



**In the FIRST - TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL
PROPERTY) &
IN THE COUNTY COURT at Guildford
sitting remotely by Video Conference**

Tribunal Reference	: CHI/43UD/LSC/2021/0009 and CHI/43UD/LIS/2021/0018
Court Claim No	: H8QZ065A
Property	: Flat 5, 41 York Road, Guildford, Surrey. GU2 4DN
Applicant/Defendant	: Mr Hani Zubeidi
Respondent/Claimant	: Ian Humberstone Limited
Respondent/Claimant Representative	: Mr Ian Humberstone
Type of Application	: Reasonableness of service charges – Section 27A Landlord and Tenant Act 1985 (the Act) Transferred proceedings from the County Court
Tribunal Members	: Judge C A Rai Mr M R Ayres FRICS
In the County Court	: Judge C A Rai sitting as Judge of the County Court exercising the jurisdiction of a District Judge
Date and venue of Hearing	: 16 September 2021 sitting remotely by CVP
Date of Decision	: 4 November 2021

DECISION

Those parts of the decision that relate to County Court Matters will take effect from the 'Hand Down Date' which will be the date this decision is sent to you.

Summary of the decisions made by the FTT

1. The Applicant is not liable to pay any service charges demanded for 2019 to the Respondent.
2. At the Hearing both parties agreed the service charges for 2020 and 2021 therefore the Tribunal made no determination for those years.
3. The Tribunal orders that the Respondent reimburse the Applicant the sum of £100 in respect of the application fee he paid to HMCTS.
4. The Tribunal makes an order under section 20C of the Act that all costs incurred by the Respondent landlord before a court or the First-tier Tribunal are not relevant costs to be taken into account in determining the amount of the service charges payable by the Applicant tenant.
5. The Tribunal declines to make an order under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 (CLARA) reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs.
6. The reasons for its decisions are set out below.

Summary of the decisions made by the Court

7. The Claim is dismissed.
8. The reason for the decision is set out below.

The proceedings.

9. Proceedings were issued against the Applicant on 1 February 2021 in the County Court Business Centre under claim number H8QZ065A in response to which the Applicant filed a Defence and Counterclaim dated 13 February 2021. The proceedings were transferred to the County Court at Guildford and thereafter to this tribunal following the order made by District Judge McCulloch dated 23 March 2021.
10. The Applicant submitted an application dated 13 February 2021 to the Tribunal for a determination as to the reasonableness of service charges in respect of Flat 5, 41 York Road, Guildford, Surrey GU2 4DN (the Property) for the service charge years 2019, 2020 and 2021.
11. The Tribunal issued Directions on 8 March 2021 which directed, amongst other things, that a Case Management Hearing (CMH) would be held.
12. At the CMH, held on 20 April 2021, Judge J Dobson directed that he would deal with both the Tribunal application and the

transferred proceedings and that the parties would henceforth be referred by the tribunal as Applicant and Respondent with regard to both sets of proceedings (to avoid confusion).

13. Further Directions were made by Judge J Dobson on 10 June 2021 and all the matters came to hearing on 16 September 2021.

14. This Hearing was a remote hearing, consented to by all parties. The form of hearing was (V) fully remote. A face to face hearing was not practical on account of the Covid-19 pandemic. The documents to which the Tribunal was referred were contained in the following electronic bundles. (1) Hearing Bundle (192 pages) (2) County Court claim papers and orders (14 pages).

15. All references in this decision to page numbers are to the pdf pages in the Hearing Bundle since the electronic page numbers are inconsistent.

The background

16. Neither party requested an inspection of the Property; nor did this Tribunal consider that one was either necessary or that it would have been proportionate to the issues in dispute.

17. The Applicant is the leasehold owner of the Property under a long lease which requires the landlord to provide regular services and the tenant to contribute towards the costs of those services, by way of a variable service charge.

The issues

18. The sums claimed by the Respondent were as follows:-

- (a) Service charges for 2019 including arrears from 2018 totalling £1,684.17
- (b) Administration fees £102 (referred to as relating to underletting, late payment and the replacement of a ceiling extractor fan)
- (c) Ground Rent £75
- (d) Interest from 01.01.20 until 20.01.21 on £1,861.17 at 8% p.a. and interest at the same rate from that date until the earlier of the date of judgement or payment
- (e) Court fee £105.

19. The Applicant has not disputed that he is liable to contribute variable service charges to the Respondent under the terms of his lease on an annual basis.

20. The Applicant has disputed the reasonableness of the service charges in the service charge years 2019, 2020 and 2021. He told the Tribunal that he was not satisfied that the Respondent has supplied evidence that the services for which charges had been demanded were either carried out at all, or if carried out were of a satisfactory standard.

21. He said that he had been charged for costs associated with a garden to which he had no access and that some invoices referred to a “non-existent” car park. He said that his attempts to obtain copies of invoices showing the services for which charges had been demanded had not succeeded.
22. The Applicant said he had submitted the application to the Tribunal because the Respondent had issued proceedings in the County Court and his defence to those proceedings is essentially similar to the reasons given in his application to the First-tier Tribunal.
23. The Tribunal told the parties it proposed to deal with each service charge year in turn.

2019

24. At the start of the hearing the Tribunal the Respondent confirmed (in accordance with his written statement) that he bought the freehold of the Property in or about 22 December 2019. Neither party provided copies of any documents which proved their ownership but both agreed that they did not dispute that the Applicant is the current owner of the leasehold flat comprising the Property and the Respondent is the current owner of the freehold to the Property.
25. The parties both confirmed that the service charge year was the same as a calendar year so that the service charges for 2019 would have been demanded in January 2019. Neither party disclosed copies of service charge demands for any of the disputed years.
26. The Applicant said he would have received a service charge demand in January 2019, for the service charge due in advance for 2019 , from the previous managing agents. The Respondent said he had been told by the previous freeholder’s agent that the Applicant had not paid the service charges demanded in January 2019. The Respondent has not provided evidence with regard to this non-payment or evidence that he is entitled to receive service charges demanded for 2019. When pressed by the Tribunal, he said that he might have obtained an assignment of the service charge debt but was unable to explain why he had not produced a copy to the Applicant or the Tribunal.
27. The Tribunal explained to the Respondent that he had not complied with the Tribunal Directions. The Directions dated 7 April 2021 (which are not in the Hearing Bundle) directed him to provide, amongst other things, copies of audited accounts (if required by the lease) together with all demands for payment and details of all and any payments made 7 days before the CMH [Paragraph 11].
28. Further Directions dated 10 June 2021 directed the Respondent to provide copies of any other relevant documents relied upon [Page 11, Paragraph 20]. Had he wished to rely upon other evidence which demonstrated that he was entitled to receive service charges for a period which preceded his ownership of the freehold to the Property, he should have produced copies of that evidence to the Applicant before the Hearing.

29. The Respondent accepted that he had not provided either the Applicant or the Tribunal with any evidence that he was entitled to the service charges arrears which he claimed were due from the Applicant for 2019. He told the Tribunal that he had relied on information obtained from the previous managing agent and conceded that he had not obtained as much information as he should have done prior to completing his purchase of the freehold of the Property.
30. The only evidence provided by the Respondent in respect of the service charges demanded for 2016 in the bundle is an account headed "Year Ended 31.12.19" which simply shows an opening and closing cash balance and receipts and payments. The paragraph titled "Accounts Information" shows debtors (s/c arrears) of £1,684.17. A hand-written annotation states "2019 Accounts from Previous Accountant". The subsequent page, which appears to be, an extract from a cash book and a hand-written note states it is "2019 Expenditure" [Pages 19 and 20]. The bundle does not contain a copy of a service charge demand for 2019.
31. The Applicant stated that until the Respondent supplied him with the information in the bundle, he had not seen any evidence of the services undertaken and charged to the service charge account. He particularly disputed that gutter cleaning had ever been undertaken because his flat is on the top floor and he said that he would have been able to see if this had been done.

Reasons

32. The Respondent bought the freehold of the Property late in December 2019. He has not provided any evidence of his entitlement to receive service charges which would, under the terms of the Lease, have been payable prior to his becoming owner of the freehold to the Property. He has not provided the Tribunal with a copy of a demand issued to the Applicant for those service charges. For those reasons the Tribunal determines that Applicant is not liable to pay any service charges for 2019 to the Respondent.

2020 and 2021

33. The Applicant's challenges to the service charges for both years are virtually identical.
34. One item, disputed in both years relates to costs associated with the maintenance of the garden. The Applicant said he had not been able to access the garden despite having owned the Property for about 20 years.
35. The Tribunal disclosed to both parties that it had examined an extract of the ordnance survey plan showing the Property. It suggested to the Respondent that it was not clear if there was any access to the garden from the rear, as any pathway would cross over two adjoining properties. The Respondent said there was definitely access through a path or lane but did not confirm he had personally seen or used the access. He suggested that his contractors had used it. Later he admitted that the occupier of rear ground floor flat adjacent to the garden, which he described as "a courtyard", had locked the external gate. He said that the flat had been empty as a result of a change in ownership and that the gate may have been locked when the flat was eventually let. The Applicant said he was not sure that it was possible to access the courtyard now and

questioned why he has been asked to contribute to the costs of maintaining a courtyard he was unable to use.

36. The Applicant also referred to an invoice which refers to cleaning referring to car parks. That invoice from S&J Safety Limited is dated 28 February 2019, which preceded the Respondent's ownership, although same company continues to provide services to the Respondent [Page 172]
37. The Applicant stated that his main complaint relates to poor condition of the carpet within the common hallway and the damp problem. He accepted however that the Respondent has investigated the cause of the damp and appeared to be trying to resolve the problem. He said he now accepted that the Respondent intends to replace the carpet and decorate the internal common parts.
38. In response to a question from the Applicant the Respondent confirmed the amount of the Service Charge Reserves and admitted that some funds in the service charge account should be transferred to the Reserve Fund.
39. A discussion ensued between the parties about the purpose of the Health and Safety inspections and why these would not identify defective or missing lightbulbs within the communal areas.
40. Eventually, the Applicant agreed that because of the information that the Respondent has now disclosed both in the bundle and during the Hearing, none of which he had ever previously seen and because he felt that in future there is likely to be improved communication and engagement, he was prepared to accept that the service charges for 2020 and 2021 are reasonable. The Respondent confirmed that the Applicant has already paid the amounts demanded.

Reasons

41. Subsection (4) of section 27A of the Act states that no application can be made for a determination in respect of any charge already agreed or admitted by the Tenant. Since the Applicant has now agreed the service charges for 2020 and 2021 and admitted his liability to pay those charges the Tribunal cannot make a determination.

Reimbursement of Tribunal Fees and applications under section 20C of the Act and paragraph 5A of Schedule 11 to CLARA

42. Under Rule 13(2) of the Tribunal Procedure Rules (First-tier Tribunal)(Property Chamber) Rules 2013 SI 1169 (the Rules) the Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor.
43. The Applicant has paid the Application fee of £100 and a Hearing Fee of £100 to HMCTS. The Respondent also paid HMCTS a Hearing Fee of £100.
44. The Respondent made no representations that the Tribunal should not exercise its discretion. The Respondent confirmed that he had no intention of recovering

his litigation costs in relation to these proceedings as service charges or as administration costs.

45. Having considered the matter and taking into account the conduct of both parties at the hearing which was collaborative the Tribunal determines it equitable that the Respondent reimburse the Applicant the Application Fee. It therefore orders the Respondent to pay £100 to the Applicant within 28 days of the date of receipt of this decision.
46. The Tribunal makes an order under section 20C of the Act that no costs incurred by the landlord (Respondent) in respect of these proceedings are relevant costs for the purpose of his recovering these by way of a service charge.
47. The Tribunal declines to make any order under paragraph 5A of Schedule 11 to CLARA . The Respondent was not represented and told the Tribunal that he had no intention of making a claim for litigation costs against the Applicant.

County Court issues

48. After the proceedings in the County Court were sent to the tribunal offices, the tribunal directed that it would administer the whole of that claim so that the Tribunal Judge at the final hearing performed the role of both Tribunal Judge and Judge of the County Court (District Judge). No party objected to this.

Decision and Reasons

49. The claim relates to sums due in respect of service charges in January 2019 which date is prior to the Claimant being contractually entitled to demand or collect service charges, administration charges or ground rent.
50. The Claimant admitted he only acquired ownership of the freehold to the Property on or about 22 December 2019.
51. He told the Court that he accepted that he had failed to provide any evidence that any debt was due from the Applicant to the previous freeholder . He had also failed to provide evidence that any such debt had been assigned to him, despite being directed to provide evidence of his entitlement to receive the amounts claimed.

Conclusion

52. The Claimant has failed to demonstrate that he is legally entitled to any of amounts claimed from the Applicant.
53. I therefore dismiss the Claimant's monetary claim for service charges administration costs ground rent and interest. Since the entire claim has been dismissed, I make no order in respect of the Claimant's court fee.
54. I have drawn a form of judgment that will be submitted with these reasons to the County Court sitting at Guildford to be entered in the Court's records.

Name: Judge C A Rai

Date:

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. Where possible you should send your application for permission to appeal by email to **rpsouthern@justice.gov.uk** as this will enable the First-tier Tribunal to deal with it more efficiently
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. All applications for permission to appeal will be considered on the papers
5. Any application to stay the effect of the decision must be made at the same time as the application for permission to appeal.

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

1. A written application for permission must be made to the court at the Regional Tribunal office which has been dealing with the case.
2. The date that the judgment is sent to the parties is the hand-down date.
3. From the date when the judgment is sent to the parties (the hand-down date), the consideration of any application for permission to appeal is hereby adjourned for 28 days.
4. 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;
5. The application for permission to appeal must state the grounds of appeal and state the result the party making the application is seeking. All applications for permission to appeal will be considered on the papers

6. If an application is made for permission to appeal and that application is refused, and a party wants to pursue an appeal, then the time to do so will be extended and that party must file an Appellant's Notice at the xx office within 21 days after the date the refusal of permission decision is sent to the parties.
7. Any application to stay the effect of the order must be made at the same time as the application for permission to appeal.

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.