



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

**IN THE COUNTY COURT at
Clerkenwell & Shoreditch sitting at
10 Alfred Place, London WC1E 7LR**

Case Reference : **LON/00BE/LSC/2019/0171**

Property : **Flat 220, Helen Gladstone House,
Nelson Square, London SE1 0QB**

Applicant : **London Borough of Southwark**

Representative : **Mr. P Cremin of LBS**

Respondent : **Mr. Sean Stevens**

Representative : **In person**

Types of Application : **Liability to pay service charges**

Tribunal Members : **Judge Tagliavini
Mrs A Flynn MA, MRICS**

In the county court : **Judge Tagliavini**

**Date and venue of
Hearing** : **18 November 2019
10 Alfred Place, London WC1E 7LR**

Date of Decision : **8 December 2019**

DECISION

Those parts of this decision that relate to County Court matters will take effect from the 'Hand Down Date' which will be:

- (a) If an application is made for permission to appeal within the 28-day time limit set out below – 2 days after the decision on that application is sent to the parties, or;
- (b) If no application is made for permission to appeal, 30 days from the date that this decision was sent to the parties

Summary of the decisions made

- (1) The respondent Mr. Sean Stevens is liable to pay to the applicant London Borough of Southwark:**
 - (i) the sum of £390.27 in respect of outstanding service charges for the service charge year 2014/15 for the premises situate at 220, Helen Gladstone House, Nelson Square, London SE1 9QB.**
- (2) No order for costs in Claim Number B24YP320.**
- (3) No order for interest in Claim Number B24YP320.**

The application

1. This is an application made under the provisions of section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act") that has been transferred by the county court sitting at Clerkenwell & Shoreditch by an order dated 2 May 2019 transferring all matters in the county court to be determined by the tribunal. Following amendments to the County Courts Act 1984, made by schedule 9 of the Crime and Courts Act 2013, all First-tier Tribunal ("FTT") judges are now judges of the county court. Accordingly, where FTT judges sit in the capacity as judges of the county court, they have jurisdiction to determine issues relating to ground rent, interest or costs, that would normally not be dealt with by the tribunal.

Background

2. In its claim made in the County Court in October 2015 under Claim Number B24YP320 the applicant landlord sought the payment of service charges in the sum of £1,708.26 for the service charge 2014/2015. Initially, the service charges for this year had been estimated in the sum of £3,182.50 to which credits of £637.12 and £837.12 were applied thereby leaving the balance claimed.
3. In a previous application to the tribunal concerning the respondent's three bedroom property at 215 Gladstone House *Ref: LON/00BE/LSC/2016/0293*, the tribunal determined in its decisions

dated 28 November 2017 and its further (calculation) decision dated 31 October 2018 that certain sums were due to be credited to the service charges in respect of that property. Therefore, the basis of the current dispute between the parties in this application was the calculation of the credits due to the respondent for Flat 220 using the tribunal's decision in respect of Flat 215 as its starting point.

The premises

4. The premises comprise a two bedroom property in a purpose built block of flats that form part of an estate known as Nelson Square Gardens. In 2013 the respondent acquired an interest in the subject premises held under a lease dated 29 September 2003 made between the London Borough of Southwark and Kay Margaret Blackhall granting a term of 125 years expiring on 28 September 2128.

The issues

5. At a case management conference held on 5 June 2019 the parties identified that the issues arising out of the 2015 county court claim issued in the county court, now revolved around the issue of the calculation of credits due for the subject property after the decisions of the tribunal concerning the respondent's other flat at 215 Helen Gladstone House. Consequently, any credit for overpaid or wrongly demanded service charges concerned the period 2011/12 to 2014/15.
6. Both parties accepted the tribunal's invitation to sit as a county court in order to deal with any issues not normally dealt with by the tribunal. Accordingly, Judge Tagliavini presided over both parts of the hearing, which has resolved all matters before both the tribunal and the court. These reasons will act as both the reasons for the tribunal decision and the reasoned judgment of the county court, where a separate order has been made.

The hearing

7. The tribunal was provided with a lever arch file of indexed and paginated documents that were relied upon by the parties during an oral hearing of this application. The tribunal also heard the oral evidence of Ms Diana Lupulesc Revenue Service Charge Officer on behalf of the applicant and from Mr. Stevens in person. During the course of the hearing the tribunal allowed the respondent an opportunity to clarify its calculations and methodology.

The Applicant's case

8. In a Statement dated 2 September 2019 setting out the credits applied to 220 Gladstone House based on the tribunal's decisions in *LON/00BE/LSC/2016/0293* dated 28 November 2017 and 31 October 2018, after adjustments were made to reflect differences in the size

between Flat 215 and Flat 220 for size and the differences in the heating provision provided to the two flats. These credits were identified as :

2011/12	£306.17
2012/13	£486.84
2013/14	£80.57
2014/15	£25.22

Total: £898.80

9. The applicant stated that having applied these credits to the sum claimed of £1708.26, a balance of £809.46 (excluding interest and costs) was left.
10. The tribunal was informed that the parties had been agreed interest at £90.98 and costs at £115 (court fee).
11. In oral evidence to the tribunal Mr. Cremin explained the weighting system used for the calculation of service charges for the subject premises. Mr. Cremin also asserted that Mr. Stevens sought in his arguments to re-open the decision of the previous tribunal in respect of Flat 215 and could be applied to Flat 220 Gladstone House. Mr. Cremin told the tribunal that the applicant had sought to implement the previous tribunal's decision not only to Flat 215 but also to the subject premises. The applicant also relied on the witness statement of Ms Diana Lupulesc Revenue Service Charge Officer, dated 17 October 2019 who also gave oral evidence to the tribunal. In her witness statement and oral evidence Ms Lupulesc set out the basis on which the credits had been made to the respondent's account in respect of Flat 220 and detailed how the various service charges had been calculated.
12. In the applicant's Reply to the Respondent's Statement dated 7 October 2019, it asserted that the cost of the boiler works had been incurred and were chargeable in the service charge year 2014/15 as had been decided by the tribunal in its decision(s) *LON/00BE/LSC/2016/0293*. However, the applicant conceded that a further credit of £419.19 was due to the respondent in line with the previous tribunal's decision, arising from the tribunal's decision that the cost of the temporary boiler works were capped at £250. This further adjustment brought the total credits due to the respondent for the subject premises to £1317.99. Therefore, the total sum said the applicant to be still outstanding and due from the respondent is £390.27.

The respondent's case

13. In the Respondent's Statement of Case dated 23 September 2019, Mr. Stevens asserted that the applicant's Statement of Credits is incorrect. Mr. Stevens queried why the applicant had not included any credits in relation to 'District Heating' for any year in question and stated that any costs disallowed by the tribunal or conceded by the applicant apply

equally to flats 220 and 215 (other than the credit given for the correction of the bed-weighting applied in 2011/12 due to only hot water supplied at flat 220 in contrast to the partial heating provided to flat 215). Mr. Stevens stated he relied on the previous decision of the tribunal in support of his assertion that the credits owing to him is £2,345.54 as he had set out in the Schedules he had provided to the tribunal.

14. Mr. Stevens also asserted that a work order asserted that the costs of works to the boiler system of £18,460 had not been incurred as the relevant invoice had not been 'raised' until 15 November 2015 and after the 2014/15 service charge year ended on 31 March 2015. Therefore, this cost of which £175.88 is attributable to the respondent's premise cannot have been an 'actual cost' for the 2014/15 service charge year. Mr. Stevens asserted that it was beyond the remit of the tribunal to determine service charges that had been incurred during the 2015/16 service charge year or any subsequent year. Therefore, he cannot be held to be liable to pay this charge in respect of the 014/15 service charge year.
15. Mr. Stevens also provided the tribunal with a schedule of service charge credits due to him in the sums of:

2014/15	£292.29
2013/14	£214.64
2012/13	£594.22
2011/12	£1,244.39
Total	£2,345.54

16. Mr. Stevens also provided a witness statement to the tribunal dated 21 October 2019. Mr. Stevens stated that he had been querying the service charges with the applicant since he had acquired his leasehold interest in the property in September 2013. However, despite outstanding and unanswered issues, the applicant had issued the county court claim now transferred to the first tier tribunal's jurisdiction. Mr. Stevens asserted that once all of the credits found to be due to Flat 215 had also been applied to Flat 220 (as set out in his Schedule), the arrears of service charges claimed by the applicant would be extinguished.
17. Mr. Stevens also asserted that the work to replace the boiler burners was not incurred in the service charge year 2014/2015, as it had been paid for a 'cash' basis in November 2015 being after the service charge year ending on 31 March 2015. This was evidenced by the work order for this work raised on 13 November 2015 and therefore these charges are incorrectly included in the 2014/15 service charge year as the expense was only incurred when it was paid for. Mr. Stevens asserted that the 'capped' charge of £250 for these boiler works was due to him as they should have been charged in the 215/16 service charge year over which the tribunal has no jurisdiction in the current application.

The tribunal's decisions and reasons

18. The tribunal found it regrettable that the parties had been unable to reach an agreement in respect of the remaining items/credits in dispute despite the two decisions of the tribunal in respect of Flat 215 identifying the common sums disallowed or capped. The tribunal preferred the evidence provided by the applicant as to how the credits due to Mr. Stevens in respect of Flat 220 were calculate to that of the respondent. The tribunal found the detailed Schedules provided by Mr. Stevens to be overly complicated and unclear as to why he was challenging the remaining items or the basis of his calculation of the credits said to be due.
19. The tribunal accepts the applicant's evidence that the credits that were made to Flat 215 cannot simply be applied to the subject flat in this application, due to the differences in size of the properties and the allocation of a base unit to each property using a bed-weighting system. The tribunal also accepts the applicant's evidence that this method of calculation was required to be further adjusted in respect of heating/hot water charges ('heating factor) to reflect the differences in services provided to each property i.e. full or partial heating and hot water or hot water only. Therefore, the tribunal prefers the evidence of the applicant to that of the respondent as to the calculation of credits due in respect of the subject flat.
20. The tribunal considers that the issue raised in respect of whether costs incurred for 2014/2015 property included the cost of the works to the boiler has already been considered by the tribunal in both of its decisions. Although this tribunal is not bound by a decision of another first-tier tribunal. Further, the tribunal considered that this issue had also been rendered academic by the collective enfranchisement carried out in September 2017 of which Mr. Stevens formed part.
21. The tribunal finds that, whether the cost of the works to the boiler burners capped at £250 should have been included in the 2014/15 or to 2015/16 service charges to be academic, as the reasonable cost of these works has been identified and has in any event become payable by the respondent. Therefore, the tribunal declines to reconsider this issue as it has already been decided by a previous tribunal upon whose decision the parties now seek to rely.

Section 20C

22. Although no application was made by the parties orally at the hearing the tribunal nevertheless considered this issue. In light of its decision as recorded above, the tribunal would (if relevant), make an order under section 20C of the 1985 Act limiting respondent from adding its costs incurred in the tribunal from being added to the service charge.

County court costs and interests

23. The parties agreed the sums of £90.98 and £115.00 as being payable in respect of the interest and costs due in the county court and therefore the parties did not present any further argument or evidence in respect of these matters.
24. It is clear that, in all cases, the award of costs is in the discretion of the court: see section 51 of the Senior Courts Act 1981; and this discretion cannot be fettered by the parties, even by way of a contractual agreement. In her capacity as a judge of the county court, Judge Tagliavini is satisfied that there should be no order for costs as the claimant has made significant concessions to its claim for arrears of service charges. For the same reasons it is determined that there should be no order for costs.
25. As all sums claimed including interest and costs have already been paid by Mr. Stevens on a “without prejudice” basis it is considered that a separate Order of Judgement is not required. However, if either of the parties disagree, they might write to the tribunal to request that such a formal Order is drawn up.

Signed: Judge Tagliavini
(also sitting as a judge of the County Court)

Date: 8 December 2019

RIGHTS OF APPEAL

Appealing against the tribunal's decisions

1. 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 date this decision is sent to the parties.
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 state the grounds of appeal and state the result the party making the application is seeking.

Appealing against the decisions made by the Judge in his/her capacity as a Judge of the County Court

5. Any application for permission to appeal must arrive at the tribunal offices in writing within 28 days after the date this decision is sent to the parties.
6. The application for permission to appeal must state the grounds of appeal and state the result the party making the application is seeking.
7. If an application is made for permission to appeal and that application is refused, or if no application for permission to appeal is made but, in either case, a party wants to pursue an appeal, that party must file an Appellant's Notice at the County Court office (not the tribunal office) within 28 days of the Hand Down date.

Appealing against the decisions of the tribunal and the decisions of the Judge in his/her capacity as a Judge of the County Court

8. In this case, both the above routes should be followed.