



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

**Case Reference** : LON/00BB/LSC/2014/0016

**Property** : 46 Harper Road, London E6 5PZ

**Applicant** : James Khalid

**Representatives** : In person

**Respondents** : MCH (Beckton) Management  
Company Limited

**Representative** : Ms E Coleman, managing agent

**Type of Application** : For the determination of the  
liability to pay a service charge

**Tribunal Members** : Judge W Hansen (chairman)  
Mr S Mason BSc FRICS FCI Arb  
Mr L G Packer

**Date and venue of  
Hearing** : 28<sup>th</sup> May 2014 at 10 Alfred Place,  
London WC1E 7LR

**Date of Decision** : 2<sup>nd</sup> June 2014

---

**DECISION**

---

## **Decisions of the Tribunal**

- (1) The Tribunal determines that the Applicant is liable to pay £838.00 + £106.35 = £944.35 in respect of service charge for the period 01/07/11 to 30/06/12.
- (2) The Tribunal determines that the Applicant is liable to pay £957.47 in respect of service charge for the period 01/07/12 to 30/06/13.
- (3) The Tribunal determines that the Applicant is liable to pay £980.80 in respect of interim service charges for the period 01/07/13 to 30/06/14.
- (4) The Tribunal determines that the Applicant is not liable to pay any sum by way of service charge in respect of the Respondent's legal costs incurred in connection with Case Reference LON/00BB/LSC/2011/0504 in the Leasehold Valuation Tribunal or in respect of the Respondent's legal costs incurred in connection with Claim Number 11Q22776 in the County Court.
- (5) The Tribunal determines that the Applicant is not liable to pay the sum of £13.02 in respect of collection costs.
- (6) The Tribunal makes an Order under section 20C of the Landlord and Tenant Act 1985 that the Respondent shall not be entitled to add the costs incurred in connection with these proceedings to the service charge.
- (7) On the Applicant's application for reimbursement of the application fee (£125) and the hearing fee (£190) which he has paid, the Tribunal makes no Order under paragraph 13(2) of the 2013 Tribunal Procedure Rules.

- (8) On the Respondent's application for its costs of these proceedings in the sum of £1,872 the Tribunal makes no Order under paragraph 13(1)(b)(ii).

### **The Application**

1. By virtue of an application dated 11<sup>th</sup> December 2013 the Tribunal is required to make a determination pursuant to section 27A of the Landlord and Tenant Act 1985 ("LTA 1985") as to the reasonableness and payability of certain service charges charged to the Applicant.
2. The application relates to the reasonableness and payability of the following service charge items:

#### **2011-2012**

Interim Service Charge	£838.00
Legal Costs before the LVT and the County Court	£1,608.00

#### **2012-2013**

Interim Service Charge	£957.47
Legal Costs	£166.80
Balancing Charge	£106.35
Charge for collection cost	£13.02

#### **2013-2014**

Interim Service Charge	£980.80
------------------------	---------

3. The relevant legal provisions of the LTA 1985 are set out in the Appendix to this decision.

### **Background**

4. The Applicant's lease ("the Lease") is dated 21<sup>st</sup> June 1982. The lease is for a term of 999 years from 1<sup>st</sup> January 1980. The original purchaser was Derek Lane but the term is now vested in the Applicant. His flat is one of 15 in the building. By Clause 6 the lessee covenants with the Respondent "*in the terms specified in Part 1 of the Sixth Schedule*". Part I of the Sixth Schedule contains the machinery for operating and collecting the service charge. The Applicant covenants to pay 1/15 of the permitted maintenance expenditure. Part II sets out the heads of expenditure "*to be recovered by means of the Maintenance Charge*". Paragraph 2 refers to "*sundry fees*", including "*all fees ... paid to any ... solicitor*". Paragraph 9 refers to "*the costs incurred ... in bringing ... any actions or other proceedings against ... any person*".
5. On or about 15<sup>th</sup> April 2011 the Respondent commenced proceedings against the Applicant in the County Court seeking to recover service charge arrears of £1,087.91, administration charges of £190.50 and £892.03 in respect of interest, legal fees and court fees. The disputed service charge related to the period 01/07/09 to 30/06/11. The claim in respect of service charges and administration charges was transferred to the LVT on 11<sup>th</sup> July 2011. The Respondent was the Applicant in those proceedings. The matter came on for a hearing before the LVT on 21<sup>st</sup> November 2011 following which the LVT determined that (i) the service charges claimed in the sum of £1,087.91 were payable in full; (ii) the administration charges of £190.50 were not recoverable and (iii) "*the lease does not allow costs in relation to the current application/transfer to be treated as relevant costs for service charge purposes*". The LVT refused to make an order under section 20C of the Landlord and Tenant Act 1985 on the basis that "*in respect of the service charge items the Respondent has not proved his case*". The

Respondent (the Applicant before the LVT on the last occasion) did not appeal against the decision of the LVT.

6. The matter was then transferred back to the County Court to consider, inter alia, the outstanding claim for interest, legal fees and court fees: see paragraphs 2 and 48 of the decision of the LVT.
7. The matter then came before District Judge Wakem to deal with the outstanding issues that remained between the parties. The Respondent by that time sought £4,295.37 by way of costs. The District Judge did not accede to that application but instead gave judgment for “*outstanding service charges of £1087.91 and legal fees ... in the sum of £656.38*”. In addition she awarded interest in the sum of £80.40 and “*costs ... on the small claim of £215*”. The Respondent appealed against that order to the Circuit Judge. The Circuit Judge, HHJ Blunsdon, refused permission to appeal, concluding that “*the District Judge could only exercise her discretion within the parameters of CPR 27.14. The jurisdiction to order costs must be exercised in accordance with the statutory power and the court rules. Absent a specified exception in CPR 27.14 contractual clauses do not assist the Appellant*”. Again, the Respondent did not pursue any appeal against his order.

### **The Matters in Dispute**

8. In the light of information provided by the Respondent prior to the hearing, the Applicant did not pursue his challenge to the interim service charges for the years 2011-12 (£838.00), 2012-13 (£957.47), 2013-14 (£980.80) or the balancing charge for the period 2011-2012 (£106.35). The Respondent did not pursue its claim for £13.02 in respect of collection costs.
9. Accordingly, the only matter that remained to be determined was the question of the recoverability under the service charge of the balance of the legal costs incurred in the earlier proceedings. The legal costs are made up of (i) the costs incurred by the Respondent before the LVT in

2011 and (ii) the costs incurred by the Respondent in the County Court proceedings in 2011-2012. The precise breakdown of those costs is apparent from the statement at page 24 of the Applicant's bundle and the costs schedule at page 45 of the same bundle. It is not necessary for the purposes of this decision to itemise precisely each of the various items claimed for. The items claimed are application fees, hearing fees, Counsel's fees, solicitors' fees and related disbursements, e.g. transcription fee.

### **Applicant's Case**

10. The Applicant's case was simple. He contended that the legal costs have already been the subject of binding and unappealed determinations of the LVT and the Circuit Judge. As he put it in his Application, "*the Respondent is seeking to recover costs which the County Court held on appeal that they were not entitled to recover*". He made much the same points in paragraph 9 of his witness statement where he said this: "*The LVT decided that the lease did not allow costs in relation to the proceedings to be treated as relevant costs for service charge purposes. Further the Respondent lost their appeal for legal costs of the County Court claim and His Honour Judge Blunsdon upheld the judgment of District Judge Wakem ... that the Respondents were only entitled to small claims fixed costs*".

### **Respondent's Case**

11. The Respondent's case, at least as advanced by Ms Coleman in her witness statement, was that the Applicant was liable to pay the balance of unrecovered legal costs incurred in connection with the previous proceedings before the LVT and the County Court. However, at an early stage in the hearing, she accepted that it was incorrect to attempt to charge the Applicant with all of these costs. Instead, she said that these items should have been charged to the block service charge account and that the Applicant should have been charged with 1/15 of these costs.

She confirmed that subject to any determination of this Tribunal and/or receipt of further legal advice this was what the Respondent proposed to do.

### **Tribunal's analysis and determinations**

12. The Tribunal is satisfied that the Applicant is correct in his submissions. He is not liable to pay any sum in respect of the above-mentioned legal costs. Until now, the Respondent has been seeking to recover all of these sums by way of service charge from the Applicant. However, the Respondent did not persist in this claim before us. Rather, Miss Coleman on behalf of the Respondent invited us to determine that these costs could be added to the block service charge account and that the Applicant should be held liable for his 1/15 share. In the view of the Tribunal the Applicant is not liable to pay any part of the above-mentioned legal costs by way of service charge essentially for the reasons that he advances. The issue of those costs has been the subject of decisions by the previous LVT and the County Court in the circumstances set out above. Whilst the previous LVT declined to make a section 20C order, its primary decision was that the issue did not arise because "*the lease does not allow costs in relation to the current application/transfer to be treated as relevant costs for service charge purposes*". The parties before the Tribunal today are the same as the parties to those earlier decisions. The then Applicant, i.e. the Respondent before the Tribunal today, did not seek to appeal that decision. Subsequently, the Circuit Judge determined that the District Judge was right to hold that the small claims track rules as to costs applied to the claim and that accordingly the Applicant's liability for costs was strictly limited by virtue of the small claims track restrictions on the recovery of costs. He further held that in those circumstances the "*contractual clauses do not assist the Appellant*". The matter has therefore been the subject of a determination by the Court: s.27A(4)(c) LTA 1985. In these circumstances the Tribunal is satisfied that the decisions of the LVT and the County Court referred to above preclude

the Respondent from seeking to recover by other means the self-same costs which were under consideration in the LVT and the County Court and which have been the subject of final decisions which were, in each case, adverse to the Respondent and which have not been appealed.

13. We would remind the Respondent of the terms of section 20B, LTA 1985 should it attempt to recover any part of *these* costs from the other 14 lessees.
14. That said, we would also make it clear that this decision relates *only* to the costs which are the subject matter of this application. It should not be taken as precluding the Respondent from recovering legal costs as part of the service charge in the future depending on the circumstances.

#### **Cost Applications**

15. The Applicant applied for an order under section 20C of the 1985 Act that the Respondent should not be entitled to add the costs incurred in connection with these proceedings to the service charge. The Applicant has succeeded on the most important issue relating to the recoverability of the legal costs via the service charge. He did not pursue the other challenges having received the service charge accounts. We are concerned that the Respondent has persisted in seeking to recover the balance of the legal costs from the Applicant notwithstanding the decisions of the LVT and the Circuit Judge. In the circumstances, the tribunal considers it just and equitable to make a section 20C order. Therefore the Respondent cannot add its costs incurred in connection with these proceedings to the service charge.
16. The Applicant made an application for reimbursement by the Respondent of the application and hearing fees under paragraph 13(2) of the 2013 Tribunal Procedure Rules. We decline to make such an Order. Notwithstanding our order under s.20C, we cannot overlook the fact that the Applicant failed to pay any service charge at all in respect of the period 2011-2012 or 2012-2013 until March 2013. He contended



that this was because he had not been supplied with the relevant service charge accounts and/or because he did not have the Respondent's bank details. However, his own e-mail dated 22/01/13 acknowledged receipt of the service charge accounts for the years 2011/12 and 2012/13 and we are satisfied that he could and should have made at least some payment in respect of the undisputed service charge items much earlier than he did. Even now, there remain outstanding charges which have not been and cannot sensibly have been the subject of any real dispute.

17. Insofar as the Respondent made a claim to costs in connection with its solicitors' fees relating to this hearing, we decline to make any order as we do not find that the Applicant has acted unreasonably in conducting these proceedings.

**Name:** Judge W Hansen

**Date:** 2<sup>nd</sup> June 2014

## **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.