



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

Case reference : LON/OOBD/LSC/2024/0068

Property : 2nd Floor Flat, 86B The Green, Twickenham, TW2 5AG

Applicant : Karl McMillan

Representative : In person

Respondent : Abdelghani el Aouadi

Representative : In person

Type of application : Payability and reasonableness of service charges

Tribunal:

Judge Shepherd

John Naylor FRICS FIRPM

Date of Hearing: 13th August 2024

DECISION

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1. The Applicant in this case is the leaseholder of premises at 2nd Floor Flat, 86B The Green, Twickenham, TW2 5AG (“The premises”). The Respondent is the freeholder of the premises. The premises lies within a building containing seven residential flats and 2 restaurants.
2. A hearing took place on 8th August 2024. Neither party attended. In the Respondent’s case this is not a surprise because he has failed to engage with any of the directions. In the Applicant’s case it was expected he would attend because he filed a bundle of documents on the day before hearing. He had told the clerk that he was attending a wedding on the day of the hearing but he would attend the hearing if he was required to. In the event he did not attend

for reasons which are unclear. This was disappointing because the Tribunal had assembled to hear the matter and a considerable amount of Tribunal time and money was potentially wasted. If as appears the case the Applicant chose the wedding above the hearing this is not acceptable particularly when the Tribunal had not been informed. As it is however, we don't definitely know the reason for the Applicant's non - attendance. What is clear however is that the Respondent has failed to engage completely.

3. We were able to reach a determination despite the absence of the parties. In doing so we have ensured that we were careful in applying weight to the Applicant's evidence in light of his non - attendance. This evidence does however, carry some weight because it was not countered in any way by the Respondent.
4. In his statement the Applicant said the following:
 - *The Landlord called me on the 3rd of February 2024 and said that he had a cashflow problem and he needed me to pay for my share of the Building Insurance going back seven years. I explained that I didn't think he could recover costs going back that far but he said that he could and would email me the demands and I must pay them immediately.*
 - *I received the email on the same day with the demand for the payment of the seven years. In the email he demanded 2018, 2019, 2020, 2021, 2022, 2023 and 2024.*
 - *These were the First Demands for Building Insurance for these years that I have received.*
 - *The Demands had no Rights and Obligations Included and requests via Phone, Text and Email for Proof of Insurance were ignored.*
 - *The Landlord and I have been in communication over these seven years by both phone and email but he has never mentioned or referred to these costs.*
 - *In good faith we paid 2023 and 2024 (without Proof of Insurance) but as the others were costs incurred by the Landlord over 18 months ago we appealed to the First-Tier Tribunal*
 - *As part of the this Bundle I have attached key correspondence between the Landlord and myself on this issue.*

5. Attached to the statement were "invoices" produced by the Respondent which appear to have been prepared on the same date in 2024. The invoices were not in the proper form for a formal demand and did not contain the leaseholder's rights and responsibilities.

The relevant law

6. The law applicable in the present case was limited. It was essentially a challenge to the payability of the costs.

7. The Landlord and Tenant Act 1985,s.19 states the following:

19.— Limitation of service charges: reasonableness.

1. *Relevant costs shall be taken into account in determining the amount of a service charge payable for a period—*
 - a. *only to the extent that they are reasonably incurred, and*
 - b. *where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard; and the amount payable shall be limited accordingly.*
2. *Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.*

....

8. The Tribunal's jurisdiction to address the issues in s.19 is contained in s.27A Landlord and Tenant 1985 which states the following:

27A Liability to pay service charges: jurisdiction

1. *An application may be made to [the appropriate tribunal]² for a determination whether a service charge is payable and, if it is, as to—*
 - a. *the person by whom it is payable,*
 - b. *the person to whom it is payable,*
 - c. *the amount which is payable,*
 - d. *the date at or by which it is payable, and*
 - e. *the manner in which it is payable.*
2. *Subsection (1) applies whether or not any payment has been made.*
3. *An application may also be made to [the appropriate tribunal]² for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to—*
 - a. *the person by whom it would be payable,*
 - b. *the person to whom it would be payable,*
 - c. *the amount which would be payable,*
 - d. *the date at or by which it would be payable, and*
 - e. *the manner in which it would be payable.*
4. *No application under subsection (1) or (3) may be made in respect of a matter which—*
 - a. *has been agreed or admitted by the tenant,*
 - b. *has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,*
 - c. *has been the subject of determination by a court, or*
 - d. *has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.*

5. *But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.*
9. Under s.21B Landlord and Tenant Act 1985 a failure to include a summary of rights and obligations means that the Applicant is not liable to pay the sum. This is suspensory. In other words liability to pay is suspended until the proper demands are served. In the present case the Respondent has not served any demands in the proper form and the reliability of the “invoices” is questionable.
10. It would appear that the Respondent has recently come alive to the issue that he should have charged for the insurance and sought to bill for it on a backdated basis. As the Applicant has pointed out there is a time limit on claiming service charges once the costs have been incurred. This is an 18 month period (see s 20B Landlord and Tenant Act 1985).

Determination

11. On the evidence we have seen we consider that none of the amounts claimed are due. No proper demands have been made and it is now beyond the limitation period for claiming the demands before 2023.

Judge Shepherd

8th August 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 should be made on Form RP PTA available at <https://www.gov.uk/government/publications/form-rp-pta-application-for-permission-to-appeal-a-decision-to-the-upper-tribunal-lands-chamber>

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).