



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

Case reference : **LON/00AN/LSC/2023/0093**

Property : **Flat 71 King Henrys Reach, Manbre Road, London W6 9RH**

Applicant : **Mr Anthony Boys**

Representative : **In person**

Respondent : **Sigma Limited**

Representative : **Mr Richard Miller, counsel for Burlington Estates (managing agent and county court defendant)**

Type of application : **For the determination of the liability to pay service charges under section 27A of the Landlord and Tenant Act 1985**

Tribunal members : **Judge Tagliavini
Mr S Mason BSc FRICS**

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

Date of hearing : **15 April 2024
22 July 2024 (r.13 costs)**

Date of decision : **29 May 2024
23 July 2024 (r.13 costs)**

DECISION AND ADDENDUM RE: RULE 13 COSTS

Decisions of the tribunal

- (1) The tribunal determines that all charges disputed by the applicant in the sum of £8,148.30 less the sum of £216.19, which was conceded by the respondent was unsupported by invoices and should be refunded to the applicant.
 - (2) The tribunal makes the determinations as set out under the various headings in this Decision.
 - (3) The tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985.
 - (4) The tribunal refers the matter back to the county court sitting at Wandsworth for any further orders that may be required including any matters of interest and costs.
 - (5) The tribunal gives further directions in respect of any application for an order for costs pursuant to rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.
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The application

1. Proceedings were originally issued in the County Court Business Centre under claim no. 346Mc366 and named Burlington Estates as the Defendant who act for the respondent landlord as its managing agents. The claim was transferred to the County Court at Wandsworth and then in turn transferred to this tribunal.
2. As the tribunal is not sitting double hatted under its deployment powers, it only has jurisdiction to substitute the respondent within the tribunal proceedings for the name of the landlord's managing agents with the name of the landlord Sigma Limited. In the circumstances, the tribunal will determine the dispute that has been brought in the county court against Burlington Estates and transferred to the tribunal, as if Burlington is the agent of the principal (landlord). Thereafter, the applicant or the respondent (as appropriate) must make an application to the county court to substitute the Defendant in the claim to name Sigma Ltd.

The hearing

3. The Applicant appeared in person at the hearing and the Respondent was represented by Mr Richard Miller of counsel.

4. The tribunal noted the applicant had included documentation that was prepared for the purpose of a mediation and therefore was incorrectly included in the hearing bundle and therefore disregarded by the tribunal.

The background

5. The property which is the subject of this application is a flat situated in a building containing 83 residential units across 10 blocks with the use of a designated parking space.
6. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.
7. The Applicant holds a long lease of the property dated 16th October 1996 made between Landmark Developments (UK) Limited and Over Rankeilour Farms Limited which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease and will be referred to below, where appropriate.
8. The applicant is required to contribute 1.06% per annum towards the service charges for the flat and 0.775% per annum of the expenditure in respect of the car park. This sum is said to include management of parking related repairs, cleaning and security.

The issues

9. At the start of the hearing the parties identified the relevant issues for determination as follows:
 - (i) The actual service charges incurred from 24 June 2021 to 23 June 2022 and 50% of the estimated service charges for the period 24 June 2022 to 23 June 2023 i.e. those demanded to 24 December 2022 and totalling £7,908.30 of which £1,170.40 is said to be in respect of a reserve fund.
 - (ii) Two administration charges in the total sum of £240
10. The tribunal found the applicant's case was unclear in respect of the actual items of service charge he was disputing and the reasons why he was disputing each of them. However, the tribunal was able to establish the following:

- (i) Requests for invoices and information had not been provided either at all or only partially;
 - (ii) A reserve fund is not payable under the terms of the lease;
 - (iii) Building insurance costs were too high due to a poor claims history;
 - (iv) The standard of cleaning;
 - (v) Caretakers, porters and maintenance staff;
 - (vi) The cost of Burlington Estates;
 - (vii) Gardening costs;
 - (viii) Duplication of costs across car park service charges and flat service charges.
11. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

Actual service charges year 2021/2022 and 50% of actual service charges 2022/2023

Reserve fund

12. The tribunal finds that clauses 5.4.11 and 5.7 of the lease make provision for the collection of a reserve fund. The tribunal finds this sum is reasonable and payable by the applicant.

Caretakers, porters and maintenance staff

13. The tribunal accepts the respondent's evidence that these personnel are on site and that their services benefit the lessees of the 83 flats, whether they are in physical occupation of their respective flats or have sub-let them as permitted by clause 3.7.2 the lease.

Cleaning and gardening costs

14. The tribunal accepts the respondent's evidence that cleaning and gardening costs have been reasonably incurred. The tribunal does not accept the applicant's unsubstantiated and sometimes contradictory assertions these costs are unreasonable and finds he has provided no evidence to support his assertions.

Duplication of charges

15. The tribunal accepts the respondent's evidence and finds the charges have not been duplicated and the service charges for the flat at 1.06% are distinguishable from those charged in respect of the car park at 0.775%.

Management fees

12. The tribunal finds the respondent is entitled to rely on a managing agent under the terms of the lease. The tribunal finds the annual service charge for management, in the region of £412 (plus VAT) per annum is at the upper range of what is considered to be reasonable. However, the tribunal finds the management fee includes a proportion in respect of the management of the car park as well as the Building containing the 83 properties.

Building insurance

13. The tribunal finds the applicant has been unable to establish why the costs of the insurance is unreasonable during the period challenged. It appears the extent of cover has now been reduced and excludes leaks of water from flats that have been caused by the leaseholders or their sub-tenants.

Administration fees

13. The applicant conceded at the hearing that these charges are payable under the terms of the lease. The respondent asserted these sums represent the cost of sending two 'letters before action' sent in the period October 2022 and January 2023. The tribunal finds these costs are at the upper end of what is considered reasonable, but on the facts of this case and on the applicant's concession they are payable under the terms of the lease find they are reasonable.

Application under s.20C

13. At the hearing, the applicant made an application for an order under s.20C of the Landlord and Tenant Act 1985 limiting the landlord from adding its costs of the tribunal proceedings from being added to the service charges. The tribunal refuses the application and declines to make the order sought having regard to the findings above.

Rule 13 costs

14. At the hearing, the respondent sought an order for costs under rule 13 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 in the sum of _____. However, the tribunal determined the applicant

had insufficient notice of this application and therefore makes the following directions:

DIRECTIONS

- (1) Within 14 days of the date of service of this decision on the parties, the respondent (if it chooses) may make an application for costs in the proper form and specifying the grounds for the application and providing a Schedule of Costs and shall send a copy of these documents to the applicant and to the tribunal.
- (2) Within 21 days of receiving an application for costs, the applicant is send any statement/submission objecting to these costs stating the reasons why.
- (3) The members of this tribunal will determine the application on the papers within 28 days of the applicant's submissions being received and an addendum made to this Decision before it is remitted to the county court.
- (4) In the event no application for costs is made, this matter will be remitted to the county court for any further orders,

Name: Judge Tagliavini

Date: 29 May 2024

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).

ADDENDUM

RE: RULE 13 COSTS

15. In accordance with the Directions above the respondent made a written application for costs under rule 13 of The Tribunal (First-tier Tribunal) (Property Chamber) Rules 2013, supported by a Schedule of Costs in the final sum of £11,410.00)inc. VAT) and written submissions from counsel, Mr Richard Meiller. In response, the applicant provided written submission (undated and unsigned) objecting to the application.

The tribunal's decision

16. in reaching its decision on the documents provided, the tribunal took into account the submissions provided. However, the tribunal finds the respondent has failed to meet the first of the three stage test identified in *Willow Court Management (1985) Ltd v Alexander* [2016] UKUT 0290 (LC). Therefore, the application for costs to be paid by the applicant is refused.

The tribunal's reasons

17. Rule 13 sets out costs may be awarded where a Tribunal finds that:
- (a) costs have been incurred as a result of any “*improper, unreasonable or negligent act or omission on part of any legal or other representative which is unreasonable to expect that party to pay,*” the Tribunal may order payment of wasted costs.
 - (b) a person who has acted: “*unreasonably in bringing, defending or conducting proceedings,*” the Tribunal may order payment of unreasonable conduct costs.

18. In *Willow Court*, the Upper Tribunal's identified a three stage systematic approach that should be applied in such applications:

(1) Has the person acted unreasonably?

At this stage, there is a high threshold. The UTLC said that "*if there is no reasonable explanation for the conduct complained of the behaviour will be adjudged to be unreasonable, and the threshold for making of an order will have been crossed.*"

(2) Should an Order be made?

If the party has acted unreasonably, the Tribunal has a discretion whether to make an order or not. There would be focus on the nature, seriousness and effect of the unreasonable conduct, which will be an important part of the material to be taken into account.

(3) What should the order be?

If the above two stages above are satisfied, it does not necessarily follow there will be an order for costs. Importantly, the order need not be confined to '*attributable to the unreasonable conduct.*'

19. The respondent asserted the applicant had behave unreasonably in that he:

(i) Approached the dispute in an aggressive and demanding manner.

was (ii) Joined the wrong defendant in the county court claim, which rectified by the tribunal for the purpose of the transferred proceedings in the tribunal only, leading to unnecessary procedural complexity.

(iii) Failed to identify a coherent basis for challenging the service charges, either at the procedural or hearing stages.

(iv) Had a clear collateral purpose to the litigation i.e. pursuant of a vendetta against other leaseholders and to pressurise the respondent in recognising his unofficial Residents' Association.

20. In his submissions, the applicant asserted:

(i) The respondent and its agents Burlington Estate acted unreasonably and gave the applicant no choice but to issue proceedings to determine the issues in dispute as they failed to answer or engage with applicant on numerous occasions.

(ii) The true identity of the landlord was unclear as the service charge demands identified Sigma Limited of 46 Duke Street, Kington, Hertfordshire HR5 3DR is incorrect as there is no company registered at this address.

(iii) The applicant is a litigant in person.

21. The tribunal finds the respondent could have either applied to strike out the country court claim as failing to establish a cause of action against the managing agent Bulington Estate or applied to substitute the defendant with the landlord before transfer to the tribunal in order to avoid the procedural confusion of which it now complains.

22. The tribunal finds the applicant's claims were less than clear but did not ultimately prevent the tribunal from reaching a decision on each of the items in dispute.

23. Further, the tribunal determines there is no requirement for an applicant to be pleasant and undemanding before issuing an application. The tribunal also finds that although the applicant, may have had additional motivations in bringing proceedings, he nevertheless had a genuine complaint, albeit somewhat unclear, in respect of his service charges.

24. The First-tier tribunal is a 'no costs jurisdiction' and it is not unusual for litigants in person to appear and attempt to articulate their claims without the assistance of legal advice or assistance. Consequently, costs are awarded only where the high bar of unreasonable behaviour has been reached. The tribunal finds the applicant did not, nor has the respondent demonstrated that high bar was reached. Consequently, the tribunal is not required to consider the second or third stages set out in *Willow Court*.

25. Therefore the application for costs is refused.

Name: Judge Tagliavini

Date: 23 July 2024

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.

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