



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY) &
IN THE COUNTY COURT at Central London, sitting at 10
Alfred Place, London WC1E 7LR**

Tribunal reference : LON/00BK/LSC/2020/0224

Court claim number : G02YJ884

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

Property : Flat A, 141 Randolph Avenue,
London W9 1DN

Applicant/Claimant : Goodwyn Realty Ltd

Representative : Mr M Phillips (Blue Property
Management UK Ltd)

Respondent/Defendant : Mr A Alves

Representative :

Type of application: Liability to pay service charges
and administration charges

Tribunal members : Judge Simon Brilliant
Mr R Waterhouse FRICS

In the County Court : Judge Simon Brilliant (sitting as a
District Judge of the County
Court)

Date of hearing:

19 February 2021

Date of decision :

22 February 2021

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DECISION

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.

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has been not objected to by the parties. The form of remote hearing was by video V: CVPREMOTE. 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 totalling 463 pages.

Summary of the decisions made by the County Court

1. The following sums are payable by the tenant to the landlord by 4.00 PM 22 March 2021:
 - (i) Historic service and administration charges up to and including 06 February 2018 of £2,891.05.
 - (ii) Service charges between 25 March 2018 and 25 March 2019 of £4,184.26.
 - (iii) Administration charges between 11 June 2019 and 20 December 2019 of £733.00.

These charges total £7,808.31, the amount claimed in the County Court and transferred to the tribunal.

 - (iv) Statutory interest on the above sums at 4% from 20 December 2019 until the date of judgment being £367.10, and thereafter at a rate of £0.86 per day until payment of the above sums.
 - (v) Legal costs: £1,255.00.
2. In the Particulars of Claim, the landlord also claimed any further charges or other monies for which the tenant might be liable and which became due during the

proceedings. The updated figures are at pages 126-128 of the bundle. The closing balance on 24 November 2020 was said to be £11,341.69.

3. However there was no reference to these additional sums at the hearing. Nor did the landlord's statement of case or its witness statements deal with them. Moreover, the sum stated to be in dispute in both sets of directions was £7,808.31. In the circumstances, we consider that it would be unfair to award the additional sums in these proceedings against the tenant. They will have to be the subject matter of future proceedings if necessary.

The application

4. The landlord issued proceedings against the tenant on 24 December 2019 in the County Court Money Claims Centre under claim number G02YJ884. The tenant filed a Defence on 20 January 2020. The proceedings were then transferred to the County Court at Central London and then to this tribunal by the order of District Judge Wilkinson dated 21 July 2020.

5. The tribunal issued directions on 05 October 2020, 23 November 2020 and finally on 21 January 2021. Judge Powell on that date declined to make an order debaring the tenant for a failure to comply with the directions, but warned that unless he served a witness statement by 22 January 2021 he would not be able to rely upon it, unless we gave permission at the hearing. As it was, the tenant did not trouble us with a statement of case or a witness statement.

The hearing

6. The matter duly came to a remote hearing on 19 February 2021. The block is managed by Blue Property Management UK Ltd ("Blue Property"). Mr M Phillips of Blue Property appeared for the landlord. The tenant appeared in person. The landlord relied upon witness statements from Mr Popperwell (the area property manager of Blue Property), and Mr Warren of Lease Debt Recovery Ltd (who recover debts on behalf of Blue Property). Mr Popperwell attended the hearing.

The background

7. The subject property is a basement flat in a terraced house consisting of 5 flats altogether. Neither party requested an inspection of the property; nor did the tribunal consider that one was necessary, or that one would be proportionate to the issues in dispute.

8. The tenant holds a long lease of the flat dated 6 April 1982, which requires the landlord to provide services and for the tenant to contribute towards their costs by way a variable service charge.

The issues

9. The issues are set out in the directions (page 21 of the bundle). They are:

(1) a claim for a refund of some £2,219.00, being the sum of £3,012.00 apparently found by a previous tribunal to have been overcharged, less some £793.00 already returned ("the refund issue");

(2) a challenge to a handover fee of £3,950.00 in 2015, which the applicant said was invalid and for which he sought a credit ("the handover issue");

- (3) an allegation that the cost of roof repairs in 2019 was paid by insurance and seeking evidence (“the roof issue”);
- (4) a challenge to all interest/ fees, which the applicant said were invalid as per the lease, and seeking their removal (“the interest/ fees issue”).
- (5) a request for full invoices for all third party costs (“the invoices issue”).

10. In the absence of a statement of case or witness statements, the brusque particulars of the tenant’s case in these proceedings are to be found in his emails dated 29 November 2020 and 20 January 2021 26 to be found at pages 6 and 7 in the bundle.

The County Court issues

11. All tribunal judges are now judges of the County Court. Accordingly, where tribunal judges sit in the capacity as judges of the County Court, they have jurisdiction to determine issues relating to ground rent, interest or costs, that would normally not be dealt with by the tribunal.

12. Accordingly, Judge Brilliant presided over both parts of the hearing, which has resolved all matters before both the tribunal and the court. The tribunal member, Mr R Waterhouse, sat as such in respect of those matters falling within the jurisdiction of the tribunal. He sat as an assessor assisting me in the those matters falling within the jurisdiction of the County Court.

13. This decision will act as both the reasons for the tribunal decision and the reasoned judgment of the County Court.

The lease

14. There was no dispute about the machinery in the lease for collecting service charges. Nor was there any challenge to the reasonableness as such of the service charges or the administration charges. Nor was there any dispute that the sums charged were chargeable under the lease, except for the interest/fees issue.

15. Mr Phillips accepted that there was no contractual entitlement under the lease to interest on any outstanding charges. He relied solely upon statutory interest.

16. As far as fees are concerned, paragraph (4) of Part I of the Fifth Schedule to the lease (pages 33 and 34 in the bundle) provides:

To pay unto the Lessor all costs charges and expenses (including legal costs and fees payable to a Surveyor) which may be incurred by the Lessor incidental to the preparation and service of a Notice under Sections 146 and 147 of the Law of Property Act 1925 ... notwithstanding that forfeiture may be avoided otherwise than by relief granted by the Court

17. There is abundant evidence that these proceedings have been commenced as a prelude to serving the requisite notice which enables the landlord to commence proceedings for forfeiture of the lease. This is hardly surprising given that the tenant has made only one payment (apart from minor credits) towards the service charges since before 29 September 2014, 6½ years ago (page 123 of the bundle).

The refund issue

18. In 2017, there was an earlier hearing between the parties in the Tribunal (LON/OOBK/LSC/2017/0191). The Tribunal determined that credits of £9.37,

£341.25 and £453.75 should be given to the tenant. These sums total £804.37.

19. The tenant says in his email dated 29 October 2020 (page 6 in the bundle):

Further to previous service charge where tribunal ruled £3,012.00 was overcharged you subsequently claim FULL amount £6,993.00 without regard to the tribunal ruling in the County Court which I paid. I claimed the £3,012.00 and you returned £793.00. Please return these monies.

20. In his email dated 20 January 2021 (page 7 in the bundle) he says:

I am claiming £3,000.00 be returned as the previous FTT order which they totalled DISREGARDED. They increased the claim after hearing in FTT court and attempted to claim forfeiture of family home based on illegal charges.

21. We took this to be a claim for a refund of some £2,219.00, being the difference between £3,012.00 and £793.00.

22. Mr Phillips was able to show that the tenant has been credited with all the sums required to be credited in the earlier decision. These are the third, fourth and seventh entries in the account at page 123 of the bundle. This is all that the Tribunal had ordered to be credited. There are no other sums due to the tenant under this previous Tribunal decision. The sum of £6,993.00 referred to by the tenant is probably a mistaken reference to the payment of £6,693.00 he made on 19 January 2018, is being the only payment of any substances made in the last 6½ years

23. Accordingly, the refund issue is determined in the favour of the landlord.

The handover issue

24. The tenant says in his email dated 29 October 2020 (page 6 in the bundle):

2019 statement ... The updated service charge statement you sent just last week for 2019 states a handover fee of £3,950.00 in 2015. This was not included in any service charge requests over 5 years and is invalid. Please recredit this to statement/confirm why you are seeking this?

25. Mr Phillips explained that on 24 July 2015, when the new managing agents were appointed, they received a handover balance in credit. This credit had actually been applied in error. The credit had not been required to be applied at all. A shortage of service charge funds was then discovered at a later date and the error identified. An adjustment was made to apply the amount back to the tenant's account on 29 September 2018.

26. Mr Phillips took us to page 126 in the bundle. This showed a credit of £512.00 on 29 September 2017, described as a budget adjustment. There was then a debit of £512.00 on 29 September 2018, described as a budget adjustment reversal.

27. The conclusion we have reached is that there was never a handover fee of £3,950.00, or any other sum. The sum of £512.00 wrongly credited was subsequently reversed. We therefore determine the handover issue in favour of the landlord.

The roof issue

28. The tenant alleges that the cost of the roof repairs in 2019 was paid by insurance, so the cost of it should not have been passed through the service charge.

29. Mr Phillips drew a distinction between the water damage caused to the upstairs flat as a result of the lack of repair of the roof, which was paid for under an insurance claim, and the cost of repairing the roof which was not an insurable claim and which has been passed through the service charge. We accept this evidence.

30. Mr Phillips provided on the day of the hearing the documents relating to the s.20 procedure. The tenant asserted, without providing any evidence, that the procedure had not been complied with. We find that it was complied with. The relevant invoices for the roof repairs are at pages 316-323 of the bundle. There was no challenge to the cost, which was under £5,000.00 (being most but not all of the expenditure of £5,043.00 for repairs and general maintenance appearing in the income and expenditure account for the year ending 28 September 2019 at page 131 in the bundle).

31. The tenant mostly complained about the fact that the lock to his side gate had been changed by the landlord and he had been charged the cost of a locksmith. This happened because the tenant had failed to give the landlord access, as required under the lease, to enable the landlord to carry out its repairing obligations in respect of the roof. The charge for the locksmith does not fall within the amount claimed in the Particulars of Claim. This issue has therefore no relevance to these proceedings.

32. There is no merit in the tenant's complaints about the roof charges, and we find for the landlord on this issue.

The interest/ fees issue

33. The tenant says that these charges are not allowed for by the lease.

34. It is common ground that the lease does not enable the landlord to charge interest on arrears. However, in the County Court a claimant has a right to claim interest under s.69 County Courts Act 1984 which provides:

... the defendant shall be liable to pay the plaintiff simple interest, at such rate as the court thinks fit or as may be prescribed, on all or any part of the debt for all or any part of the period between the date when the cause of action arose and the date of the payment.

35. The prescribed rate is still 8% per annum. We feel it would be unfair to apply such a rate when interest rates as a whole are historically low. In our view it should be awarded at 4% per annum.

36. Strictly speaking, interest should be applied to each part of the total debt from the date when that part arose. In other words, each interim service charge should attract interest from the date on which that charge became due. But the landlord has not provided us with a comprehensive schedule to enable us to do that. It is not the tribunal's function to make those time-consuming calculations itself. Accordingly, we will apply interest from 20 December 2019, the day the landlord sent the claim form to the County Court.

37. The correct figure for interest on this basis is at 4% from 20 December 2019 until the date of judgment being £367.10, and thereafter at a rate of £0.86 per day until payment of the above sums.

38. The lease does provide for legal costs to be recovered: see paragraphs 16 and 17 above. We deal with the amount of costs to be allowed below.

The invoices issue

39. The tenant argues that unless and until the landlord provides copies of all relevant invoices which relate to the service charges, he is under no obligation

to pay the service charge.

40. This point is wholly without merit. There is no obligation under the lease for the landlord to provide all or any of the invoices as a condition precedent to recovering the service charge. In fact, the landlord had provided all the invoices for inclusion in the bundle by 30 November 2020 as directed. The tenant has a statutory right to see the invoices under s.22 Landlord and Tenant Act 1985, but he has not chosen to exercise that right.

Legal costs

41. We will allow the following contractual costs:

- (1) County Court fee: £455.00.
- (2) Tribunal fee: £200.00.
- (3) Mr Phillips' preparation of the bundle and attendance fee: £600.00.

42. This totals £1,255.00, and is to be paid within 28 days of this decision. We note in passing that we were told that Lease Debt Recovery Ltd's fees of £633.00 were included within the figure of £7,808.31 claimed.

43. Given that the Tribunal has made a decision regarding the service charges, the landlord is entitled to a judgment in that sum. A separate County Court order, reflecting this decision is attached.

Name: Judge Brilliant: Date: 22 February 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.

General Form of Judgment or Order

In the County Court at Central London	
sitting at 10 Alfred Place, London WC1E 7LR	
Claim Number	G02YJ884
Date	22 February 2021

Goodwyn Realty Ltd	1st Claimant Ref
	2nd Claimant Ref
Aidan Joseph Alves	1st Defendant Ref
	2nd Defendant Ref

BEFORE Tribunal Judge Brilliant, sitting as a Judge of the County Court (District Judge), with Mr R Waterhouse FRICS as assessor

UPON the claim having been transferred to the First-tier Tribunal for administration on 21 July 2020 by order of District Judge Wilkinson sitting at the County Court at Central London

AND UPON hearing Mr Phillips for the Claimant and the Defendant in person

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

IT IS ORDERED THAT:

1. The Defendant shall pay to the Claimant by 22 March 2021 the sum of £8,175.41 being the sum found due and payable in respect of service charges, administration charges and interest to the date of judgment.
2. The Defendant shall pay to the Claimant by 22 March 2021 the sum of £1,255.00 in respect of the Claimant's summarily assessed costs.
3. The reasons for the making of this Order are set out in the combined decision of the court and the First-tier Tribunal (Property Chamber) dated 22 February under case reference LON/00BK/LSC/2020/0224.

Dated: 22 February 2021

