

12495



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

**Case reference** : **LON/00AC/LSC/2016/0440**

**Property** : **30 Vernon Way, Hendon Way,  
London NW2 2PE**

**Applicant/landlord** : **Brencastle Management (Vernon  
Court) Ltd**

**Representative** : **No appearance**

**Respondent/tenant** : **Alfred Yazdiha**

**Representative** : **In person**

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

**Date of decision** : **29<sup>th</sup> November 2017**

**Tribunal members** : **Tribunal Judge Adrian Jack and  
Tribunal Member John Barlow  
FRICS**

the Tribunal must not proceed further with the case until the fee is paid.

(2) Where a fee remains unpaid for a period of 14 days after the date on which the fee is payable, the case, if not already started, must not be started.

(3) Where the case has started, it shall be deemed to be withdrawn 14 days after the date on which the Tribunal sends or delivers to the party liable to make payment a written notification that the fee has not been paid.”

9. In the current case, due to an administrative oversight, no letter complying with rule 11(3) has been sent. By Article 4(4) of the First-tier Tribunal (Property Chamber) Fees Order 2013 any hearing fee “is due within 14 days of an applicant receiving notice of the hearing date.” Rule 6(3)(a) of the Procedure Rules in our judgment gives the Tribunal the power to extend that time.
10. The tenant in the current case, under pressure from his mortgagee, has paid the sums in dispute, but without prejudice to his right to have these refunded once the Tribunal reaches its conclusions. If the Tribunal merely marked the landlord’s claim as withdrawn, it would be potentially unclear what, if any, service and administration charges were owed by the tenant to the landlord.
11. The solution in our judgment is, in accordance with the Overriding Objective under rule 3 of the Procedure Rules, is to extend the landlord’s time for paying the hearing fee to 8<sup>th</sup> December 2017. Since as at today’s date no fee is payable, we can therefore proceed to determine the matter on its merits. No question of the case having been withdrawn would therefore arise. (If it had arisen, there would have been an issue as to what consequential orders should be made. This was a transfer from the County Court, so it is unclear what effect, for example as to costs, the deemed withdrawn would have on the County Court action.)
12. We are satisfied that the landlord has been informed of the hearing and that reasonable steps to notify it of the hearing have been taken. It is in the interests of justice to proceed with the hearing: see rule 34 of the Procedure Rules.

### **Determination on the merits**

13. The landlord has failed to put any evidence before the Tribunal to justify the service and administration charges claimed in the Claim Form. In these circumstances, the Tribunal finds that nothing is owing.

### **Setting aside**

14. Under rule 51 the Tribunal can in certain circumstances set aside a decision, such as the present, which disposes of proceedings. These circumstances include the non-attendance of a party. Such an application

must be made within 28 days of the date on which the Tribunal sends this decision to the parties.

### **DETERMINATION**

- a. The time for the landlord to pay the hearing fee in respect of the current matter is extended to 8<sup>th</sup> December 2017.
- b. No monies are payable in respect of the claim referred to the Tribunal by the County Court.
- c. The matter is transferred back to the County Court sitting at Clerkenwell and Shoreditch.

Adrian Jack, Tribunal Judge, 29<sup>th</sup> November 2017

### **ANNEX: The law**

The Landlord and Tenant Act 1985 as amended by the Housing Act 1996 and the Commonhold and Leasehold Reform Act 2002 provides as follows:

#### **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, improvement 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 of 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 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 provision 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 20**

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—

(a) complied with in relation to the works or agreement, or

(b) dispensed with in relation to the works or agreement by (or on appeal from) a leasehold valuation tribunal.

(2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

(a) if relevant costs incurred under the agreement exceed an appropriate amount, or

(b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—

(a) an amount prescribed by, or determined in accordance with, the regulations, and

(b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.

### **Section 20B**

(1) If any of the relevant costs taken into account in determining the amount of any service charges were incurred more than 18 months before a demand for payment of the service charge is served on the

tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charges as reflects the costs so incurred.

(2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

### **Section 27A**

- (1) An application may be made to a leasehold valuation 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 a leasehold valuation tribunal for a determination whether 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.”

### **Administration charges**

Section 158 of and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 contain similar provisions as regards administration charges.