



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

Case Reference : LON/00BE/LSC/2013/0671

Property : 451 Heligan House Water Gardens Square
London SE16 6RJ

Applicant : Mr Jonathon Esparon and
Mrs Winifred Esparon

Representative : Mr Jonathon Esparon in person

Respondents : The Water Gardens (Canada Water)
Management Company

Representative : Ms Tara Taylor of Trinity London

Type of Application : to determine the reasonableness and
payability of service charges and
administration charges

Tribunal Members : Mrs E Flint DMS FRICS IRRV
Mr M Cartwright JP FRICS
Mr A Ring

Date of Hearing : 3 February 2014

Venue of Hearing : 10 Alfred Place London WC1E 7LR

Date of Decision : 15 April 2014

8. The lease which is dated 22 November 2007 for a term of 999 years from 1 January 2005 is in modern tripartite form. The parties are (1) George Wimpey City Ltd, (2) The Water Gardens (Canada Water) Management Company Ltd and (3) Jonathon Georges Soyven Esparon and Winifred May Esparon.
9. By clause 5 the lessee covenants to pay the annual service charge in accordance with clause 6 of the lease. The service charge year is from 1 January to 31 December or such other period as the Landlord may from time to time decide. Service charges are payable in advance on 1 January and 1 July each year.
10. By clause 6.6 the Service Charges include reasonable provision for the future in respect of periodically recurring items whether recurring at regular or irregular intervals and the replacement or renewal of items the expenditure of which would fall within the Estate Services.
11. The service charges are defined in Schedule 2 of the lease and comprise 4 "Sectors". The proportions payable under the leases are:
12. 0.621% of Sector 1 charges relating to the estate common parts and service installations.
13. 3.037% of Sector 2 charges relating to the residential common parts and structural parts which are to be shared between the occupants of the block. The services include at paragraph 2 "*Lighting heating (where appropriate) of the Residential Common Parts and gas and providing electricity, gas and water supplies.....and standing charges for the water meter for the supply of water for use in connection with the Residential Common Parts and the private Housing.*"
14. 0.6255% of Sector 3 charges in respect of the car park, excluding the car stacker.
15. 0.714% of Sector 4 charges in respect of the car parking stacker.
16. The Estate is defined as "*The land and buildings known as The Water Gardens Canada Water London SE16 shown for identification edged red on Plan 1.*"
17. The Block is defined as "*the building on the Estate..... (within which is located the flat)....and extending out beyond the footprint of the area coloured yellow on the plan*"

the flat. He was not now able to charge these amounts to the tenants as they were no longer living at the flat. He was of the opinion that the landlord was now misconstruing the lease. He was no longer disputing the amounts of the actual water and electricity bills only his liability for the cost of these items. He was prepared to offer a maximum amount of £250 pa for each service on the basis that they were long term agreements.

25. Ms Taylor argued that the lease provides for both water and electricity to the communal areas and the individual flats to be charged to the service charge account. The respondent relied on clause 2 of Schedule 2 of the lease.
26. Mr Littleworth an estate manager at Trinity since 2008 explained that there was only 1 water meter and 1 electricity meter for the entire development, excluding the housing association block which was separately metered; the commercial units each had their own meters. Electricity was required in addition to the flats for the lifts, lighting, car stackers, CCTV, door entry system, external lighting and the water fountain pump. His evidence was contradicted when specimen bills were produced which clearly showed that there were two meters for both water and electricity.
27. The Respondent confirmed in writing after the hearing that there were 2 water meters serving the residential properties, excluding the Housing Association block known as Giverney House, a main meter and a bypass meter. During periods of high usage water is drawn through the main meter which has a wider pipe and when fewer people are using water it is drawn through the bypass meter. Photographs of the meters were also supplied. The Respondent confirmed that there are 2 electricity meters serving the residential properties, again excluding Giverney House. The main meter and a separate meter for the Fire Brigade, the latter showed zero usage in the photograph.

The Tribunal's decision

28. The Tribunal determines that the charges for water and electricity as demanded are not payable but will become payable once the actual costs for the block have been identified.

Reasons for the Tribunal's decision

29. The arrangements for the supply of water and electricity to the development appear somewhat unusual in that the evidence was that there was only one meter for the development for each of these utilities and no check meters for either the blocks or the individual flats. The lease provides for water and electricity charges to be

bundle and confirmed that she had not seen any evidence of such an agreement. She referred to the cleaning specification dated 7 November 2007 which was an ad hoc arrangement; the contract had not been signed until 1 February 2012 when Trinity took over; it provides for termination on 3 months' notice. The applicant had not raised any argument regarding the regarding the reasonableness of the cost and his contribution each year was below the threshold.

The Tribunal's decision

37. The contract is not a QLTA.

Reasons for the Tribunal's decision

38. The cleaning contract has been in place since 2007, either side could terminate on 3 months' notice since February 2012 and there is no evidence to show that the contract prior to then was at any time for a period of in excess of 12 months. Entering into an agreement for a lease did not give the applicant an interest in the property which would have entitled him to be consulted regarding any proposed QLTAs.

Car Parking System: C. A. S. Engineering

39. Mr Esparon referred to the contract with the company for servicing the car parking system which had been entered into on 5 December 2008 and continued on a rolled over basis to date.

40. Ms Taylor referred to the contract in the bundle: it was an annual contract which could be terminated at any time by either party on 3 months' notice.

The Tribunal's decision

41. The contract is not a QLTA.

Reasons for the Tribunal's decision

42. The contract was for a period of 12 months.

Maintenance

43. Mr Esparon was not challenging the individual costs incurred in respect of lift maintenance because it was below the threshold of £250, or the items included under general maintenance. However he was of the opinion that all the maintenance items should be aggregated under one heading in accordance with case law. He

TV and satellite television services: Switchsure.

50. Mr Esparon queried the power of the landlord to enter into the 10 year agreement.
51. Ms Taylor referred to Schedule 2 part 2 clause 6 of the lease which allows the landlord to provide “*Any other amenities works and or services that the landlord...deems reasonable*”... It was not known if Chainbow had consulted on the contract. The annual cost has been no more than £100 therefore section 20 has not been engaged.

The Tribunal’s decision

52. The landlord is not in breach of the lease. There is no financial effect of a lack of consultation.

Reasons for the Tribunal’s decision

53. The landlord was acting within the terms of the lease when entering into a contract to provide TV and satellite services. The annual cost falls well below the section 20 threshold.

Security: Contract with Executive Security Solutions

54. Mr Esparon contended that this contract should have been the subject of consultation under section 20ZA as “qualifying works”. In addition it was a QLTA.
55. Ms Taylor submitted that the provision of security services cannot be described as works and therefore section 20ZA cannot apply. Again the contract was for a defined period of 12 months and could be terminated by either party on 6 months’ notice.

The Tribunal’s decision

56. Section 20ZA does not apply to this contract. It is not a QLTA.

Reasons for the Tribunal’s decision

57. The contract does not relate to qualifying works but to a service. The contract period is 12 months.

Caretaking/Security

58. Mr Esparon accepted that the employment contracts of the Concierge and Night Porter with the management Company were

64. The Tribunal determines that the contract with Chainbow was a long term agreement. However as it was entered into prior to the leases being granted the consultation provisions do not apply.

Reasons for the Tribunal's decision

65. The Tribunal is satisfied that the agreement with Chainbow was entered into prior to any occupational leases being granted.

Administration Charges

66. The applicant contested charges of £150 in respect of a reminder letter, 7 day letter, letter on referral and gathering of papers on referral in relation to outstanding service charges and £102 being solicitors charges in pursuit of legal proceedings.

67. The Respondent relied on clause 6.23 of the lease.

The Tribunal's decision

68. The charges are reasonable and payable.

Reasons for the Tribunal's decision

69. The charges are payable under the terms of the lease.

Sinking Fund

70. During the course of the hearing Mr Esparon accepted that the sinking fund was payable under the terms of the lease. The Tribunal has no jurisdiction following the concession.

Section 20(b) Landlord and Tenant Act 1985.

71. Mr Esparon submitted that the final accounts for 2009, 2010 and 2011 were not finalised until 31 January 2013. He had not been aware of the method of charging for water supplies until 20 March 2013. The situation regarding electricity was not apparent until September 2013. He considered that the notification of the actual charges for water and electricity was more than 18 months after the costs had been incurred and therefore the amounts were not payable. He had not received any letters prior to 2013 regarding these costs or the late completion of the accounts.

72. The Respondent accepted that the service charge accounts for 2009, 2010, 2011 and 2012 were not prepared until 2013. Letters notifying

Appendix of relevant legislation

Landlord and Tenant Act 1985

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 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,

