



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)
and in the COUNTY COURT AT
Clerkenwell & Shoreditch sitting at 10
Alfred Place, WC1E 7LR**

Case reference : **LON/00BE/LSC/2020/0256**

HMCTS code (paper, video, audio) : **V: CVPREMOTE**

Property : **54 Lupin Point, Abbey Street, London SE1 2DW**

Applicant : **London Borough of Southwark**

Representative : **Mr Walker**

Respondent : **Mr G Agomou**

Representative :

Type of application : **For the determination of the liability to pay service charges under section 27A of the Landlord and Tenant Act 1985**

Tribunal members : **Judge Brilliant
Mr M Taylor MRICS**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of Hearing : **06 April 2021**

Date of decision : **08 April 2021**

DECISION

Covid-19 pandemic: description of hearing

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 since this decision was 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

This has been a remote video hearing which has been not objected to by the parties. The form of remote hearing was V: SKYPEREMOTE. A face-to-face hearing was not held because it was not practicable and no-one requested the same. The documents that we were referred to are in a bundle of 200 pages, the contents of which have been noted.

Summary of the decision made by the Tribunal

1. The Tenant is liable to pay the following sum by way of service charges: £13,863.70. The Tenant is also liable to reimburse to the Landlord the hearing fee of £200.00.

Summary of the decisions made by the County Court

2. The Tenant is liable to pay the following sum by way of contractual interest up to the date of the hearing: £1,494.07.
3. The Tenant is liable to pay interest from the date of the hearing until payment at the rate of £1.94 per day. The Tenant is also liable to reimburse to the Landlord the issue fee of £688.13.

Introduction

4. This is a deployment case concerning proceedings in the County Court (“the Court”) and in the FTT (“the Tribunal”). In the Court proceedings Judge Brilliant is sitting alone. In the Tribunal proceedings Judge Brilliant and Mr Taylor are sitting together.
5. The Landlord is the Claimant in the Court proceedings and the Applicant in the Tribunal proceedings. The Tenant is the Defendant in the Court proceedings and the Respondent in the Tribunal proceedings.

The lease

6. The Tenant holds under a long lease dated 24 January 2005. The lease

provides for the Landlord to provide services, the cost of which can be recouped from the Tenant by way of a service charge.

7. The Third Schedule to the lease provides that the service charge year shall run from 01 April to 31 March each year. Before the commencement of each year the Landlord must make a reasonable estimate of the amount which will be payable by the Tenant by way of service charge, and shall notify the Tenant of the estimate.
8. The Tenant must pay the Landlord in advance on account of the service charge the amount of such estimate by equal payments on 01 April, 01 July, 01 October and 01 January in each year.

The claim

9. Although the Particulars of Claim contained other matters (which have now been paid), the remaining matters before us relate to demands for on account estimated charges in respect of major works carried out on the building and on the estate.
10. The estimated costs which the Tenant is being asked to pay as at the date of the hearing amount to £13,863.70. Those costs have been spread over two accounting years. In the year ending March 2019 the amount is £13,602.13. In the year ending March 2020 the balance is £261.57¹.
11. The Tenant served a Defence. He admitted he owed £2,784.18. It is not clear how he reached that figure, but it would include the amounts referred to above in paragraph 9 which have now been paid.
12. In the Landlord's Statement of Case at paragraph 74 the contents of the Defence are succinctly set out in a list of six issues (page 27 of the bundle):
 - (1) Asbestos.
 - (2) Scaffolding/ cradle.
 - (3) Interest.
 - (4) Efforts of committee members/transparency.
 - (5) Total cost of the works not yet known.
 - (6) The Tenant's offer to pay £200 per month.
13. 03 August 2020 the proceedings were transferred to the Tribunal.

Directions

¹ This is slightly smaller than the £348.77 pleaded.

14. Directions were given by the Tribunal on 20 October 2020 and 12 January 2021. The Tenant was ordered to provide a Statement of Case setting out why he disputed his liability to pay the sums demanded by 19 February 2021. The Tenant failed to engage or provide a Statement of Case.

The hearing

15. At the hearing the Landlord was represented by its employee Mr Walker. The Tenant joined by telephone. No witness evidence was adduced, and the matter was dealt with by way of oral submissions on the documentary evidence.
16. We are grateful to Mr Walker who presented his case with clarity and fairness, and to the Tenant who was clearly sincere in his beliefs and did not waste time on bad points.
17. Although the Tenant had failed to provide a Statement of Case, we were not asked to strike his case out and it was agreed that the hearing would proceed on the basis that each side would make representations on each of the six issues referred to in paragraph 12 above.

Asbestos

18. During the consultation process the issue of asbestos had been raised. In a letter sent to the Tenant on 17 August 2018, it was explained that the provisional sum allocated for asbestos works was £174,300.00. Previous surveys had been carried out and identified limited amounts of asbestos remaining. The provisional sum was a precaution should some asbestos be found within the opening up of the shaft works. It was unlikely that every flat would contain asbestos.
19. The Tenant made the point that no asbestos work had been done in his flat, and as far as he knew none had been found at all.
20. It was explained to the Tenant that this was purely a precautionary provisional sum, and that if a lower sum were spent on asbestos works then the final account would be adjusted accordingly.
21. We are satisfied that on a project of this size the amount allocated for asbestos works by way of a provisional sum was reasonable.

Scaffolding/ cradle

22. During the consultation process the issue had been raised as to whether abseiling would be considered instead of scaffolding.
23. Mr Walker explained that the tender document had been prepared to include provision for the contractors to price for “access provision” to carry out the works. The actual methodology was for them to determine.

The contractors were asked to provide a written method statement explaining why they considered a particular methodology to be appropriate. In this way the Landlord would get the best possible price for access provision as it would be in the contractors' interests to price the access element lower, whilst they were in competition with each. This effectively would make it a contractor's risk should full scaffolding eventually be required.

24. Asking for alternative prices would expose the Landlord, and the Tenants, to a risk of increased costs as there would be a possibility of the contractors pricing abseiling low and scaffolding high, and then pushing for scaffolding on health and safety grounds post contract. This approach would effectively have been at the Landlord's risk.
25. The tenders received had all been evaluated by external consultants, who recommended the chosen contractor as it had received maximum scores for submitting the lowest tender sum and passing a quality evaluation.
26. Again, the point was made that these costs were only provisional, and that if changes were made to the means of access there would be appropriate adjustments in the final account.
27. We are satisfied that it was reasonable for the Landlord to have costed for access provision in this manner.

Interest

28. Mr Walker provided us with an interest calculation on the sum of £13,863.70 being claimed. At a contractual rate of 5.1% the total amount of interest as at the date of the hearing was £1,494.07, continuing at a daily rate of £1.94.
29. The Tenant accepted that there was a contractual right to interest.

Efforts of committee members/transparency

30. Ms Walker said that the Landlord had conducted a lengthy and thorough consultation process and even postponed the start date in order to take into consideration the observations received. All observations received were responded to by the Landlord. In each letter sent by the Landlord to the Tenant, the Tenant was invited to contact the officer sending the letter if any further information were required. The Tenant was also made aware that he could arrange to visit the Landlord's office to view documents related to the contract of works. This offer was made to allow transparency of information.
31. The Tenant said that the amounts claimed did not reflect concessions and changes made during the consultation process. Mr Walker replied that where concessions were made the reduction in costs would be carried

through to the final account.

32. We are satisfied that the required consultation process did take place and was complied with.

Total cost of the works not yet known

33. Mr Walker agreed that the final costs are not yet known. Once the final accounts had been received, checked and apportioned, details will be sent to the Tenant along with either a credit note or additional invoice, depending on whether the actual costs are lower or higher than the estimate.
34. It is irrelevant what the actual costs turn out to be, so long as we are satisfied that the provisional cost is a reasonable one. It has not been demonstrated to us that the provisional cost is other than a reasonable one.
35. Mr Walker hoped that the final account would be ready by the end of the year, but he made it clear that this was not within his own hands. He could not say when the final account would be available with any real degree of certainty.

The Tenant's offer to pay £200 per month

36. This offer could not as a matter of law relieve the Tenant from paying advance service charges otherwise due.
37. It can be recorded that before the proceedings were started the Landlord was prepared to allow the Tenant to pay £304.00 per month over a 46 month period interest free. However, the Tenant never made any payment under that arrangement.
38. When asked, Mr Walker said that the Landlord would not enter into any such arrangement if it obtained judgment. The Tenant would have to take his own steps to ask the Court if he could pay by instalments.

Conclusion

39. Despite the sincerity with which the Tenant put forward his arguments, we are unable to find any reasons why the Landlord is not entitled to the amount now claimed for advance service charges and contractual interest.
40. Accordingly, judgment will be entered in the sum of £15,357.77. The Landlord is also entitled to be reimbursed the Court fee of £683.13 and the hearing fee of £200.00.

Name: Simon Brilliant

Date: 08 April 2021

Rights of appeal

Appeals in respect of decisions made by the FTT

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 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 his/her 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.