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

**Case Reference** : LON/00AK/LSC/2017/0424

**Property** : Flat C, 10-12 The Ridgeway, Enfield,  
Middx. EN2 8QH

**Applicant** : Laurel Gordon Properties Ltd

**Representative** : Sadlers, managing agents

**Respondents** : Stephen Conrad Taylor  
Elizabeth Ann Shepherd

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

**Tribunal** : Judge Nicol  
Mrs S Redmond MRICS

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

**Date of Decision** : 4<sup>th</sup> April 2018

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**DECISION**

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**Decisions of the Tribunal**

- (1) The Tribunal refused to adjourn the hearing of this application.
- (2) The Respondents are debarred from defending the proceedings before the Tribunal.
- (3) The Tribunal has concluded that the sum of £1,191.27 is payable by the Respondents to the Applicant.
- (4) The Respondents shall reimburse the Applicant the hearing fee of £200.

- (5) This matter is now transferred back to the county court to address any remaining issues within its jurisdiction.

Relevant legislative provisions are set out in the Appendix to this decision.

### **The Application**

1. The Applicant is the freehold owner and the Respondents are the lessees of the subject property.
2. In or about May 2017 the Applicant issued proceedings against the Respondents in the county court (claim no:D94YJ339) for the sum of £1,191.27 in service charges, plus ground rent and costs. The Respondents put in a defence and counterclaim in Form N9B alleging that the Applicant had included in the service charges some of their costs of converting two flats into three and had failed to respond to requests for information and to appoint a surveyor to look at cracks to the building. On 25<sup>th</sup> October 2017 DJ Lethem transferred the matter to the Tribunal.
3. The Tribunal arranged a case management conference for 30<sup>th</sup> January 2018. It was attended by Mr Philip Simmons from Sadlers on behalf of the Applicant and by the First Respondent. The Tribunal formulated directions in consultation with them.
4. The first direction was for the Applicant to send various relevant documents to the Respondents which they did by letter dated 7<sup>th</sup> February 2018. The next direction was for the Respondents to provide a schedule setting out the items in dispute, any relevant documents they relied on and a statement of case. They did not comply, despite a chasing letter from Sadlers dated 1<sup>st</sup> March 2018.
5. A bundle of documents was provided to the Tribunal on behalf of the Applicant. Contrary to the directions, it had no index. Fortunately, it was short, even though it was comprehensive. Mr Simmons had provided a witness statement pointing to the relevant documents which set out how the service charges were compiled and demanded.
6. The hearing of this matter took place on 4<sup>th</sup> April 2018. The Applicant was represented by Mr Simmons. The First Respondent again attended on his own behalf, accompanied by his daughter, Ms Katie Taylor, on behalf of her mother, the Second Respondent.
7. The First Respondent and Ms Taylor told the Tribunal a number of things:
  - (a) There was a longstanding problem with the receipt of mail at the property, a substantial part of which goes missing. They suspect Sadlers to be behind it but there is no evidence of this.
  - (b) The First Respondent raised this issue at the case management hearing but did not ask for any arrangements to be put in place

to address it. Nor did he attempt at any time to provide alternative arrangements for receipt of mail, other than to send Ms Taylor to the property every few days while he was away.

- (c) They have not received anything from the Tribunal, the Applicant or Sadlers since the case management hearing. On 14<sup>th</sup> February 2018, they phoned the case officer, Ms Kim Harry, and she emailed them a copy of the directions.
- (d) On 25<sup>th</sup> February 2018 they sent a copy of the schedule referred to in the directions, together with a one-page document making four short objections to the service charges, to the Applicant's registered office and to the home address of Mr Russell Thomas, a director of the company.
- (e) Apart from those two occasions, from the case management hearing until the day before the final hearing, they did not attempt to make any contact with the Tribunal, the Applicant or Sadlers.
- (f) They said that the reason they did not attempt to contact Sadlers is that their relationship with Mr Simmons had broken down due to his failure to respond to past communications and requests for information.
- (g) The First Respondent said he was away from 9<sup>th</sup> March 2018. He had warned the Tribunal at the case management hearing that this might happen but had said that it should not affect compliance with the directions. Otherwise, he told no-one and did not make any arrangements for dealing with the case in his absence. In particular, it did not occur to him to compile his own bundle of documents in accordance with paragraph 7 of the directions.
- (h) On the day before the hearing, they phoned Ms Harry and she told them to send in what they wanted to rely on. They claimed to have a number of documents and photographs in support of their case but only sent in the document they had sent to the Applicant on 25<sup>th</sup> February 2018.

8. The Tribunal acknowledges that it is sometimes difficult for a layperson to navigate the complexities of the law and full legal representation can be prohibitively expensive. However, it only takes common sense, not legal training, to make arrangements to ensure you can receive mail or to chase mail which is expected but hasn't been received. Directions are given in order to ensure the fair conduct of the proceedings and full preparation for the final hearing. It is neither fair nor efficient to try to do things at the last minute.

9. The Tribunal is satisfied that the Applicant properly served documents on the Respondents in accordance with the directions but also has no reason to disbelieve the Respondents when they say those documents were not received. However, the Respondents had plenty of opportunities to correct this problem but did not take them. The parties

arrived before the Tribunal for the final hearing completely unprepared for a proper hearing of the dispute – the Tribunal has no doubt that this is entirely the fault of the Respondents.

10. The Respondents were warned in the directions that, if they failed to comply with the directions, the Tribunal may bar them from taking any further part in the proceedings and may determine all issues against them under rule 9 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. This is a draconian measure but the Tribunal is satisfied that it is appropriate in the circumstances of this case. The Tribunal did consider whether adjournment would be an appropriate alternative but concluded it would not be fair to the Applicant or an efficient use of Tribunal time in the light of the Respondents' default.
11. The Applicants had provided an estimate of expenditure for 1<sup>st</sup> April 2017 to 31<sup>st</sup> March 2018 with a breakdown into common categories such as cleaning, insurance and management fees. There was a large reserve fund of £11,000 but Mr Simmons explained that this had been calculated based on two estimates, obtained purely for budgetary purposes ahead of the full consultation process for external decorations work due this year.
12. In the absence of a defence, the Applicant's documents were sufficient to establish that the Respondents' service charges of £1,191.27 were reasonable and payable.
13. Mr Simmons also asked for reimbursement of the hearing fee of £200. In the circumstances set out above, the Tribunal is satisfied that this is appropriate.

**Name:** NK Nicol

**Date:** 4<sup>th</sup> April 2018

## **Appendix of relevant legislation**

### **Landlord and Tenant Act 1985 (as amended)**

#### **Section 18**

- (1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
  - (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
  - (b) the whole or part of which varies or may vary according to the relevant costs.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose -
  - (a) "costs" includes overheads, and
  - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

#### **Section 19**

- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
  - (a) only to the extent that they are reasonably incurred, and
  - (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard; and the amount payable shall be limited accordingly.
- (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

#### **Section 27A**

- (1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to -
  - (a) the person by whom it is payable,
  - (b) the person to whom it is payable,
  - (c) the amount which is payable,
  - (d) the date at or by which it is payable, and
  - (e) the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified

description, a service charge would be payable for the costs and, if it would, as to -

- (a) the person by whom it would be payable,
  - (b) the person to whom it would be payable,
  - (c) the amount which would be payable,
  - (d) the date at or by which it would be payable, and
  - (e) the manner in which it would be payable.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which -
- (a) has been agreed or admitted by the tenant,
  - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
  - (c) has been the subject of determination by a court, or
  - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.