

9/6/12



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

Case Reference : **LON/00BE/LSC/2013/0639**

Property : **Flat 8, 12 – 14 St Mary’s Road
London SE 15 2DW**

Applicant : **12 – 14 St Mary’s Management
Limited**

Representative : **Robin Jamieson**

Respondent : **Terence Ronald Jones**

Representative :

Type of Application : **For the determination of
reasonableness of and the liability
to pay a service charge and
whether a breach of covenant has
occurred**

Tribunal Members : **Dr Helen Carr
Mr Hugh Geddes
Ms Susan Wilby**

**Date and venue of
Hearing** : **26th February 2014
10 Alfred Place, London WC1E 7LR**

Date of Decision : **28th February 2014**

DECISION

Decisions of the tribunal

- (1) The tribunal determines that there has been a breach of paragraph 1 of Schedule 5 of the lease.
- (2) The tribunal makes the determination as set out under the various headings in this Decision.

The application

1. The Applicant seeks two determinations from the Tribunal. First, pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Respondent in respect of the service charge years 2007 – 8, 2008-9, 2009 – 10, 2010 – 2011, 2011 – 2013 and 2012 - 13. Second, pursuant to s168(4) of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") for a determination that breaches of covenants or conditions in the tenant's lease have occurred.
2. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

3. The Applicant appeared in person.
4. The Respondent did not appear

The background

5. The property which is the subject of this application is a three bedroom maisonette in a block of eight maisonettes, all held on long leases and each benefitting in addition from a garage, shed and garden plot. Each of the leaseholders is a shareholder in 2 – 14 St Mary's Management Company Limited, which is a party to the lease. Robin Jamieson who is representing the Applicant in these proceedings is the sole director of the management company.
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 Respondent holds a long lease of the property 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.

The issues

8. At the start of the hearing the Tribunal identified the relevant issues for determination as follows:
 - (i) The payability and/or reasonableness of service charges for the years from 2007 – 2008 to 2012 – 2013 continuously.
 - (ii) Whether the Respondent has breached covenants set out in his lease as the Applicant alleges.
9. 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.

The Applicant's case in connection with non-payment of service charges

10. Mr Robin Jamieson, on behalf of the Applicant, informed the tribunal that the total expenditure charged to the service charge account for the years in questions was as follows:

2007 – 2008 £3185.00

2008 – 2009 £7413.00

2009 – 10 £ 5,568.00

2010 – 2011 £ 543.00

2011 – 2012 £6790.00

2012 – 13 £ 3,262.35

11. Service charges demanded covered the following costs:

Building insurance

Electricity costs for communal areas

Maintenance of common parts and structure

Accountancy and preparation of annual reports

Cleaning of communal areas

Stationery

Legal costs.

12. Mr Jamieson informed the Tribunal that Mr Jones had paid service charges from the date he bought the property in 1992 until 2006 but then had ceased to pay following a dispute with a previous director of the Applicant Company.
13. The Tribunal was concerned that the Applicant had failed to understand the directions made in connection with this application and had therefore not provided copies of relevant service charge demands, and invoices relating to service charge expenditure. It was explained to the Applicant that on the basis of the papers provided to it the Tribunal was unlikely to be able to make the decision that the Applicant was seeking.
14. Mr Jamieson, on behalf of the Applicant, applied to withdraw the application and the tribunal consented.

The Applicant's case in connection with alleged breach of covenants.

15. The Applicant alleges that the Respondent has behaved in a threatening and aggressive manner towards his partner and other occupiers of St Mary's Road.
16. In addition the Applicant alleges that as a result of overwatering plants the Respondent's partner has caused flooding. He also makes other allegations, relating in particular to the disposal of rubbish and the storage of items on the common parts.
17. The Applicant also alleges that on 23rd July 2013 there was a serious threat of physical violence towards him and Ms Graham, which was accompanied by racial insults. This incident resulted in the Respondent being arrested and charged.
18. The criminal matter was tried on 11th February 2014. The Tribunal obtained the following information in connection with the conviction of the Respondent:

On 23/07/2013 at St Mary's Road London SE15 used towards Mr Robin Jamieson threatening, abusive or insulting words or behaviour with intent to cause that person to believe that immediate unlawful violence would be used against him by any person, or to provoke the immediate use of unlawful

violence by him whereby that person was likely to believe that such violence would be used, or it was likely that such violence would be provoked
Contrary to section 4(1) and (4) of the Public Order Act 1986. - No separate penalty

On 23/07/2013 at St Mary's Road London SE15 used towards Mr Robin Jamieson threatening, abusive or insulting words or behaviour, with intent to cause that persons to believe that immediate unlawful violence would be used against him by any person, or to provoke the immediate use of unlawful violence by him or whereby that persons were likely to believe that such violence would be used, or it was likely that such violence would be provoked and the offence was racially aggravated within the terms of section 28 of the Crime and Disorder Act 1998
Contrary to section 31(1)(a) and (4) of the Crime and Disorder Act 1998

Discharged conditionally for 12 months.

To pay victim surcharge of £15.00.

Collection order made.

No order for costs.

19. The Applicant gave evidence to the Tribunal that the incident took place at 12 – 14 St Mary's Road. The incident started outside Flat 8 and ended outside Flat 3.

The tribunal's decision

20. The tribunal determines that the conduct of which the Respondent has been convicted is a breach of Paragraph 1 of Schedule 5 to the lease.

Reasons for the tribunal's decision

21. Paragraph 1 of Schedule 5 to the lease provides as follows:

Nuisance: Not to do or permit or suffer to be done in or upon the Property or any part thereof anything which may be or become a nuisance damage or annoyance or inconvenience – to the Landlord or – to any tenant or occupier of any flat in the building.

22. The information about the conviction of the Respondent provided by the Witness Care Office Nicola Hester together with the evidence of the Applicant that the incident took place on the property demonstrates that there has been a breach of paragraph 1 of Schedule 5 to the lease.

23. It was not necessary, nor would it have been appropriate in the circumstances, for the Tribunal to hear any further evidence in connection with other allegations made by the Applicant.

Name: Helen Carr

Date: 27th February 2014