead of the amount actually charged inhibited the Respondent from making a settlement offer because Mr Wolanski had no idea what sum would satisfy the Applicant. However, that would not inhibit the Respondent from setting out how the expenditure on each item was incurred so that it could be determined whether the resulting service charge was reasonable and payable.
 10. Both parties were given several chances to state their case. Judge Tagliavini ordered the parties to do so to "the greatest extent possible". The directions orders of June, October and April contained warnings that failure to comply with the directions could lead to the Applicant's case being struck out or the Respondent being debarred from defending the proceedings.
 11. The Tribunal is satisfied that the Respondent's failure to state its case is an obvious and indefensible breach of the Tribunal's directions. There is no point in giving the Respondent yet another chance to do what should have been done at the first time of asking. Therefore, the Tribunal has more than sufficient grounds to debar the Respondent.
 12. However, the Tribunal would then be confronted with the Applicant's case. In the absence of a case from the Respondent and the Applicant's failure to provide his alternative figures as directed, the Tribunal would have little to no idea of what amounts should be determined in place of those challenged by the Applicant. The Applicant's failure to comply with the direction as to his alternative figures might not seem as serious as the Respondent's failure to state a case at all but it is just as obstructive to a proper determination. It is also inexcusable. Through the various directions, the Applicant did not seek to change this requirement and the Tribunal did not change it. It is one thing for a party to misunderstand something or not have the technical ability to comply but it is not for either party to decide, deliberately and consciously, to ignore the Tribunal's directions when they happen to feel it is appropriate.
 13. In the circumstances, the Tribunal is satisfied that it is appropriate to strike out the application. Having struck it out, there are no proceedings from which to debar the Respondent but, for the sake of clarity, the Respondent would have been debarred if the application had not been struck out. The Applicant would have preferred the

Tribunal to issue yet more directions but the history of this matter suggests that this would have been elevating hope over experience.

14. This decision is not intended to prevent either party from bringing the same dispute, about the same service charges, to the Tribunal in future. However, non-compliance with directions next time would have similar results.
15. The Tribunal has made no determination on any of the substantive issues but those issues seem suitable for settlement negotiations or mediation. The Tribunal would encourage the parties to talk to each other. The Applicant has a number of concerns which may abate if the service charges are explained to him. Mr Wolanski is concerned at the time and money expended in doing so but some effort spent with the Applicant may have the effect of preventing or limiting any future litigation and the further time and cost involved.

Name: Judge Nicol

Date: 11th October 2022