



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

Case reference	:	LON/00BG/LSC/2016/0355
Property	:	1 Roche House, Beccles Street, London E14 8HE
Applicant	:	London Borough of Tower Hamlets (lessor)
Representative	:	Mr Karl Schooling (ref: Legal/Arrears/KS/575)
Respondent	:	Mrs Shahanaz Begum (lessee)
Representative	:	In person, assisted by Mr N Miah & Mr A Khan
Type of application	:	Liability to pay service charges
Tribunal member(s)	:	Judge Timothy Powell
Venue	:	10 Alfred Place, London WC1E 7LR
Date of hearing	:	18 January 2017
Date of decision		27 January 2017

DECISION

DECISIONS OF THE TRIBUNAL

- (1) For the reasons given below, I bar Mrs Begum, as respondent, from taking further part in these proceedings, insofar as they relate to the reasonableness and payability of the service charges in themselves; and I determine summarily that the amount claimed by the council, some £6,394.94, is reasonable and payable by Mrs Begum for the service charges in question, subject to any reduction by way of set-off resulting from an award that may be made by the court for damages, following consideration by the court of Mrs Begum's counterclaim.

but, in any event, she had numerous complaints about the cost and the standard of services provided to her by Tower Hamlets. She also raised a counterclaim seeking damages for the way that she had been treated, the unnecessary exacerbation of her existing health condition, professional negligence and poor administrative practices, and the unjustified withdrawal of her estate parking permit, amongst other things.

Transfer to the tribunal

7. By order dated 26 September 2016, District Judge Bell sitting at the County Court at Clerkenwell & Shoreditch transferred the proceedings to the First-tier Tribunal for determination. The tribunal arranged an oral case management hearing on 25 October 2016, which was heard by me and which was attended by Mr Karl Schooling from Tower Hamlets and Mrs Begum in person, assisted by her husband, Mr Miah, and by Mr Khan, a volunteer adviser.
8. As some of the issues transferred by the court were outside the tribunal's jurisdiction, the parties were invited to agree that the tribunal should assume jurisdiction under the "Deployment of Judges Pilot" being run under the auspices of the Civil Justice Council. However, in the absence of agreement from the council, the tribunal concentrated on the narrow issue of the amount of the service charges payable, with a view to returning the matter to the county court for the counterclaims and issues of interest and costs to be dealt with there, after the tribunal had made its determination.
9. As it was unclear which of the service charges Mrs Begum disputed and why, and since there appeared to be an earlier tribunal decision covering the same or similar service charges demands in respect of Roche House, I gave directions aimed at clarifying the issues in dispute. Those directions provided for a short preliminary hearing/ further case management hearing, to determine which of the disputes should proceed to a full hearing (with full disclosure of documents, witness statements, live witnesses and, if appropriate, expert evidence). Mrs Begum was directed to prepare a schedule itemising the amounts in dispute and giving her reasons, providing copies of supporting documents; and Tower Hamlets was to respond to that schedule and prepare a hearing bundle.

Preliminary hearing

10. I heard the preliminary hearing on Wednesday, 18 January 2017, when all the same individuals appeared before me. The relevant documents were contained in a comprehensive hearing bundle, to which Mrs Begum added a Defendant's Statement dated 11 January 2017 and an Audit Committee Report, concerning Tower Hamlets, dated 20 September 2016.

management), unspecified complaints about the charges for leasehold management and housing management (which I will assume is seeking a 30% reduction of each). Altogether, I calculate that the approximate reduction sought is some £208.55 in this period.

15. Although there is no mention of it in the Scott Schedule - and, therefore, Mr Schooling from Tower Hamlets had come unprepared to deal with the detail of it - at the hearing Mrs Begum also sought to challenge the necessity, reasonableness and payability of the £2,625.53 actual costs of the major works to Roche House, involving the re-wiring of the landlord's electrical services and the rising/lateral mains. Although the county court particulars of claim and applicant's statement of case before the tribunal made clear that the outstanding service charge arrears included this major works item, it appears that Mrs Begum did not include it in her Scott Schedule, as it did not appear as a separate heading in her annual service charge certificates.

The "Earlier Decision"

16. The fact that the amounts of the annual service charges disputed are of modest value is not, in itself, a reason to prevent the hearing of their reasonableness and payability taking place, even though the cost to the parties and to the public purse is likely to outweigh the sums in dispute. What is far more significant, in the present case, is that the identical service charges have already been considered by another tribunal in a previous decision dated 5 January 2015 ("the Earlier Decision").
17. That decision was in respect of a claim brought by Tower Hamlets against a Mr M Rahman, the long leaseholder of 30 Roche House. The case was dealt with under reference LON/00BG/LSC/2014/0151 and the tribunal members were Judge P Korn, Mr T Johnson FRICS and Mrs L Hart.
18. Of relevance to the present case, the Earlier Decision dealt with all the service charges relating to Roche House for the years 2009/10 to 2012/13. As the papers in the hearing bundle made clear, these were absolutely identical charges to those disputed by Mrs Begum, where there only difference was that Mr Rahman in Flat 30 was required to pay a slightly higher percentage of the total expenditure under his lease (based on the gross rateable value of his flat), than Mrs Begum in the present case was required to pay under her lease (also based on gross rateable value). Not only were the service charges identical, but the Earlier Decision also dealt with the major works charge for the cost of re-wiring the landlord's services and the rising/lateral mains.
19. The earlier tribunal considered witness statements and heard live oral evidence from four Tower Hamlets officers: Mr B Negus, the caretaking team leader, who gave details of the caretaking/cleaning services provided to Roche House; Ms R Harper, the service charge advice

council having to expend a disproportionate amount of time and money, duplicating the preparation of witness evidence, documentation and investigation, which would be necessary for a full hearing.

25. Mrs Begum naturally opposed this, saying that, like Mr Rahman in Flat 30, she ought to have her own opportunity to challenge the service charges which she was being required to pay. She said that her case differed from Mr Rahman's in a material way, because Mr Rahman's flat was located on an upper floor of Roche House, whereas her flat was on the ground floor and therefore more greatly affected by poor cleaning and estate caretaking.

The law

26. My power is contained within rule 9 of the Tribunal Proceedings (First-tier Tribunal) (Property Chamber) Regulations 2013, the relevant provisions of which are as follows:

“9(3) The Tribunal may strike out the whole or a part of the proceedings or case if ...

(e) the Tribunal considers there is no reasonable prospect of the applicant's proceedings or case, or part of it, succeeding...

(4) The Tribunal may not strike out the whole or a part of the proceedings or case under paragraph (2) or paragraph (3)(b) to (e) without first giving the parties an opportunity to make representations in relation to the proposed striking out.

(7) This rule applies to a respondent as it applies to an applicant except that—

(a) a reference to the striking out of the proceedings or case or part of them is to be read as a reference to the barring of the respondent from taking further part in the proceedings or part of them; and ...

(8) If a respondent has been barred from taking further part in proceedings under this rule and that bar has not been lifted, the Tribunal need not consider any response or other submission made by that respondent, and may summarily determine any or all issues against that respondent.”

My conclusions

27. I am of the view that there is no reasonable prospect of Mrs Begum's case succeeding. She does not dispute her liability to pay the service charges in question, only the amounts that she should pay: a dispute which arises primarily out of her dissatisfaction with the standard of caretaking provided to the building and the estate.
28. The earlier tribunal has already made a determination as to the reasonableness of the services provided by the council and the expenses

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).