



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)
TRANSFERRED FROM THE COUNTY
COURT AT DARTFORD**

Case reference : **LON/00AH/LSC/2020/0036**

HMCTS code: : **V:VIDEOREMOTE**

Property : **Flat B, 105 Dagnall Park Road, London
SE25 6NS**

Applicants : **Mr Yasar Qamar**

Representative : **Mr C Sinclair, counsel instructed by
Brady Solicitors**

Respondents : **Mr Harmeet Singh Gabrhi (also written
as ‘Gabri’)**

Representative : **N/A**

Type of application : **Liability to pay service charges**

Tribunal members : **Judge Tagliavini
Mr R Waterhouse**

**Venue & date
of hearing** : **10 Alfred Place, London WC1E 7LR
V: VIDEOREMOTE
29 March 2021**

Date of decision : **8 April 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was **V:VIDEOREMOTE**. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The tribunal was referred to the applicant's bundle of documents numbered 1 to 413. The order made is described at the end of these reasons.

Summary of decisions of the first-tier residential property tribunal

- (1) The tribunal determines that service charges in the sum of £4,711.79 for the service charge period 1 January 2016 to 31 December 2018 are payable by the respondent.

Summary of the decisions made by Judge Tagliavini sitting as a judge of the County Court

- (2) Judgement is entered for the Claimant and the Defendant shall pay £5,796.51 to the Claimant within 28 days of the date of this Order being made up of the sum of £4,711.79 being the sum found due and payable in respect of service charges and interest in the sum of £1,084.72 to date of judgment/hearing (with credit of the £2,542.24 held by the applicant being given to the respondent).
- (3) The Defendant to pay the Claimant's assessed costs in the sum of £12,964.60 within 28 days of the date of this Order.

The application

1. The Claim No E5AY75P5 was issued on 11 April 2018 and transferred to the tribunal by an order of DDJ Mohabir dated 13 December 2019 sitting in the county court at Dartford. This order stated 'Case - transfer to First Tier Tribunal (Property Chamber) to determine Defendant's liability to pay and/or the reasonableness of the disputed service and administration charges claimed by the Claimant.' Therefore, the tribunal is required to determine the respondent's liability to pay arrears of service charges/ground rent. Further to the tribunal's directions dated 21 December 2021, it was directed the tribunal judge sitting as a District Judge of the county court would determine the interest and costs claimed by the Claimant in the county court proceedings.

Background

2. The respondent is the long lessee of premises situate at Flat B, 105 Dagnall Park Road, London SE25 6NS ('the Premises') under a lease dated 26th April 1991 made between Trawlstone Limited and Fabrizio Roseo for a term of 99 years from 1st January 1990.

3. The applicant had made a previous claim against the respondent for service charge arrears under Claim No B02YP558 in the sum of £2,323.20. This claim concerned the service charges due in respect of major works of exterior redecoration that had been carried out at the development in 2015, of which the subject property forms part. These proceedings were ultimately dismissed by an order of DDJ Gill dated 30 May 2017, as the respondent had paid the sum said to be owed and the applicant had failed to either withdraw the claim or to seek the making of a Consent Order in order to formally dispose of those proceedings.

The applicant's case

4. In the Particulars of Claim dated 16th April 2018 in the current Claim No E5AY75P5 sought arrears of service charges and ground rent for three service charge years commencing 1 January 2016 to 31 December 2018 in the sum of £4,711.79 together with interest and legal costs. The applicant asserted that under clause 2 of the lease, the respondent is required to pay service charges and that clause 4(12) makes provision for the payment of contractual costs.
5. In a Reply to Defence dated 4th July 2019, the applicant asserted that the following service charges were due from the respondent; £2,780.06 (2016); £1,323.11 (2017) and £1,398.37 (2018). In the applicant's Statement of Case dated 4th July 2019 (made in accordance with the tribunal's directions), it was accepted by the applicant that the respondent had made payments of £1,398.37 (on 05/04/2018); £1,143.87 (on 10/0/2018) and £200 (on 04/04/2019) all of which were currently held in applicant's solicitor's suspense account in order to avoid a waiver of a right to re-entry.
6. The applicant's (second) Statement of Case dated 2nd February 2021 revised the figures said to be owed by the respondent to £1,990.31 (2016); £1,323.11 (2017) and £1,398.37 (2018). It was also accepted by the applicant that the respondent had since the issue of the claim on 16/04/2018, had paid sums totalling £2,542.24 and that as previously stated, these sums were being held in the solicitor's suspense account as these formed only part payment of the arrears of service charges claimed in the sum of £4,711.79. The applicant reiterated that the current did not include any claim for all or any part of the sum of £2,323.20 that had been claimed in the previous Claim No B02YP558 which it accepted had been paid by the respondent.
7. In support of the current application, the applicant provided the tribunal with a bundle numbering 413 pages. In addition to statements made in support of the application the tribunal was also provided with copies of invoices and demands for the service charges in dispute that had been sent to the respondent.
8. At the hearing of the application, the applicant also relied upon the witness statement dated 11th February 2021 of Mark Simons, a Director of Mr & Mrs Simons, the applicant's Property Manager for the development at 105 Dagnall Park Road. Mr Simons set out the sums of service charges said to be owed by the respondent and exhibited the Statements of Account for the disputed service charge years together with the demands made for payment

accompanied by the Summary of the Tenant's rights and obligations and copies of invoices. The applicant also conceded that no arrears of ground rent were now owed and that the arrears sought were made up of service charges only.

The respondent's case

9. In the respondent's application dated 25/11/18 seeking to set aside the Judgement in Default of a Defence dated 25th October 2018 that had been previously entered in the current claim (Claim No E5AY75P5), Mr Gabrhi asserted that he had paid all of the service charges and costs that were said by the applicant to be owed by him and that he had proof of all sums he had paid over the years for service charges. Consequently, Mr Gabrhi asserted that he did not owe any arrears to the applicant. Mr Gabrhi presented in table form, the service charges demanded by the applicant for 2015, 2016 and 2017 totalling £7,470.26 and which sums included the major works charge of £2,323.20. The respondent stated he had paid the sum of £7,620.36 in the period 2015 to 2018 and therefore did not owe the applicant any arrears of service charge and asserted that he was now being 'double charged.'
10. However, Mr Gabrhi did not provide the fully particularised defence to the claim ordered by the county court on 5 April 2019 or a detailed Statement of Case/(Scott) Schedule directed by the tribunal in directions dated 15 October 2020 and 21 December 2020. Further, the respondent did not appear and was not represented at the hearing of his application.
11. Therefore, from the respondent's application to set aside judgement, the respondent's letter dated 17/4/2019 that was headed 'Defence', the tribunal was able to ascertain that Mr Gabrhi believed that the current Claim No E5AY75P5 included the service charges for major works that had been the subject of a county court judgement dated 30/05/2017 that had been made in the previous claim (Claim No B02YP558). Therefore, the respondent asserted that the payment of these (2015) service charges plus the court ordered costs for setting aside judgment together with the other payments he had made were sufficient to have extinguished any arrears now claimed by the applicant.

The tribunal's decision and reasons

12. The tribunal is satisfied that the service charge arrears claimed in Claim No E5AY75P5 and transferred to the tribunal concern arrears of service charges for the period 1 January 2016 to 31 December 2018 ('the period') and are not a duplication of the service charges previously sought in Claim No B02YP558 and paid by the respondent.
13. In the absence of any challenge by the respondent to the reasonableness of the amount of the service charges for the services provided or to their standard, the tribunal is satisfied that the service charges sought by the applicant for the above 'period' are both reasonable and payable by the respondent in accordance with the terms of the lease and is satisfied that they have been properly demanded by the applicant.

14. The tribunal finds that the respondent has misunderstood the claim issued by the applicant 11/04/2018 for ground rent and service charge arrears despite the applicant's 'letter before action' of 23rd March 2018. This letter set out a claim for the arrears owed of £4,711.79, interest of £83.65, the fee for the issue of the 'letter before action' of £250 plus VAT and £6.00 Office Copy fee and previous correspondence. The tribunal finds that the respondent's dates in his Schedule of Payments do not align with the applicant's Schedule of Service Charges thereby mistakenly creating the impression the respondent had paid all the arrears the tribunal now finds are owed to the applicant.
15. Therefore, the tribunal determines that service charges in the sum of £4,711.79 for the service charge period 1 January 2016 to 31 December 2018 are payable by the respondent.

County court matters

Interest

16. The claimant provided an up to date schedule of the interest claimed from the respondent at the rate of 8% in the sum of £1,084.72. The applicant submitted that the rate of interest should not be reduced as although interest rates were low, the applicant was not a bank and were this a judgement debt the rate of 8% would automatically apply.

Costs

17. The claimant also provided a Skeleton Argument relating to costs dated 26th February 2021 and an up to date Schedule of Costs as at the date of hearing on 29/03/2021 seeking costs in the sum of £12,964.60.
18. The applicant submitted that the clauses 4(1) and 4(12) respectively made provision for the payment of legal costs and fees incurred in the recovery of any rent or other moneys and in respect of forfeiture proceedings. In reliance on *Chaplain Ltd v Kumari* [2015] EWCA Civ 798, the Court of Appeal had held that where the contractual rights to costs had been established, CPR 27.14 did not prevent costs incurred in the county Court and the Tribunal from being sought, even on a small claims track.
19. The applicant invited the court to assess the costs on an indemnity basis as the respondent had contractually agreed to pay the applicant's costs having regard to the provisions of CPR Rule 44.
20. The applicant also drew the attention of the Judge to the 'without prejudice' offers of settlement that had been made in the period July 2019 to May 2020 but all of which had either been rejected or not responded to by the respondent.

County court matters– decision by the tribunal judge sitting as a judge of the County Court

Interest

21. The claim for interest is found payable at the rate of 8% in the total sum of £1,084.72 to the date of judgment/hearing.

Costs

22. Judge Tagliavini sitting as a judge of the county court is satisfied that there is a contractual agreement between the parties for the payment of costs. Having considered the updated Schedule of Costs, Judge Tagliavini is satisfied that the rates charged by and the use of the level of fee earners claimed is reasonable. Judge Tagliavini finds that this matter has been protracted both by the setting aside of the judgement that had been previously obtained by the applicant to little effect and the absence of active participation by the respondent once the claim had been transferred to the tribunal.
23. Therefore, the applicant is awarded costs on an indemnity basis in the sum of £12,964.60.

**See Order attached*

**Name: Judge Tagliavini
(Judge of the First-tier tribunal
and as a District Judge of the
county court)**

Date: 8 April 2021

Rights of appeal from the decision of the tribunal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

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.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

Appeals in respect of decisions made by the Tribunal Judge in the capacity as a Judge of the County Court

Appeals in respect of decisions made by the Tribunal Judge in his/her capacity as a Judge of the County Court. An application for permission to appeal may be made to the Tribunal Judge who dealt with your case or to an appeal judge in the County Court.

Please note: you must in any event lodge your appeal notice within 21 days of the date of the decision against which you wish to appeal. Further information can be found at the County Court offices (not the tribunal offices) or on-line.

Appeals in respect of decisions made by the Tribunal Judge in the capacity as a Judge of the County Court and in respect the decisions made by the FTT. You must follow both routes of appeal indicated above raising the FTT issues with the Tribunal Judge and County Court issues with either the Tribunal Judge or proceeding directly to the County Court.

In the County Court at Dartford	
Sitting at: 10 Alfred Place, London WC1E 7LR	
Claim Number:	E5AY75P5
Date	8 April 2021

General Form of Judgment or Order

Yasar Qamar	1st Claimant Ref
	2nd Claimant Ref
Mr Harmeet Singh Gabrhi	1st Defendant Ref
	2nd Defendant Ref

**BEFORE Tribunal Judge Tagliavini sitting as a Judge of the County Court
(District Judge)**

UPON:

- (a) The County Court having transferred to the First-tier Tribunal the matters within the Tribunal's jurisdiction
- (b) The Tribunal Judge (sitting as a Judge of the County Court) having exercised County Court jurisdiction on any matters falling outside the Tribunal's jurisdiction

AND UPON hearing Mr Sinclair of counsel for the Claimant and the Defendant not appearing and not being represented

AND UPON this order putting into effect the decisions of the First-tier Tribunal made at the same time

IT IS ORDERED THAT:

1. Judgement is entered for the Claimant and the Defendant shall pay £5,796.51 to the Claimant within 28 days of the date of this Order being made up of the sum of £4,711.79 being the sum found due and payable in respect of service charges and interest in the sum of £1,084.72 to date of judgment/hearing (with credit of the £2,542.24 held by the applicant being given to the respondent).
2. The Defendant to pay the Claimant's assessed costs in the sum of £12,964.60 within 28 days of the date of this Order.
3. The reasons for making of this Order are set out in the combined decision of the Court and the First-tier Tribunal (Property Chamber) dated 8 April 2021 under case reference LON/00AH/LSC/2020/0036.

Dated: 8 April 2021