



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

Case reference : **LON/00AP/LSC/2024/0126**

Property : **Flat 12, Lea Court, 143 Broad Lane,
London, N15 4QH**

Applicant : **Serdar Ozgul**

Representative : **In person**

Respondent : **Notting Hill Genesis Housing
Association**

Representative : **Tom Owen**

Type of application : **Liability to pay service charges under
section 27A Landlord and Tenant Act
1985**

Tribunal : **Judge Robert Latham
Stephen Wheeler MCIEH, CEnvH**

**Date and Venue of
Hearing** : **20 November 2024 at
10 Alfred Place, London WC1E 7LR**

Date and Decision : **22 November 2024**

DECISION

Determination

The Tribunal strikes out this application pursuant to rule 9(3)(a) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (“the Tribunal Rules”).

The Application

1. On 7 April 2024, Mr Serdar Ozgul, the Applicant, issued this application pursuant to section 27A of the Landlord and Tenant Act 1985 seeking a determination of his liability to pay service charges. The sums in dispute were stated to be £2,232.36.
2. On 22 July, the Tribunal gave Directions. The Case was set down for hearing today. The final stage of the Directions (and the first which involved the tribunal) was for the Applicant to file a Bundle of Documents by 28 October. The Applicant failed to comply with this Direction.
3. On 31 October 2024, the Respondent wrote to the Applicant requesting a copy of the Bundle. On 5 November, the Respondent applied to the tribunal for an order striking out the application, on the ground that the Applicant had had not complied with the Directions in that he had failed to file the Bundle of Documents. Mr Ozgul responded on the same day. It is apparent from his email that he did not understand what was required of him. He concluded: “The our case in the Trubinal hands now lets hope the best outcome for both side (sic)”.
4. On 13 November, the tribunal issued a Notice that the Tribunal was minded to strike out the application pursuant to rule 9(3) of the Tribunal (Procedure) (First-Tier Tribunal) (Property Chamber) Rules 2013 (“the Tribunal Rules”). The Legal Officer noted that the Applicant had not indicated in his email that he intended to comply with the Directions, nor had he provided any explanation for his non-compliance. Both parties were invited to make written representations by no later than 12.00 on 18 November on the question whether the application should be struck out. The parties were reminded that the hearing remained scheduled for 20 November.
5. Mr Ozgul responded at 14.12 on the same day. Again, it is apparent that he was bemused by the proceedings. His email included the following passage:

“I did not know anything about bundle to return to Majesty Tribunal Chamber at all. I am feeling to be betrayed by my own estate management by not reading or seeing small prints. I didnt not have a solicitor on this case i was assuming the chamber will be deciding on the paper base by submitting by the estate management.”
6. On 14 November, the Respondent made written representations as to why the application should be struck out. The papers were reviewed by Procedural Judge who directed that the application should be determined as a preliminary issue at today’s hearing.

The Hearing

7. The hearing was listed for 10.00. Mr Tom Owen, the Respondent's Disputes and Consultation Manager, appeared on behalf of the Respondent. He was accompanied by Mr Maddin van Sitter.
8. There was no appearance by Mr Ozgul. There were a number of procedural matters which concerned this Tribunal. We therefore asked the Case Officer to contact Mr Ozgul by both telephone and email to ascertain why he was not present. There was no reply. The Tribunal therefore commenced the hearing at 10.30.¹
9. The Tribunal has had regard to rule 34 of the Tribunal Rules. We were satisfied that Mr Ozgul has been notified of the hearing date and that it was in the interest of justice to proceed in his absence.
10. The problem for the Tribunal was that, without any Bundle of Documents, it was impossible to identify the substance of this dispute. It was difficult to discern this from Mr Ozgul's application form. He had not identified the service charges which he challenged or the years in dispute. It seemed that his significant concern was that his monthly service charge had increased from £109.31 to £186.73 from 1 April 2024, an increase of 70%. He considered this to be unfair. He did not provide a copy of his lease, a requirement specified on the application form. He stated that he was content for a paper determination.
11. The application was considered by a Procedural Judge who gave standard Directions. It is a matter of regret that he did not set it down for a Case Management Hearing ("CMH") to identify exactly what was in dispute. Had he done so, the limited nature of the dispute would have become apparent. The dispute would either have been resolved at the CMH or Directions would have been given for a paper determination.
12. Mr Owen told us that Mr Ozgul had acquired his leasehold interest on 1 December 2023. He is a "commercial" rather than a "social" tenant of the Respondent which is a Registered Social Landlord. Mr Ozgul had been paying an interim service charge for 2023/24 of £109.31 which had increased to £186.73 for 2024/25. The reason for this increase was that the Respondent had significantly underestimated the likely expenditure for 2023/24 and the budget for 2024/25 had been adjusted accordingly. Mr Ozgul had not identified any individual item in the 2024/25 budget which he considered to be unreasonable. He was merely concerned about the size of the increase. The reasonableness of the budget for 2024/25 was to be assessed having regard to the actual expenditure for 2023/24.

¹ After the hearing, Mr Ozgul notified the Case Officer that he was unable to attend as he was working on night shift.

13. The standard Directions required the Respondent to both post and email the following to the Applicant “copies of all relevant service charge accounts and estimates for the years 2023/24 and 2024/25, together with all demands for payment of service charges and details of any payments made”. The Respondent complied with this by serving a large number of documents in a series of emails. Most of these were irrelevant to the narrow issue in dispute. However, the scope of that issue was not entirely clear.
14. By 9 September 2024, the Applicant was directed to send the Respondent a Schedule specifying the service charge items in dispute, any documents upon which he sought to rely and any witness statements. Mr Owen showed the Tribunal, on his iPad, a short email which Mr Ozgul had sent. This merely repeated the Applicant’s contention that the service charge for 2024/25 was excessive.
15. On 24 September, The Respondent sent an email in response stating that the increase in the interim service charge reflected the actual expenditure incurred in 2023/24.
16. The next step was for the Applicant to file a Bundle of Documents for the hearing fixed for today. Mr Ozgul failed to do this.

The Law

17. Martin Rodger KC, the Deputy Tribunal President, first gave guidance in *Haziri v Havering LBC* [2019] UKUT 330(LC) on the approach to be adopted by Residential Property Tribunals where a party fails to comply with Directions:

“21. For a number of years, the courts have emphasised the importance of compliance with the rules and practice directions under which civil litigation is conducted. In *Denton v T H White Limited* [2004] EWCA Civ 906, the Court of Appeal laid down the approach to be followed by the courts in deciding whether to grant relief against sanctions for non-compliance. The majority of the court (Lord Dyson MR and Vos LJ) said at [24] that a judge should approach the question in three stages:

(i) identify and assess the seriousness of the failure to comply;

(ii) consider why the default occurred;

(iii) evaluate all the circumstances of the case to enable the court to deal justly with the application, including the need for litigation to be conducted efficiently and the need to enforce compliance with rules, practice directions and orders.

22. In *BPP Holdings v Commissioners for Her Majesty's Revenue and Customs* [2017] UKSC 55, the Supreme Court explained that although the Civil Procedure Rules (which govern court procedure) do not apply to tribunals, such tribunals should follow a similar approach to procedural non-compliance and relief against sanctions. At paragraph [24] of BPP, Lord Neuberger PSC described decisions of the courts on the application of the Civil Procedure Rules as providing “a salutary reminder as to the importance that is now attached in all courts and tribunals throughout the UK to observing rules in contentious proceedings generally.” Those decisions were directed to, and only strictly applicable to, the courts of England and Wales, “save to the extent that the approach in those cases is adopted by the UT, or, even more, by the Court of Appeal when giving guidance to the FTT.”

18. In *Deane v Newham LBC* [2024] UKUT 300 (LC), the Deputy President gave further guidance. He noted two significant differences between the Civil Procedure Rules (“CPR”) and the Tribunal Rules:

(i) The overriding objective in rule 3 of the Tribunal Rules is expressed in different terms to CPR 1.1. In particular, the need to enforce compliance with rules, practice directions and orders is not identified as a core component of dealing with cases fairly and justly (at [48] – [50]).

(ii) Rule 8 (2) and (3) of the Tribunal Rules do not replicate the factors specified in CRP 3.9(1). In particular, rule 8(2) refers to “such action as the Tribunal considers just” and provides a menu of responses to cases on non-compliance. These act as a reminder that the appropriate reaction, even in a serious case, need not always be to strike out the proceedings (at [54] – [56]).

19. Under rule 3(2) of the Tribunal Rules, dealing with a case fairly and justly includes:

(a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties and of the Tribunal;

(b) avoiding unnecessary formality and seeking flexibility in the proceedings;

(c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;

(d) using any special expertise of the Tribunal effectively; and

- (e) avoiding delay, so far as compatible with proper consideration of the issues.
20. By rule 3(3), the Tribunal must seek to give effect to the overriding objective when it: (a) exercises any power under these Rules; or (b) interprets any rule or practice direction.
21. By rule 3(4), the parties must: (a) help the Tribunal to further the overriding objective; and (b) co-operate with the Tribunal generally.

The Tribunal's Determination

22. The Tribunal is satisfied that it has no option but to strike out Mr Ozgul's application pursuant to rule 9(3)(a) of the Tribunal Rules. The provision of a Bundle of Documents is essential. The Directions had not required the parties to send their Statements of Case to the tribunal. In the absence of a Bundle of Documents which includes the respective cases of the parties, it is impossible for the Tribunal to determine the application.
23. The breach is therefore serious. Mr Ozgul has provided no explanation as to why he failed to file a Bundle. He has had the opportunity to remedy his breach by providing a Bundle. He has failed to do so. Further, he has failed to attend the hearing to present his case.
24. Any applicant who seeks to argue that any service charge is not payable, must establish a prima facie case that it is not reasonable or that it is not payable pursuant to the terms of his lease. Mr Ozgul has failed to establish such a case.
25. These proceedings have caused considerable expense to the Respondent. This is a "no costs" tribunal. We understand that the Respondent made a "without prejudice" offer to Mr Ozgul to settle his claim and to avoid the cost of defending it. It is a matter of regret that Mr Ozgul did not accept this offer.
26. The Tribunal has had regard to the overriding objective to deal with cases fairly and justly. We have due regard to the fact that we are dealing with a litigant in person who has had difficulty in understanding what has been required of him. As stated, it is a matter of regret that the tribunal did not set the matter down for a CMH at an early stage. However, there is only so much that the Tribunal can do to assist a litigant in person. We have sought to investigate the merits of his case. Mr Ozgul has not suggested that any item included in the 2024/25 budget is either unreasonable or is not payable.
27. Mr Ozgul's complaint is that his interim service charge has increased by 70%. This is only an interim charge. At the end of the financial

year, the Respondent will provide him with service charge accounts which will confirm whether the estimate of the likely expenditure was justified.

Judge Robert Latham
22 November 2024

RIGHT TO APPLY FOR THE PROCEEDINGS TO BE REINSTATED

1. Where the proceedings have been struck out under rules 9(1) or (3)(a), the applicant may apply for the proceedings struck out to be reinstated pursuant to rule 9(5) of the Tribunal Rules by making an application in writing to be received by the tribunal within 28 days after the date on which the tribunal sent this notification of the striking out to the parties.
2. Any such application for reinstatement must be sent by email to London.rap@justice.gov.uk and copied to the other party. If a party does not have access to email, its application must be sent to the Tribunal and to the other party by first class post by the same date.

RIGHT OF APPEAL TO THE UPPER TRIBUNAL

1. 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.
2. 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.
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 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.