



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

Case Reference : LON/00BA/LSC/2018/0207

Property : Flat 15, The Holt, London Road,
Morden, SM4 5AP

Applicant : The Holt Freehold Limited

Representative : KDL Law

Respondent : Mr Imran Uddin

Representative : Tungsten Law

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

Tribunal Judge : Mr L Rahman

**Date and venue of
Hearing** : 13/9/18 at 10 Alfred Place, London
WC1E 7LR

Date of Decision : 8/10/18

DECISION

Decisions of the tribunal

- (1) The tribunal determines the respondent be barred from taking further part in these proceedings under Rule 9(1) and / or Rule 9(3)(a) and the tribunal summarily determines all issues against the respondent under Rule 9(8) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.
- (2) The respondent is liable to pay the total sum of £3,160.65 for the service charge years 2014, 2015, 2016, and the first half of 2017.

The background

1. Following a transfer from the County Court Money Claims Centre, 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 respondent in respect of service charges.
2. This matter was listed for a case management conference on 26/6/18. The parties were notified of the case management conference by letter dated 5/6/18. Mr Dillon of counsel attended the case management conference on behalf of the applicant. The respondent did not attend and stated in his letter dated 25/6/18 that he had been “*unavailable and therefore did not receive*” the tribunal’s letter dated 5/6/18, he was unable to attend the case management conference, he needed to take legal advice, he wanted the case management conference to be adjourned to another date, he had several witness statements he wanted to submit, and he had other documentary evidence in support of his case and would need a few weeks to put together.
3. The tribunal noted that the defence submitted by the respondent at the County Court was general and non-specific in that the respondent did not particularise or provide details of the reasons for challenging the service charges other than claiming that the applicant had duties to “*maintain, cleanse and otherwise keep in good order the common parts of the estate*” and that the applicant was “*in breach of its duties*” and had “*neglected the estate to the extent that the value of the property had been negatively affected*”. Despite requests from the applicant at the County Court the respondent did not provide any further information regarding his defence. In the circumstances, the tribunal was unable to issue any meaningful Directions as it was difficult to ascertain the nature and number of potential issues, any meaningful time estimate for the final hearing, whether a paper or oral hearing was required, and whether any expert evidence and an inspection may be necessary? Given the circumstances, the tribunal had no alternative but to adjourn the case management conference to another date.

4. The tribunal issued Directions on 26/6/18 directing that the respondent file and serve by 4:30pm on 24/7/18 a statement setting out, for each relevant service charge year, the item and amount in dispute, the reason(s) why the amount is disputed, and the amount, if any, the respondent would pay for that item. A further case management conference was to be listed on the first open date after 28 days and the parties were to provide dates to avoid by 10/7/18. The tribunal further directed that if the respondent failed to provide a statement and to attend the adjourned case management conference, the tribunal would consider that the respondent does not raise any challenges to the reasonableness of the service charges and would determine that they are payable as sought by the applicant.
5. Pursuant to those directions, on 10/7/18 the respondent emailed his dates to avoid and the matter was listed for a further case management conference on 13/9/18 at 10am. The parties were notified by letter dated 12/7/18.
6. In an email dated 24/7/18, the respondent requested an extension of four weeks to provide the statement. The respondent stated that he did not attend the previous case management conference and he was currently away and did not have access to his documents. The respondent further stated that the claimant had not provided a detailed service charge statement for each of the disputed service charge years in its claim, it was unclear to the respondent what the tribunal was requesting from him, and that if he received the information [detailed service charge statement for each of the years] in good time he would be able to give a meaningful statement as requested by the tribunal.
7. In an email dated 25/7/18 the applicant objected to the request for an extension on the basis that the tribunal's previous direction made it abundantly clear what was required from the respondent, the applicant had no record of the respondent requesting a detailed service charge statement, the respondent should make it clear exactly what he required from the applicant and why, and the applicant failed to see why an additional four weeks was required to prepare a statement of case given that the respondent already had four weeks to prepare a statement.
8. In a letter dated and emailed to the parties on 26/7/18, the tribunal refused the respondent's request. The tribunal noted that when the respondent provided his dates to avoid the respondent did not indicate that he would be away and unable to deal with this matter. The tribunal further noted that proceedings had been ongoing in this matter for more than six months and the respondent had had sufficient time to know the case he had to address and to state why he considered the service charges were either unreasonable or not payable. The tribunal did not consider it sufficient for the respondent to ask for a further postponement, on the basis that he was away, on the last day by which

the respondent should have supplied his statement. However, given that the request was received so late, the tribunal felt it had no alternative but to grant a short extension for the respondent to comply with the Directions. The tribunal directed that the respondent must by 4pm on 6/8/18 serve his statement of case on the applicants in readiness for the further case management conference. The tribunal warned that if the respondent failed to comply with the revised timetable, the tribunal had already given, and repeats the warning, that the respondent may be barred from taking any further part in these proceedings and the tribunal may determine the matter in the absence of the respondent's evidence.

9. In an email dated 10/8/18, the respondent informed the tribunal that he had just read this email [dated 26/7/18] after being away for the last couple of weeks. The respondent stated that he had been unable to access his emails or post and he had just returned for the weekend to see the email. The respondent further stated *"I gave my availability to the court because I knew I was going to be unavailable for the dates that I gave. My availability is difficult and intermittent during until early September as I set out. Since sending my application for an extension I have been involved in organising and participating in a large religious event in Hampshire during which I did not have access to my emails. I apologise if this was not clear but this was my understanding and purpose. Clearly I have missed the deadline imposed by the tribunal and will need permission to complete the statement over the weekend and send it to you"*.
10. In an email dated 14/8/18, the tribunal informed the respondent that his request for additional time had been denied as the matter had been ongoing for some time and it was unreasonable for a further request to delay the process received four days after compliance with the Direction should have been made, and again at a time when it was impossible for a tribunal judge to make a response. The tribunal noted that the respondent had stated in his email dated 10/8/18 that if an extension were granted the respondent would supply his statement by 14/8/18. The tribunal noted that as at 11:28am no statement had been received. The tribunal stated that it saw no good reason why any further extensions of time should be granted. The tribunal reminded the respondent the warning that had already been given in the Directions dated 26/6/18 regarding the consequences of not complying with those Directions and went on to give the following additional warning: *"(1) Given your failures to comply with any of the tribunal's directions issued on 26/6/18, you should explain by noon on the 16 August 2018 why you should not be barred from taking any further part in these proceedings, and in accordance with Rules 9(7) and 9(8) of the Tribunal's Procedure Rules why the tribunal should not determine all matters against you. (2) Without any meaningful reason why you have not been able to comply with directions, the tribunal will bar you from taking any further part in these proceedings and issue a decision to that effect"*.

11. In an email dated 14/8/18, the respondent filed and served a witness statement dated 13/8/18 pursuant to the tribunal's Directions dated 26/6/18. The respondent stated in his witness statement that the applicant had only provided him with information stating that the total service charge was £3,291.65p. The information provided by the applicant did not set out the detail which the tribunal was expecting him to respond to. However, the respondent stated that in anticipation of selling his property he had requested from the managing agents service charge details and other information which he needed to sell the property. Although they failed to respond to the request, he had received from KDL Law, attached to their letter dated 12/9/17, the actual items of expenditure for 2016 and the anticipated budget for 2017. Based upon that information, the respondent identified the items of expenditure which he disputed and the reasons why.
12. The tribunal notes that the witness statement dated 13/8/18 did not explain at all, as directed by the tribunal on 14/8/18, why the respondent should not be barred from taking part in the proceedings. The tribunal further notes that the respondent did not provide any explanation by noon on 16/8/18 as to why he should not be barred from taking any further part in these proceedings.

The hearing

13. Mr Dillon of Counsel appeared on behalf of the applicant. The respondent did not attend but was represented by Ms Sanna Ghani from Tungsten Law.
14. Mr Dillon submitted that the respondent be barred from the proceedings for the following reasons:
15. The respondent had failed to comply with the tribunal's Directions. On 26/6/18 the tribunal directed that the respondent must file and serve by 430pm on 24/7/18 a statement setting out the reasons why he disputed the service charge. The respondent failed to comply with this Direction and only approximately 2.5 hours before the deadline the respondent made an application to the tribunal for an extension. In its Directions dated 26/7/18, the tribunal considered that it had no alternative but to grant a short extension and directed that the respondent file and serve his statement of case by 4pm on 6/8/18, warning the respondent that a failure to comply with the revised timetable may result in the respondent being barred from taking any further part in these proceedings. Despite this warning, the respondent failed to comply with this direction and only emailed the tribunal after the expiry of the deadline on 10/8/18, in which the respondent stated that having missed the deadline he would need permission to complete the statement over the weekend. However, yet again, the respondent failed to provide the statement over the weekend, as noted by the tribunal in its Directions dated 14/8/18. The tribunal then issued its

final Directions on 14/8/18, directing that the respondent should explain by noon on the 16 August 2018 why he should not be barred from taking any further part in these proceedings. Yet again, the respondent failed to comply with this Direction. The witness statement dated 13/8/18 did not explain at all why the respondent should not be barred from taking part in the proceedings. The respondent had therefore effectively completely ignored the tribunal's Direction dated 14/8/18 and should in the circumstances be barred from these proceedings.

16. In reply Ms Ghani stated as follows:

17. She had only been instructed 2 days before the hearing. The respondent was unable to attend the hearing as he has been taking care of his mother, who is unwell and lives in Leicester, for approximately one year. She did not know the nature of the respondent's mother's illness or any other reason as to why the respondent could not attend the hearing. When asked how the respondent was able to attend the religious event as referred to in his email, Ms Ghani stated that the respondent took part in that particular event every year as he was a high-profile member of the organisation responsible for arranging the event. The respondent attended the event in Guildford for two weeks and he may also have spent more time planning and preparing the event. When asked why the respondent had failed to provide a reply to the tribunal's Directions dated 14/8/18, Ms Ghani stated that the respondent had provided his reply in his witness statement dated 13/8/18. However, upon a careful reading of the respondent's witness statement, Ms Ghani agreed that the witness statement did not explain at all why the respondent should not be barred from taking part in the proceedings. When asked to explain why the respondent should not be barred from taking part in the proceedings, Ms Ghani stated that the respondent had tried to settle the matter in December 2017 but only received a reply from the applicant's two months later. The respondent wanted the matter to be resolved and was also agreeable for mediation. Furthermore, because of events in the past year, the respondent's mind had not been completely stable. The respondent had been suspended from practising as a solicitor for two years and therefore his professional career was effectively over. The respondent had to move from London with his three children and relocate to Leicester. When asked whether Ms Ghani had any medical evidence regarding the respondent's mental state, Ms Ghani confirmed that no medical evidence was before the tribunal. Finally, the respondent had never received any itemised service charge invoice from the applicant and therefore he could not have provided a statement of case as directed by the tribunal on 26/6/18 and 26/7/18.

18. In a brief reply Mr Dillon stated as follows:

19. The respondent had shown a “total disdain for the tribunal”. The submissions made on behalf of the respondent were irrelevant as the respondent had not provided any witness statement or medical evidence concerning himself or his mother as to why he should not be barred from these proceedings. None of this had been mentioned by the respondent prior to the hearing. The respondent was asked to provide his dates to avoid and he did not specify 13/9/18 as a date that needed to be avoided or that his mother was unwell and therefore he may not be able to attend. The applicant had already provided itemised service charge accounts for each of the relevant service charge years and as set out in the applicant’s email dated 25/7/18, the applicant had no record of having received any such request from the respondent.
20. At the conclusion of the hearing the tribunal indicated that the respondent shall be barred from these proceedings and that written reasons will be provided in due course. However, following the conclusion of the hearing, the tribunal received a letter by email dated 13/9/18 from the respondent in which the respondent sought to explain his reasons for his non-attendance at the hearing and the reasons why he should not be barred.
21. Given that the respondent was legally represented at the hearing, no request was made on behalf of the respondent for the matter to be adjourned until later in the day or to another date to enable the respondent to provide any further evidence, the respondent having had the opportunity to provide all the evidence he wished to rely upon prior to the hearing, the applicant did not have the opportunity to respond to the points raised by the respondent in his additional letter, the lengthy case history, the previous CMC having been adjourned because of the late request made by the respondent and through no fault of the applicant, the numerous correspondence / applications dealt with by the tribunal and both the parties, and the total sum involved, the tribunal determined, having considered the overriding objective to deal with cases fairly and justly, that the respondent not be allowed to rely upon the contents of his letter dated 13/9/18.

Findings and reasons

22. The tribunal notes that the Directions issued on 26/6/18, 26/7/18, and 14/8/18, were sufficiently clear for the respondent to have understood what was required of him and the consequences of failing to comply with those Directions. The respondent has not sought to argue that he had failed to understand those Directions.
23. The tribunal notes the explanation provided by the respondent for his failure to provide a statement of case, namely, that the applicant had not provided a detailed service charge statement for each of the disputed service charge years to enable the respondent to provide a meaningful statement as requested by the tribunal. However, the

tribunal notes that the respondent did not raise this issue or request any extension of time, having received the Directions and partly complying with the Directions by providing his dates to avoid by 10/7/18, until 4 weeks later and only approximately 2.5 hours prior to the deadline for submission of his statement of case. The respondent has provided no credible or reasonable explanation for this delay. The tribunal further notes that despite claiming not to have the relevant information, the respondent did in fact receive the actual items of expenditure for 2016 and the anticipated budget for 2017 on 12/9/17 and was able to identify the items of expenditure which he disputed and the reasons why in his witness statement dated 13/8/18. It is therefore unclear why the respondent had previously failed to comply with the tribunals Directions dated 26/6/18 and 26/7/18.

24. The tribunal notes the difficulties raised by the respondent in his email dated 10/8/18, namely, his involvement in organising and attending a large religious ceremony resulting in the respondent being unable to access his emails or post and having only just returned for the weekend to see the tribunals Direction dated 26/7/18. However, the tribunal notes that the respondent did not raise any such difficulties or request any extension of time until 4 weeks after the tribunal's Directions had been issued and only approximately 2.5 hours prior to the deadline for submission of his statement of case. The tribunal notes again the respondent has provided no credible or reasonable explanation for this delay.
25. The tribunal notes the respondent's failure to comply with the tribunal's final Direction dated 14/8/18, despite the clear and final warning given to the respondent. The tribunal notes that the witness statement dated 13/8/18 does not explain why the respondent should not be barred and the respondent did not provide any further explanation by noon on 16/8/18. The explanation provided by Ms Ghani at the hearing, namely, the respondent's professional, personal, and family circumstances, together with his and his mother's ill health, should have been provided by the respondent in the form of a witness statement by noon on 16/8/18. No reasonable or credible explanation has been provided for the failure to do so despite the respondent being able to organise and participate in a large religious ceremony over a number of weeks and the respondent being able to draft a lengthy and detailed witness statement on 13/8/18. No medical evidence whatsoever has been provided to support the claim that the respondent has been suffering from any ill-health which may have affected his ability to comply with the tribunal's Direction.
26. The tribunal considered the overriding objective under Rule 3. The tribunal also considered Rule 8(2), which states that where a party has failed to comply with a direction, the tribunal may take such action as the tribunal considers just, which may include waving the requirement, requiring the failure to be remedied, striking out a party's case,

referring the matter to the Upper Tribunal, or barring or restricting a party's participation in the proceedings.

27. Given the repeated warnings provided by the tribunal, given the failure by the respondent to comply with the tribunal's Directions and in particular the Directions dated 14/8/18, for which the tribunal found no credible or reasonable explanation, the tribunal determines that it is fair and just that the respondent be barred from taking further part in these proceedings under Rule 9(1) and / or Rule 9(3)(a) and the tribunal summarily determines all issues against the respondent under Rule 9(8).
28. The tribunal determines the respondent is liable to pay the total sum of £3,160.65 for the service charge years 2014, 2015, 2016, and the first half of 2017.
29. This matter should now be returned to the County Court Money Claims Centre.

Name: Mr L Rahman

Date: 8.10.18