101797

FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)
EASTERN REGIONAL OFFICE

Case Reference	:	CAM/26/UL/LSC/2014/0028
Property	:	100 Springfields, Welwyn Garden City, Herts AL8 6XL
Applicant (landlord)	:	Welwyn Hatfield Borough Council Represented by Mr Wayne Beglan of Counsel
Respondent (tenant)	:	Mr Peter Tomazou In Person
Date of Application	:	5th March 2014
Type of Application	:	Determination of reasonableness and payability of service charges Landlord & Tenant Act 1985 section 27A
Tribunal	:	Tribunal Judge G M Jones Miss M Krisko BSc (Est Man) FRICS Mr P A Tunley
Date and venue of Hearing	:	Best Western Homestead Court Hotel 13th June 2014

DECISION

ORDER

UPON HEARING Counsel for the Applicant
AND UPON READING the Hearing Bundle
AND the Respondent having voluntarily left the hearing

IT IS ORDERED THAT: -

1. The Respondent is hereby debarred from defending the Application on the grounds that his conduct in relation to the Application has been an abuse of process and that his Defence has no reasonable prospects of success.

2. The unpaid service charges claimed by the Applicant in respect of 100 Springfields, Welwyn Garden City, Herts AL8 6XL for financial years ending 31st March 2011, a balance of £94.54; 31st March 2012 a total of £241.29; and 31st March 2013 a total of £205.90; were reasonably incurred and are payable by the Respondent.

3. The advance services charge in respect of the said property for financial year ending 31st March 2014 in the sum of 456.49 were reasonable and are payable by the Respondent.

4. The Tribunal makes no order as to costs.

Tribunal Judge G M Jones
Chairman
25th June 2014

REASONS

0. BACKGROUND

The Property

0.1 The subject property is a two bedroom second and third floor maisonette in a block of brick and pan tile construction forming part of a development probably dating from the late 1950's. An open staircase leads to the second floor; access to the upper maisonettes is from a balcony running along the front of the block. At the rear of the block are small second floor balconies attached to individual dwellings. Windows are uPVC double-glazed units.

0.2 The structure and exterior appear to be generally in fair to good condition. The Tribunal could not see the front elevation of the roof as an adjoining building prevented us from getting far enough back from the block to see it. The gutters and downpipes on that side appear sound and the gutters clear, though there are signs of water-staining below the balconies, suggesting an overflow of water from hoppers at balcony level that must have continued for some time or recurred on several occasions. The walls appear to be dry (it was dry weather and had been for some time prior to inspection).

0.3 On the rear elevation, however, the gutter sported a flourishing growth of moss. It did not appear that the moss was being washed off the roof (which was entirely clear of moss); it was simply growing in the gutter. The Respondent stated that rain had been known to flow over the moss and down the outside wall of the building, causing dampness in the wall around the windows. At a time of heavy rain (such as has occurred during the winter and early spring of this year) this account would be consistent with what we saw. The hipped roof has three chimney stacks. There were signs of disturbance to the leadwork around the join between chimneys and roof.

0.4 The tenant told the Tribunal that an aerial attached to the central stack had fallen and punched a hole in the roof. There was visible evidence in support of this contention in the form of empty brackets attached to the stack (there was at least one other aerial fixed to it) and new tile work nearby. Leaks around the chimney stacks are a feature of the case; it is not disputed that there has been some water ingress into the roof space around the chimney stacks.

0.5 The Tribunal did not inspect the roof space(s) internally; but it is common ground that the loft is divided by a transverse brick wall adjoining the central chimney stack into two spaces, one of which lies above the Respondent's maisonette and its two neighbours. However, that section of roof space can be accessed only by a trapdoor from the Respondent's maisonette. It is common ground that the Respondent has occupied the loft, which is not part of his maisonette, and that he or some former tenant has modified the roof on the front elevation by removing roofing tiles and inserting clear panes of plastic sheeting. The Tribunal was unable to observe this; but we have seen photographs taken from inside.

0.6 The Applicant has made it clear that the Respondent's occupation of the loft is in breach of the terms of his lease. It was initially done without the knowledge of the Council and now continues very much against the wishes of the Council.

0.7 There was some discussion on site as to whether the Tribunal should make an internal inspection of the maisonette and loft. The Respondent was clear that he did not want to allow the Applicant's representatives into his home. He initially appeared willing to allow the Tribunal to inspect but in the end decided against it. It is fair to say that an inspection might had added little to the evidence already before us, given that it is common ground that there are no leaks at present and signs of internal water damage (if any) have been eradicated by works of repair and redecoration carried out by the Respondent.

0.8 During the inspection the Respondent asked to Tribunal to take oral evidence from other residents. The Chairman told him that evidence must be taken at the hearing and, although no witness statements had been served by him (not even of his own evidence) the Tribunal might be willing to hear witnesses if they attended the hearing. This was explained to two potential witnesses, who appeared to accept the situation. In the end, as will be seen, no witnesses attended the hearing.

The Lease

0.9 The lease dated 2nd October 2006 is a fairly typical "right to buy" lease of its time. It is for a term of 125 years from 10th February 1986 at an annual rent of £10.00. As is usual, the landlord is responsible for the insurance of the block, repair and maintenance of the structure, exterior and common parts (including common service media) of the block, the tenant paying by way of service charge one twelfth of the associated costs. The tenant is responsible for the maintenance and repair of the interior and internal walls of the demised premises (the maisonette), including window glass. It is clear that the loft does not form part of the demised premises. The landlord is entitled to demand as part of the service charges reasonable sums towards a reserve fund for anticipated future works. The landlord's financial year ends 31st March.

1. THE DISPUTE

1.1 It appears that in 2009 the Respondent's flat was damaged by water escaping from a leak in the cold water tank in the loft and he received compensation, probably through an insurance claim. That matter was resolved, the leak reported on 7th April 2009 being repaired on 16th June 2009, and there have been no further problems with the tank. In 2010-11 the Respondent's service charge contribution was £367.51 but he paid only £272.97 (leaving an outstanding balance of £94.54) and has paid nothing since. The total outstanding at the date of the Application was £998.22.

1.2 The Council's files show that in January 2012 the Respondent complained that the roof had been leaking for 18 months, though there was no record of any reports of leaks since June 2009. The roof was inspected on 14th February 2012 and some water staining was found in the loft. The only visible evidence in the maisonette was a hairline crack in the bathroom ceiling, considered to merit a decorative repair only, and thus the tenant's responsibility. The Council initially decided to treat the matter as closed; but then decided to instruct an independent expert, Mr Bob Gold of Glanville Consultants Ltd. An external inspection revealed a slipped roof tile and a need to clear out the gutters. This would involve scaffolding or a cherry picker so was held over in the hope that all necessary work could be identified.

1.3 It proved difficult to arrange an internal inspection (which required the cooperation of the Respondent) and Fiona Lowe says she found it "extremely challenging" to speak to the Respondent by telephone on 30th April 2012. The Respondent complained that there was a severe leak and water was coming through his bathroom ceiling. An inspection was arranged for the following day and the Respondent's sub-tenants allowed access to the flat. It appears that the Respondent kept the loft locked and his tenants did not have access. The inspectors reported that they could see no sign of water ingress, staining, damage or leaks in the flat itself. It was raining quite heavily but the guttering appeared (when viewed from ground level) to be in good order and coping with the flow of rainwater. Here was evidence of some minor displacement of roof tiles but none appeared to be loose or missing.

1.4 It was decided to investigate alternative means of access to the loft, which proved problematical. On 15th May a report was received from an anonymous tenant via Councillor Tony Skottowe that the Respondent had carpeted the loft, installed a Scalextric and replaced two roof tiles with clear panes or tiles. This was naturally a matter of concern given that the roof space accessed only via the Respondent's flat and not intended to be used by tenants ran also above his neighbours' properties. On 3rd July 2012 Mr Skottowe reported that the Respondent had agreed to allow Council inspectors access to the loft. Meanwhile, because of the difficulties and expense of external access (which would require scaffolding or a cherry picker) the Council hesitated to undertake minor repairs until all relevant repairs had been identified. There was also a question whether the roof might be replaced soon, in which case, perhaps, any works could be deferred to avoid duplication of costs.

1.5 On 14th August 2012 Mr Gold inspected the loft and reported that the Respondent was clearly using the loft as living space. Personal effects were scattered about and a Scalextric circuit covered part of the floor. The roof was lined with hardboard and the voids between the rafters appeared to have been insulated. A number of roof lights of amateur design had been installed. There was evidence of water staining on the hardboard adjacent to these, which might have been caused by minor leaks or by condensation. There was also evidence of some minor water ingress around the chimney stacks, suggesting a need to check the flashings and possibly to undertake some re-pointing. There was also some staining on the hardboard lining that appeared to be associated with a slipped tile near the ridge. A fallen aerial was thought likely to be the cause.

1.6 There was, however, no evidence of water penetration into the upper floor of the maisonette. Small ceiling cracks were noted, particularly in the bathroom, but not considered to be structurally significant. External inspection also revealed a loose coping stone and growth of moss and vegetation blocking some of the guttering. It was impossible to see the translucent roof tiles on the front elevation or check whether their profile was correct to keep out driven rain or snow.

1.7 On 12th September 2012 the loose coping stone was rebedded but other works were deferred while the Council considered how best to proceed. On Friday 7th September 2012 while home on leave Ms Lowe received a telephone call from Cllr. Skottowe reporting a complaint from the Respondent that water was leaking through the roof into his flat. This complaint was effectively dismissed.

1.8 On Saturday 22nd December 2012 during the Christmas break, an operative of the Housing Maintenance Team (then operating a skeleton staff) attended 100 Springfield on an emergency following a complaint that water was leaking into the loft. The operative reported that "the extent of the leaks may have been staged to look worse than they actually were". A temporary repair was attempted on 27th December 2012 but the Respondent was away and the HMT were unable to gain access. The Respondent said on the telephone that he had dealt with the matter for the time being using buckets and diverting the flow.

1.9 A visit was scheduled for 10th January 2013 for an internal inspection; but the Respondent was not there and the inspectors could not gain access to the loft. A decision was taken to progress the known external works. An attempt was made to carry out works on 13th February but the weather prevented the scaffolders from starting work and set back all scheduled external works. The scaffolding was eventually erected on 25th February 2013 and works were carried out over the next few days. It is, however, unclear what parts of the guttering were cleared; apparently not all of it. Meanwhile steps were being taken to recover from the Respondent overdue service charges. After initially saying he would make a payment of £300 the Respondent then said he would withhold payment by way of offsetting a compensation claim he was making.

1.10 The Council's Insurance Officer Andrea Plucknett then attempted to pursue an insurance claim on behalf of the Respondent. She pointed out that an insurance assessor would need to inspect the damage. Ms Plucknett suggested to the Respondent that an appointment might be made for the insurance assessor Jim Browne and the Council's consultant Mr Gold to inspect together. This took place on 6th June 2013. Mr Brown reported that there was no evidence of water ingress into the maisonette or damage caused by water ingress. Mr Gold reported that the situation in the loft was the same as on the occasion of his previous inspection, with no evidence of new damage. On 20th June Ms Plucknett wrote to the Respondent explaining that he appeared not to have any claim and reminding him that the loft was not part of his maisonette and he ought not to be using it.

1.11 A further attempt was made to make an appointment to view the loft but once again the Respondent was uncooperative; ultimately, he made it clear that he did not intend to give access to the loft. The Council has been unable to inspect the loft since except on one occasion when emergency repairs were carried out. On that occasion (Christmas Eve 2013) it was noted that there was some dampness near the chimneys but no water coming in. However, some further works have been carried out to the roof to replace slipped tiles and to clear the gutters. Ms Lowe understood that the work was completed by 12th February 2014; but on 16th February the Respondent telephoned to say that the roof was still leaking. Further work was done and apparently completed by 21st February 2014, since when there have been no further reports of leaks. Major roofing works are planned in the near future.

2. THE ISSUES

2.1 The Applicant's case is simple: the service charges, which do not relate to any of the above-mentioned roofing works, do not appear to be disputed by the Respondent and he ought to pay. There is no evidence of any losses justifying a claim for set-off.

2.2 Moreover, the Applicant submits that the Respondent's case should be struck out and the Respondent should be debarred from defending on the grounds that he has patently failed to comply with directions, thereby prejudicing the Applicant and that, in any event, he appears to have no grounds for disputing the service charges claimed and no arguable case for a set-off.

2.3 The Respondent has clearly been saying to the Applicant's officers (as recorded in e-mails and set out in the Applicant's witness statements) that the Applicant has not carried out to a reasonable standard or in a reasonable time scale its obligations under the lease to maintain the roof of the block, thereby causing or permitting damage to his property by ingress of water. He is clearly seeking to set off against the service charges claimed damages he claims to have suffered by reason of the Applicant's breach of covenant. In e-mail correspondence he has quantified his claim at £800. However, his case to the Tribunal comprises only a bundle of 78 pages, with no statement of case or witness statement. These include photographs the significance of most of which is unexplained and, accordingly, obscure.

3. THE HEARING

3.1 The hearing began at 11.10 am. Mr Tomazou asked to speak privately to the Tribunal. He was told that the Applicant's Counsel must be present. He told the Tribunal that he had been visiting the hospital three times a week; he did not explain the nature of his complaint. He told the Tribunal that he had received a telephone call from the hospital and must go there immediately. He said it might be bad news but did not elaborate. The Chairman told Mr Tomazou (who had not previously mentioned that he was ill) that we would wait until, say, 12.30 pm to see whether, after attending the hospital, he was able to return and continue the hearing. He asked Mr Tomazou to telephone to let us know the position. Mr Tomazou left. The Tribunal decided to wait until 12.30 pm to see what happened.

3.2 At 12.25 pm the Mrs Ahn at the Tribunal's Regional Office in Cambridge phoned to say that Mr Tomazou had just telephoned the Office. She reported that he had told her he was unable to return to the hearing; he wanted to think about the case; and he wanted a postponement.

3.3 The hearing was resumed at 12.30 pm. The Tribunal decided to hear submissions from Counsel before deciding how to proceed. Counsel said the Applicant would generally be inclined to be sympathetic to an application for a postponement based on a genuine emergency. But the Council did not accept that there was a genuine emergency. The history of the case suggests that the Respondent tends to avoid inconvenient appointments by making excuses. In this case, the Respondent has also patently ignored the Directions Order (which called for a statement of case and exchange of witness statements).

3.4 In any event, there is no substance to the Respondent's case (as it emerges from correspondence). In some cases, a tenant may be able to mount a defence to a service charge claim on the basis that historical neglect has inflated service charges: see *Continental Property Ventures Inc. v. White* [2006] 1 EGLR 85; [2007] L&TR 4 (Lands Tribunal). But that is not the case here.

3.5 The service charges claimed patently do not include any costs associated with roof repairs and the Respondent makes no challenge to the reasonableness of the charges. That leaves only the possibility of set-off in the event the tenant can show that he has suffered loss e.g. by reason of breach of covenant on the part of the landlord. In this case, it appears that there was a successful insurance claim in 2009. But all the evidence from repeated inspections suggests that, apart from the single instance of a slipped or broken tile (the aerial incident), the leaks in the roof have been minor and that no damage has been caused to the Respondent's maisonette. Damage to the roof space by ingress of water through slipped tiles or poor flashings is not damage suffered by the Respondent, whose use of the roof space is unlawful. Accordingly, there is no credible evidence in support of a set-off.

4. THE LAW

Service and Administrative Charges

4.1 Under section 18 of the Landlord & Tenant Act 1985 (as amended) service charges are amounts payable by the tenant of a dwelling, directly or indirectly, for services, repairs, maintenance, improvement, insurance or the landlord's costs of management. Under section 19 relevant costs are to be taken into account only to the extent that they are reasonably incurred and, 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. Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable.

4.2 Under section 27A the Tribunal has jurisdiction to determine whether a service charge is payable and, if so, the amount which is payable; also whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for those costs and, if so, the amount which would be payable.

4.3 In deciding whether costs were reasonably incurred the Tribunal should consider whether the landlord's actions were appropriate and properly effected in accordance with the requirements of the lease and the 1985 Act, bearing in mind RICS Codes. If work is unnecessarily extensive or extravagant, the excess costs cannot be recovered. Recovery may in any event be restricted where the works fell below a reasonable standard.

Information for tenants

4.4 Under section 21 of the Landlord & Tenant Act 1985 a tenant liable to pay service charges may in writing require the landlord, directly or through his agent, to supply him with a written summary of the costs incurred in the last accounting period which are relevant costs in relation to the service charges payable or demanded. Amongst the information the landlord must provide is the aggregate of any amounts received by the landlord on account of the service charge in respect of relevant dwellings and still standing to the credit of the tenants at the end of the relevant accounting period. The landlord must supply the summary within one month of the request or within 6 months of the end of the accounting period, whichever is the later.

4.5 Under section 22 the tenant may, within 6 months of receiving the summary, require the landlord in writing to afford him reasonable facilities for inspecting the accounts, receipts and other documents supporting the summary and for taking copies or extracts from them. The landlord must make those facilities available to the tenant for a period of two months beginning not later than one month after the request was made. Under section 25, failure to comply with the provisions of sections 21 or 22 is a criminal offence. The Commonhold & Leasehold Reform Act 2002 contained provisions amending these sections; but those provisions are not yet in force.

4.6 The RICS Service Charge Residential Management Code (2nd Edition) approved by the Secretary of State under the terms of section 87 of the Leasehold Reform Housing & Urban Development Act 1993 sets out good practice for landlords' agents and managers of residential blocks. Part 10 of The RICS Code deals with "Accounting for Service Charges". Agents and managers are advised that accounts should reflect all expenditure in respect of the relevant accounting period, whether paid or accrued and should indicate clearly all the income in respect of the accounting period, whether received or receivable. Copies of such accounts should be made available to all those contributing to them. Service charge funds for each property should be identifiable and either placed in a separate bank account or in a single client/trust account. Where interest is received this belongs to the fund collectively; it should be shown as a credit in the service charge accounts and retained in the fund and used to defray service charge expenditure.

4.7 All chartered surveyors and others engaged by way of business in residential property management should be familiar with the provisions of this Code, to which the Tribunal is required to have regard.

Proportionality and the Overriding Objective

4.8 The Civil Procedure Rules 1998 introduced into the civil courts in England and Wales a new concept; the Overriding Objective. This was designed to ensure that cases are dealt with justly and is stated in CPR Part 1. Rule 1.1(2) provides as follows:

> "Dealing with a case justly includes, so far as is practicable –
> (a) ensuring that the parties are on an equal footing;
> (b) saving expense ...
> (c) dealing with the case in ways which are proportionate –
> (i) to the amount of money involved;
> (ii) to the importance of the case;
> (iii) to the complexity of the issues; and
> (iv) to the financial position of each party;
> (d) ensuring that it is dealt with expeditiously and fairly; and
> (e) allotting to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases."

4.9 CPR Rule 1.2 provides that the court must seek to give effect to the overriding objective when it exercises any power given to it by the Rules; or interprets any rule. CPR Rule 1.3 requires the parties to help the court to further the overriding objective. Provisions of this sort are inevitable once it is recognised that the resources available to parties to access justice and to the courts to dispense justice are finite and must be controlled and allocated in a principled manner.

4.10 The Tribunal Service is not governed by the CPR; but the provisions of CPR Part 1 are echoed in the Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013 with a view to ensuring that the Tribunal is able to deal with cases fairly and justly (Rule 3(1)). Rule 3 further provides as follows:

> "(2) Dealing with a case justly includes, so far as is practicable –
> (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 in the Tribunal effectively; and
> (e) avoiding delay, so far as compatible with proper consideration of the issues.
>
> (3) The Tribunal must seek to give effect to the overriding objective when it –
> (a) exercises any power under the Rules; or
> (b) interprets any rule or practice direction.
>
> (4) Parties must –
> (a) help the Tribunal to further the overriding objective; and
> (b) co-operate with the Tribunal generally."

Striking out a party's case – Rule 9

4.11 There are several situations in which a party's case may be struck out. The Tribunal must strike out a case where the Tribunal has no jurisdiction and does not exercise its power under rule 6(3)(n)(i) to transfer to another court or tribunal. A case may be struck out automatically if the party fails to comply with an order specifying that sanction in the event a direction is not complied with (usually made only after serial defaults). Under rule 9(3) the Tribunal may strike out the whole or part of proceedings or a case if –

> "(a) the applicant has failed to comply with a direction which stated that failure by the applicant could lead to the striking out of the proceedings or case or that part of it;
> (b) the applicant has failed to co-operate with the Tribunal such that the Tribunal cannot deal with the proceedings fairly and justly;
> (c) the proceedings or case are between the same parties and arise out of facts which are similar or substantially the same as those contained in a proceeding or case which has been decided by the Tribunal;
> (d) the Tribunal considers the proceedings or case (or part of them), or the manner in which they are being conducted, to be frivolous or vexatious or otherwise an abuse of the process of the Tribunal; or
> (e) the Tribunal considers there is no reasonable prospect of the applicant's proceedings or case, or part of it, succeeding."

4.12 The rule applies equally to a respondent, save that a reference to the striking out of proceedings or case or part thereof is to be read as a reference to the barring of the respondent from taking further part in the proceedings or such part of them.

4.13 These sanctions have serious consequences and must be applied with caution.

4.14 The Tribunal must first give the affected party an opportunity to make representations in relation to the proposed striking out or debarring. If proceedings or a case or part of a case are struck out, or the respondent barred, rule 9(5) permits the affected party to apply for the proceedings etc to be reinstated or the bar lifted, as the case may be. Such an application must be made in writing and received by the Tribunal within 28 days after the date on which the Tribunal sent notification of the striking out or debarring to that party.

Costs

4.15 The Tribunal has no general power to award inter-party costs, though a general power now exists under section 29(4) of the Tribunals, Courts & Enforcement Act 2007 and Rule 13(1) of the Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013 to make costs orders in cases where costs are wasted or a party has acted unreasonably. In general, if the terms of the lease so permit, the landlord or designated manager is able to recover legal and other costs (eg the fees of expert witnesses) associated with an application to the Tribunal from the tenants through the service charge provisions i.e. he is entitled to recover a contribution to such costs not only from the defaulting tenant but from all tenants.

4.16 However, under section 20C of the Act of 1985 the Tribunal has power, if it would be just and equitable so to do in the circumstances of the case, to prevent the landlord or manager from adding to the service charge any costs of the application. The Lands Tribunal in the case Tenants of ***Langford Court –v- Doren Ltd*** in 2001 said that the Tribunal should use section 20C to avoid injustice. It ought not to be used in a manner oppressive to the landlord or manager. Clearly the manner in which this discretionary power is (or is not) exercised will depend upon the facts of the case. The power will not, in any event, be exercised unless a party seeks an order under section 20C.

4.17 In addition, under Rule 13(2) of the 2013 Rules the Tribunal may order a party to reimburse the Applicant in respect of application and hearing fees. This power is likely to be exercised in cases where the applicant is substantially successful, unless he has been guilty of unreasonable conduct in connection with the application, e.g. where he has unreasonably rejected a proposal for mediation or a fair and proper offer of compromise.

5. DISCUSSION AND CONCLUSIONS

5.1 The Tribunal considers that proportionality is an important factor in this case. The sums of money are small and the time and trouble expended by the Applicant on this case is considerable. The Tribunal further considers that the Applicant's efforts have been well-directed and their presentation of the facts fair to the Respondent and helpful to the Tribunal. The Respondent, as a litigant in person, is entitled to a certain amount of leeway. He cannot be expected to present his case in the same manner as a large professional organization with the assistance of Counsel. But there is no reason to suppose that the Respondent was unable to understand or comply with the Directions Order of Regional Judge Edgington of 12th March 2014. However, it does not appear that the Applicant was misled or that the failure of the Respondent to comply with directions prejudiced the Applicant's conduct of its case.

5.2 On the other hand, it is clear that the Respondent does not rely upon any criticism of the Applicant in relation to the services included in the service charges claimed; his whole case is that he is entitled to a set-off against the claim. Thus the Tribunal is bound to accept the Applicant's case which is that the service costs were reasonably incurred. Moreover, the basis of the set-off is a claim for damages for breach of covenant, namely, failure to repair and maintain the roof of the block, whereby he claims to have suffered loss and damage. He quantifies his special damages claim (the cost of repairs) at £800; but he might, if his case could be proved, in addition be entitled to general damages for inconvenience and loss of amenity.

5.3 The problem with the Respondent's case is that a series of inspections by qualified professionals has failed to find any evidence of damage to the demised premises caused by ingress of water through the roof. There is considerable evidence of the ingress of moderate amounts of water causing relatively minor damage to the lining of the roof space, though it is unclear when that damage occurred. But the roof space is not part of the demised premises; it is part of the common parts and the Respondent ought not to be using it.

5.4 The focus of the Respondent's case relates to ceiling cracks. All the evidence suggests that these are small cracks and that they are caused by an inherent feature of the building, namely, the use of concrete floors and ceilings, specified in blocks of flats to act as fire barriers. Of course, a concrete floor will also act as a water barrier, though water may seep through cracks and joints. Concrete contracts and expands with changes in humidity and temperature, causing small cracks in plasterwork fixed to it. The cracks in this case are characterized by the inspectors as structurally insignificant and thus falling within the repairing obligations of the tenant.

5.5 It is also relevant to consider to what extent the Applicant has failed in its repairing obligations as regards the roof. Work has been done on a number of occasions, mostly successfully. It is clear that the gutters on the rear elevation need further attention; but that is an expensive operation because of the difficulties of access. Moreover, the Council takes the view that the roof is tired and in need of a major overhaul. This may be the case as the roof is over 50 years old. Repairs have not always been carried out very promptly; but the Respondent has not been very co-operative in granting access to the roof space, which suggests that he does not consider the matter to be very serious. Overall, the Respondent's case for a set-off is, in the judgment of the Tribunal, extremely weak.

5.6 The Respondent was made aware before the hearing that the Applicant intended to apply to debar him from defending; so he was given an opportunity to make written representations and to prepare his oral arguments. The Tribunal is not satisfied that the reason given by the Respondent for leaving the hearing was genuine.

5.7 In the circumstances the Tribunal concludes that the Respondent's conduct in leaving the hearing without warning and for no good reason amounted to an abuse of process; also that the Respondent's case has no reasonable prospect of success; and that it would be just and proportionate to debar him from defending. The evidence provided by the Applicant is ample to prove the Applicant's case.

5.8 The Tribunal finds that the service charges claimed, in the sum of £998.22, were reasonably incurred and payable by the Respondent.

5.9 The Tribunal reminds the parties that the Respondent has the right to apply for the debarring order to be set aside and for the case to be heard on its merits. If he does so in accordance with the Rules, he will have to provide convincing written evidence as to why he left the hearing and also to persuade the Tribunal that his case has some reasonable prospect of success.

Costs

5.10 The Tribunal has no general power to award costs. There has been no application for a wasted costs order (as regards which the Respondent would be entitled to be heard). In those circumstances the Tribunal makes no order as to costs.

Tribunal Judge G M Jones
Chairman
25th June 2014