



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

**Case Reference** : **LON/00AM/LSC/2014/0020**

**Property** : **Flat A, 76 Princess May Road, Stoke  
Newington, London N16 8DG**

**Applicant** : **Mr J Menezes**

**Representative** : **In person with Mr Spencer Lewis,  
Solicitor in attendance**

**Respondent** : **Mrs L C Hagan**

**Representative** : **Mr Emmet Brady Property  
Manager with Salter Rex Chartered  
Surveyors**

**Type of Application** : **For the determination of the  
reasonableness of and the liability  
to pay a service charge**

**Tribunal Members** : **Ms N Hawkes  
Mrs A Flynn MA MRICS  
Mr A Ring**

**Date and venue of  
Hearing** : **7<sup>th</sup> May 2014 10 Alfred Place,  
London WC1E 7LR**

**Date of Decision** : **12<sup>th</sup> May 2014**

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**DECISION**

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### **Decisions of the tribunal**

- (1) By consent, the Tribunal determines that no service charge payments are outstanding.
- (2) By consent, the Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the respondent's costs of the tribunal proceedings may be passed to the applicant through any service charge.
- (3) By consent, the tribunal determines that the respondent shall pay the applicant the sum of £315 within 28 days of this Decision, in respect of the reimbursement of the Tribunal application and hearing fees which have been paid by the applicant.
- (4) The Tribunal orders that the respondent is to pay the applicant the sum of £1,400 in respect of his legal costs pursuant to rule 13(1) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013.

### **The application**

1. The applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the applicant in respect of the service charge years 2009 to date.
2. The relevant legal provisions are set out in the Appendix to this decision.

### **The hearing**

3. The applicant appeared in person at the hearing and was supported by his solicitor, Mr Lewis, who sat behind him and assisted him from time to time. The respondent was represented by Mr Emmet Brady, a Property Manager with Salter Rex Chartered Surveyors who are the respondent's managing agents.

### **The background**

4. The property which is the subject of this application is a one bedroom flat in a Victorian house which has been converted into two flats. The subject property occupies the ground floor and the second flat occupies the first floor.

5. 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.
6. The applicant holds a long lease of the property. On behalf of the respondent, Mr Emmet Brady conceded that pursuant to the provisions of the lease no service charge is payable by the applicant in respect of the accountancy fees, general management fees (including site inspections), building repairs, administration fees, legal fees, debt collectors' fees and the mortgage deed costs which had been claimed by the respondent and which forms the subject matter of this application. The Tribunal finds that this interpretation of the lease is correct.
7. During the course of the hearing, Mr Emmet Brady gave the applicant an express assurance on behalf of the respondent that the respondent would not seek to levy similar charges in the future. Further, he gave an assurance on behalf of the respondent that a sum of £185 which the applicant had paid towards buildings insurance but which has been wrongly applied to pay the fees and charges of PDC legal (solicitors acting for the respondent) will be correctly applied towards the insurance costs.
8. It was agreed by Mr Emmet Brady on behalf of the respondent that an order should be made under section 20C of the Landlord and Tenant Act 1985 and that the applicant should be reimbursed his application and hearing fees.

### **The issues**

9. Following the making of the concessions set out above, the sole issue remaining for determination was an application on the part of the applicant for an order requiring the respondent to pay his legal costs of these proceedings pursuant to rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, in addition to the reimbursement of the Tribunal fees.
10. Having heard submissions from the parties and having considered all of the documents referred to, the Tribunal has made the following determination.

### **The application for costs pursuant to rule 13**

11. The Tribunal's power to make a costs order is contained in rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 where the relevant part states: 13. '*(1) The Tribunal may make an order in respect of costs only—(a) under section 29(4) of the 2007 Act (wasted costs) and the costs incurred in applying for such costs; (b) if a person has acted unreasonably in bringing, defending or*

*conducting proceedings in—residential property case, or (iii) a leasehold case’.*

12. Such an order can be made where proceedings were started on or after 1 July 2013, the date on which the new tribunal rules came into effect, so it applies to this case where the proceedings were started on that date.
13. Before this new costs power came into effect, the Tribunal had the power to make a costs order under paragraph 10, Schedule 12 of the Commonhold and Leasehold Reform Act 2002 limited to a maximum order of £500 (or other amount to be specified in procedure regulations). Under rule 13 of the new rules there is no upper limit on the amount of the costs that can be ordered.
14. The Tribunal is of the view that costs orders under rule 13 should only be made where a party has clearly behaved unreasonably. This is because the Tribunal is essentially a costs-free jurisdiction where parties should not be deterred from using the jurisdiction for fear of having to pay another party’s costs should they fail in their application.
15. Rule 13 costs should, in our view, be reserved for cases where on any objective assessment a party has behaved so unreasonably that it is only fair and reasonable that the other party is compensated by having their legal costs paid.
16. Having taken these considerations into account, we have no hesitation in finding that this is a case in which the respondent should be ordered to pay the applicant’s legal costs pursuant to rule 13 for the following reasons.
17. Firstly, the Tribunal finds that the respondent acted unreasonably in defending this application. As long ago as September 2009, the applicant informed the respondent by letter dated 9<sup>th</sup> September 2009 that the service charges which were being claimed are not referred to in the lease. The respondent did not concede the point and extensive correspondence has passed between the parties from 2009 to date.
18. By way of example, by letter dated 20<sup>th</sup> March 2013 to Salter Rex, the applicant referred to and enclosed a copy of a legal opinion which he had received to the effect that the service charges which were being claimed are not payable under his lease. He stressed to the Tribunal that the respondent had suggested that he seek legal advice on this point. Notwithstanding this letter and its enclosure the respondent continued to claim that the disputed charges were payable.
19. By way of further example, the matter was passed to a company by the name of Property Debt Collection Limited (“PDC”) who by letter dated 15<sup>th</sup> March 2013 stated that unless a total sum of £1,169.02 (which

included their costs) was paid within 7 days of the date of the letter they would have no alternative but to inform the applicant's mortgage lender of the arrears. They stated "Under the terms of your lease or transfer deed this sum is due in full".

20. This letter concludes: "Where payment is not made, solicitors will be instructed to act in taking debt recovery proceedings in the County Court. Should court proceedings commence, the court fee and solicitors costs will be added to the arrears and any judgment entered against you may prejudice your ability to obtain credit. Proceedings may be commenced at any time following expiry of the seven-day time limit referred to above".
21. The applicant's mortgage lender was contacted by PDC regarding the alleged debt and by a letter dated 3<sup>rd</sup> July 2013 PDC stated:

"Your mortgage lender has advised that in order for them to make payment of the outstanding service charge & ground rent on your behalf they require a determination by the Court.

Under the terms of your transfer/lease you are contractually bound to make payment of the above service charge & ground rent.

In light of the above we may now instruct our solicitor to take legal action without further notice. Please call us on the above number immediately to discuss settlement.

Upon judgment being obtained we will ask our client for instructions to use a recognised method of enforcement to secure payment of the debt and other associated costs which may include:

- Preparation and service of a Section 146 Notice under the Law of Property Act 1925 and further application to the court for possession of your property
- Bailiffs and High Court Enforcement Officers who on application to the court can be given authority to attend your premises, seize goods to the value of the debt and have them sold at public auction.
- An application for a third party debt order which will prevent you from accessing your selected bank account until the court makes a determination on whether funds should be released to our client to make payment of the debt.
- An application for a Charging Order to be placed on the Land Registry title securing our clients' position and further application to allow the sale of your property to pay the debt.

If you are unsure or have any doubts regarding this you should consult your solicitor immediately.”

22. The applicant informed the Tribunal that he felt harassed by this correspondence and the Tribunal notes that, as stated above, the respondent now concedes that no part of the debt which was being pursued in such forceful terms was actually due.
23. Only during the course of the hearing did it emerge for the first time that the respondent conceded that none of the charges which the applicant was disputing are in fact payable. Mr Emmet Brady initially thought that concessions had been made in recent email correspondence but he later accepted that the relevant correspondence had been “without prejudice” and that no formal concessions had been made prior to today’s hearing.
24. The respondent has employed professional managing agents who have access to legal advice and the Tribunal finds it surprising that a number of charges which are not recoverable under the terms of the lease were sought to be levied in the first place. The applicant having alerted the respondent as long ago as September 2009 to the true position, the Tribunal considers that the respondent has in pursuing the alleged debt in the forceful terms described above and in failing to formally concede the validity of the applicant’s case prior to the hearing of this matter acted unreasonably in the conduct of the proceedings.
25. Secondly, the Tribunal finds that the respondent acted unreasonably in relation to the conduct of the hearing. Mr Emmet Brady attended the hearing without the respondent’s copy of the hearing bundle. This meant that the relevant parts of a number of documents had to be read out loud in order that Mr Emmet Brady could follow the proceedings. The application could have been disposed of considerably more efficiently if Mr Emmet Brady had had a copy of the bundle.
26. Further, Mr Emmet Brady was not familiar with the issues raised in the applicant’s Statement of Case. He apologised for this explaining that he had only been instructed at 5 pm the day before the hearing because up until that point it had been anticipated that counsel would be instructed to represent the respondent. He also explained that he did not have time to prepare for today’s hearing after 5 pm because he had to attend meetings.
27. The Tribunal is of the view that steps should have been taken to ensure that the representative who attended the hearing on behalf of the respondent had a copy of the respondent’s hearing bundle and had been afforded adequate preparation time.

28. Thirdly, the Tribunal was informed that a sum of £185 which the applicant had expressly stated that he was paying towards buildings insurance had been wrongly applied to pay the fees and charges of PDC legal which he was disputing were payable. Mr Emmet Brady accepted that this had occurred but stated that he did not have any instructions (notwithstanding that this matter was raised at paragraph 33 of the applicant's Statement of Case). He also accepted that that the matter had been raised by the applicant in correspondence approximately three weeks ago and that the respondent had failed to reply to this correspondence.
29. The Tribunal adjourned for 20 minutes in order to give Mr Emmet Brady the opportunity to take instructions on the point by telephone. Following the adjournment he informed the Tribunal that he had been unable to obtain instructions because he could not get a reply from the accounts department.
30. The Tribunal finds that the respondent acted unreasonably in the conduct of these proceedings in applying a payment towards a sum which the applicant was disputing, contrary to the applicant's express instructions, and then failing to respond to pre-hearing correspondence regarding the matter. This Tribunal considers this to be a serious and fundamental error.
31. Fourthly, the Tribunal finds that the respondent acted unreasonably in the conduct of these proceedings in attaching service charge demands to its Statement of Case which show an address which the applicant states is the landlord's correct address when the respondent accepts that the demands which were actually served on the applicant showed a different address. The address on the demands is of importance (see section 47 of the Landlord and Tenant Act 1985).
32. Mr Emmet Brady did not have instructions on this point notwithstanding that it was raised at paragraph 29 of the applicant's Statement of Case. The Tribunal adjourned in order to enable him to take instructions by telephone.
33. Following the adjournment, Mr Emmet Brady explained that when an address is updated on Salter Rex's system and copies of demands which predate the change of address are printed off, the new address appears on those demands.
34. The Tribunal is of the view that Salter Rex should have a system in place which ensures that the service charge demands relied upon are identical to the demands which were actually served or that any discrepancy between the service charge demands relied upon by the respondent and the service charge demands which the respondent actually served and the reasons for the discrepancy are explained in the

clearest terms. The Tribunal considers this to be a further serious and fundamental error.

### **The assessment of the applicant's costs**

35. The applicant informed the Tribunal that he had incurred legal costs in the sum of £500 in obtaining legal advice in 2010 as to whether or not the charges claimed were payable. He also informed the Tribunal that he has incurred legal costs of £750 + VAT (£900 in total) in respect of the work carried out by his current solicitor in liaising with the respondent's solicitors: in liaising with the Tribunal; in liaising with the applicant; in attending the directions hearing; attending today's hearing; and engaging in some correspondence. In respect of this work the applicant's solicitor has charged 3 hours at £250 per hour.
36. Mr Emmet Brady did not make any submissions in relation to the amount of the costs and invited the Tribunal to assess whether in the Tribunal's experience the sums claimed are reasonable.
37. The Tribunal is satisfied that the sum of £500 is a reasonable fee for obtaining legal advice in respect of the merits of this case in 2010. Further, the Tribunal is in no doubt that the applicant's current solicitor must have carried out considerably more than 3 hours work. The Tribunal hearing which he attended today in itself lasted three hours. The Tribunal is satisfied that the solicitor's hourly rate is reasonable and that the overall costs of his services is very reasonable.

### **Conclusion**

38. Accordingly, the Tribunal orders that the respondent is to pay the applicant a total sum of £1,400 in respect of his legal costs pursuant to rule 13(1) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013.

Judge Naomi Hawkes

12<sup>th</sup> May 2014