



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

Case reference : **CAM/00MG/LSC/2023/0006**

Property : **8 Addenbrookes Road
Newport Pagnell
Buckinghamshire MK16 9FD**

Applicant : **Nathan Bingley**

Respondent : **Spectrum (Newport Pagnell)
Management Limited**

Type of application : **Liability for service charges**

Tribunal : **Judge David Wyatt**

Date of decision : **6 July 2023**

NOTICE OF DECISION TO STRIKE OUT A CASE

Decision

If these applications under section 27A of the Landlord and Tenant Act 1985 (the “**1985 Act**”) and paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (the “**2002 Act**”) had not already automatically been struck out under Rule 9(1) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (the “**Rules**”), they are hereby struck out under Rule 9(3)(a).

Reasons

1. On 24 January 2023, the Applicant applied to the tribunal under section 27A of the 1985 Act to determine payability of service charges for 2019 to 2023. He did not make an application under section 20C of the 1985 Act, but did apply for an order under paragraph 5A of Schedule 11 to the 2002 Act.
2. The Applicant indicated that he had not purchased the Property until 2021 and should not be liable for costs for earlier years. He said that there had been a pressure problem with the boiler since he moved in

and this was not resolved. He said it had also taken a year for a leak to be fixed and this had caused damage to his ceiling and his belongings.

3. After requests for missing documents and further information from the Applicant, enquiries were made of the Respondent's representatives. On 13 April 2023, they explained that a balancing demand had been made on 16 June 2022 for deficits in the 2019 and 2020 service charge years. They said that in their replies to enquiries for sale/purchase of the Property they had warned that the accounts for these years were outstanding and advised that a retention be kept for any excess charge. They understood the conveyancing solicitors had negotiated a retention but only for 12 months from the purchase in March 2021, so this had been released to the seller before the balancing demand was made. They said the Applicant had informed them that he had complained to the Legal Ombudsman about his conveyancing solicitors but his complaint had not been upheld. They said the Respondent had issued County Court proceedings for the sum sought in the balancing demand, Judgment in default had been obtained for £889.50 (for the demand for 2019 and 2020 plus court fees, interest and costs) and paid in full by the Applicant in March 2023. The Applicant was asked to comment on all of this and did not dispute what the Respondent had said.
4. On 3 May 2023, I gave directions encouraging the Applicant to seek independent legal advice, noting the matters said already to be the subject of the default Judgment and giving basic guidance about what the Applicant would need to do if he wished to pursue determinations in relation to the alleged boiler problems and leak. I warned that the tribunal could decide to strike out the application, but was giving this explanation and warning to ensure the Applicant had been given a fair opportunity to produce documents making a case which the tribunal could deal with. The Applicant was directed to by 24 May 2023 prepare and send his case documents to the Respondent, including a schedule of disputed items, a statement, copies of documents relied upon and any witness statements of fact.
5. The Applicant did not comply with this direction. He produced only an e-mail on 18 May 2023 which was not copied to the Respondent. This suggested the only years he now wished to dispute were 2019 and 2020. The Applicant said gas usage was disputed, but gave no information. He asserted that a roof leak had been reported, had caused damage to belongings, had stopped the Applicant letting out his spare room to a lodger and still had not been properly remedied, so he had lost £600 per month for 18 months and suffered stress and depression.
6. On 15 June 2023, I gave a final explanation and warning. This directed that by 23 June 2023 the Applicant must comply with the directions of 3 May 2023 and if he did not do so these proceedings would automatically be struck out under Rule 9(1).

7. On 19 June 2023, the Applicant sent a brief schedule, with no other case documents. Since the Applicant has in substance failed to comply with the directions, these proceedings may already have been struck out automatically. If they have not, and to consider whether they should be reinstated if they have, I have reviewed below the five items described by the Applicant in his schedule.
8. First, the Applicant says he wishes to dispute balancing charges of £347.33 for 2019 and 2020 less an unexplained adjustment of £167.46. Second, the Applicant disputes £528.02 for gas for 2019 and 2020. It appears the tribunal would not have jurisdiction (legal power) to make any determination in relation to these matters because they were all paid by the previous leaseholder or formed part of the balancing charge for which default Judgment was entered. The Applicant has not applied to the County Court to set aside that Judgment. He agrees that he paid it more than three months ago. Even if the tribunal does have jurisdiction in relation to any of these matters, the Applicant has not complied with the directions requiring him to quantify how much of this is said to be reasonable/unreasonable and has produced nothing to indicate a case with any reasonable prospect of success. The Applicant says only that the same pressure problems were probably existing at this time, so gas usage “*should be re-evaluated*”.
9. Third, the Applicant says he wishes to dispute gas usage for 2021 to 2022 but cannot say how much he wishes to challenge because the accounts have not yet been finalised. He asserts that low pressure will have meant that residents used more gas to heat their flats, but gives no evidence or quantification of this. The Applicant has failed to comply with the directions requiring him to identify any estimated charges he wished to dispute for these years and has made no real case about this for the Respondent to answer.
10. Fourth, the Applicant says he wishes to dispute all service charges from 2021 to date, which he says total £4,609.01. Under this heading, he alleges low pressure in the heating system providing inadequate heating and says he had to use his immersion heater, but gives no details. He also refers to the alleged roof leak. He provides no evidence of any of these matters. Again, he has failed to comply with the directions requiring him to identify any service charge costs said not to be reasonable or payable. The tribunal had already warned in the earlier directions that if he wished to make a case that he had suffered loss from a breach of covenant which should be set off against service charges otherwise payable he would need to prepare his case carefully and provide full details. He has not done so.
11. Finally, the Applicant says he wishes to dispute recharged expenditure of £70. This has not been mentioned before. Despite the directions, he does not identify the service charge year or source of this disputed charge. In view of the explanations already given and failures to comply with directions, it is not appropriate to seek to explore this further in these proceedings.

12. Accordingly, I am satisfied that these proceedings should be (or remain) struck out under Rule 9(3)(a) for the failures to comply with the directions given by the tribunal. These all warned that failure to comply with those directions could lead to the striking out of the proceedings.
13. This does not preclude the Applicant from making a new application to the tribunal, at least in relation to any service charges from 2021 onwards, when service charge accounts have been prepared and/or he is ready to produce adequate case documents identifying disputed estimated or actual costs and evidencing any grounds of dispute, including any losses he says he has incurred and should be set off against any service charges otherwise payable. However, he is reminded that the tribunal has no power in these proceedings to order the landlord to carry out works or to award compensation (the lost rental he described earlier would exceed the service charges he has been seeking to dispute). If he was intending in these proceedings to make a claim for compensation against his landlord, he may wish to take independent legal advice on whether to make such a claim in the County Court. The tribunal cannot advise and these proceedings are now at an end.

Judge David Wyatt

6 July 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).