



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

**IN THE COUNTY COURT at Romford,
sitting at 10 Alfred Place, London
WC1E 7LR**

Tribunal reference : LON/00AB/LSC/2021/0271

Court claim number : F22YM041

Property : Flat A, 9 Oval Road, Dagenham, RM10
9DP

Applicant/Claimant : Assethold Limited (Co. no 227627)

Representative : Mr Ronnie Gurvits of Eagerstates
Limited

Respondent/Defendant : Nelio Patricio Teixeira Franco

Representative : In person

Tribunal members : Judge Tagliavini and Mrs S Redmond
MRICS

In the county court : Judge Tagliavini

Date of hearing : 17 December 2021
Date of decision : 21 January 2022

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has not been objected to by the parties. The form of remote hearing was V: CVPREMOTE. A face-to-face hearing was not held because it was not practicable, and all issues could be determined in a remote hearing. The documents that the tribunal were referred

to were in the applicant's bundle of pp 1-194 the contents of which the tribunal has taken into consideration.

This decision takes effect and is 'handed down' from the date it is sent to the parties by the tribunal office:

Summary of the decisions made by the Tribunal

- (1) Service charges in the sum of £1,673.16 are payable by the Nelio Patricio Teixeira Franco to Assethold Limited (Co. no 227677) by 25 February 2022
- (ii) The tribunal determines that nothing is payable for administration charges in respect of this application *ref:* LON/00AB/LSC/2021/0271.
- (iii) The tribunal determines that nothing is payable for administration charges claimed of £3,600 in respect of the previous county court claim application.
- (iv) The tribunal determines the sum of £2000 is payable in respect of legal costs in respect of this application *ref:* LON/00AB/LSC/2021/0271.
- (v) Contractual costs in the sum of £2,000 are payable by Mr Patricio Franco to Assethold Limited (Co. no 227677) by 25 February 2022.

Summary of the decisions made by the Court

- (i) The following sums are payable by the Nelio Patricio Teixeira Franco to Assethold Limited Con 227677 by 25 February 2022
- (ii) Ground rent of £100
- (iii) Costs in the sum of £555

The proceedings

1. Proceedings were originally issued against the respondent in a claim dated 20 September 2019 in the County Court under claim number F22YMO412, claiming Service and Administration Charges amounting to £9000.38, interest and costs. The respondent filed a Defence dated 30 October 2019 asserting that his service charge account was up to date

and did not reflect the payments he had made. Having been allocated to the small claims track, the proceedings were then transferred to this tribunal by the order of Deputy District Judge D H Smith dated 11 May 2021.

2. Directions were issued, and the matter eventually came to hearing on 17 December 2021.

Background

3. In a decision of the county court sitting at Romford dated 27 April 2018 judgement in the claim D9QZ449J was entered for Assethold Ltd against the defendant/respondent in the sum of £5,282.09 including costs of £610.00.

The hearing

4. The applicant freeholder was represented by Mr Ronnie Gurvits, property manager at Eagerstates Limited the applicant's managing agent. The respondent leaseholder appeared in person.

The background

5. The subject property is a first floor flat of three similar flats.
6. Neither party requested an inspection of the property; nor did the tribunal consider that one was necessary, or that one would have been proportionate to the issues in dispute.
7. The respondent holds a long lease of the subject property, which requires the landlord to provide services and for the lessee to contribute towards their costs by way a variable service charge. Each service charge year begins on 24 June with the lease requiring half yearly payments on 24 June and 25 December. By a letter dated 3 June 2019 the applicant sent to respondent a statement for the accurate service charges for 2018/19. These amounted to £5,329.88 of which the 1/3 required from the respondent was £1,776.63 of which £781.19 had been received on account leaving a balance of £995.44.
8. The same letter set out the estimated service charges for 2019/2020 in the sum of £7,252.30 including meter cupboard works of £3,186.00, of which the respondent's 1/3 share totalled £2,417.43 payable in half-yearly instalments of £1,208.72 and ground rent of £100 for the period June-December 2019. All other charges claimed in this letter related to the costs of previous proceedings. Therefore, at the date of the issue of the current county court claim in October 2019, the service charge

arrears amounted to £2,204.16 for period 2018 to 24 December 2019 plus £100 for ground rent.

The issues

9. The sums claimed by the Applicant were as follows:
 - (i) Service charge to year ended June 2019: £1,776.63 (estimated)
 - (ii) Service charges for the period June 2019–December 2019: £1,208.72
 - (iii) Administration charges for breaches of payment: £2,045.00
 - (iv) Administration in respect of previous proceedings: £3,600.00
 - (v) Ground rent for the period June-December 2019: £100.00
 - (vi) Interest: £476.22

10. At the start of the hearing the parties identified the relevant issues for decision as follows:
 - (i) Is the respondent/defendant liable to pay the administration sums demanded in respect of earlier county court proceedings for which judgement including interest and costs has been given for the applicant/claimant?
 - (ii) Were all sums paid by the respondent/defendant reflected on the service charge account and properly adjusted for the actual sums incurred rather than the estimated costs?
 - (iii) Are payments for meter cupboard works reasonable and payable?

11. The respondent sought to challenge service charges relating to earlier periods including 2016/17 and 2017/18. However, these do not form part of the claim transferred to this tribunal and in any event could or should have been the subject of earlier proceedings for which judgement has been entered. Therefore, the tribunal is only able to deal with the service and administration charges in these proceedings i.e., 2018/2019.

County court issues

12. After the proceedings were sent to the tribunal offices, the tribunal decided to administer the whole claim so that the Tribunal Judge at the final hearing performed the role of both Tribunal Judge and Judge of the County Court (District Judge). No party objected to this.

The tribunal's decisions and reasons

Service charges

13. The tribunal finds that service charges for the period ending June 2019 are reasonable and payable by the respondent in the sum of £995.44.
14. The tribunal finds that service charges for the period ending December 2019 in the sum of £677.72 to be reasonable and payable. This sum represents the half-yearly service charges claimed of £1,208.72 less 50% of £1,062.00 for meter cupboard works (*see below*).

Meter cupboard works

15. The tribunal finds these costs unsubstantiated. Reference was made to 'meter cupboard works as per section 20 notices' in the estimated service charge account June 2018/2019 produced by the applicant. However, these notices were not provided to the tribunal, or any evidence of the works having been carried out with the actual service charge account for 2018/19 omitting this item. Therefore, the tribunal finds these sums are not reasonable or payable by the respondent in his 1/3 share i.e., £1,062.0 for the service charge 2019/2020. However, as the claim made covers only 50% of the service charges due for 2019/20 the tribunal also reduces the sum demanded accordingly i.e., £531.00

Administration charges in current proceedings of £2,045.00

16. The tribunal finds the lease makes and no provision for the payments of such charges and therefore determines these sums are not payable by the respondent.

Administration charges of £3,600 for previous county court proceedings

17. The tribunal finds these sums are not payable. If the applicant had wished to recover the costs of those proceedings, they should have sought the same in Claim No. D9QZ449J1.

Contractual costs

18. The tribunal was provided with a Summary Statement of Costs totalling £6,290.00 as of May 2021. The tribunal finds that clause 3(A)(v) of the lease makes provision for the payment of costs for the purpose of or incidental to the preparation of notices required for forfeiture. The tribunal finds that by a letter dated 14 August 2019 to the respondent from the applicant's solicitors Scott Cohen, reference was made to obtaining a determination of the alleged debt with a view to initiating

forfeiture proceedings. At the hearing further costs were claimed of £1,300 (plus VAT) for the solicitor's costs of preparing the hearing bundle and £1,080 (inclusive of VAT) for Mr Gurvits costs although he is not legally qualified or produced any proof of loss.

19. The tribunal finds the costs claimed are out of all proportion to the sums initially claimed and to the sums recovered. Therefore, the tribunal limits the costs to £2,000 representing approximately 20% and the extent of the respondent's successful challenges to the £9,000 originally claimed.

Interest

20. Clause 3 (A)(ii) of the lease makes provision for the charging of interest at the annual rate of 4% above the Barclay's Bank Base Rate and have been pleaded at the rate of 4.75% per annum from the date of claim. However, in light of the findings of the tribunal and the difficulties in deciphering the applicant's accounts and the sums properly charged, the tribunal makes no award of interest.

Decisions of the county court

Ground rent of £100

21. The court finds this sum is payable under the terms of the lease.

Costs

22. By an order dated 8 November 2019 this claim F22YM041 was allocated to the small claims track. Therefore, costs are limited by CPR 27.14 and are awarded in the sum of £555.

Interest

21. In light of the tribunal's finding the court exercises its discretion and makes no award of interest.

Conclusion

22. By way of conclusion, we make the following awards in favour of the landlord:
 - (i) Service charges: £1,674.16
 - (ii) Ground rent: £100
 - (iii) Costs in the sum of £555

23. A form of judgment that will be submitted with these reasons to the County Court sitting at Romford, to be entered in the court's records. All payments are to be made by 25 February 2022.

Name: Judge Tagliavini

Date: 21 January 2022

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.