

10504



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

**Case Reference** : **LON/00BJ/LSC/2014/0436**

**Property** : **Flat 11, Star and Garter Mansions,  
Lower Richmond Road, London  
SW15 1JW**

**Applicant** : **Star and Garter (Management  
Company) Ltd**

**Representative** : **Mr Robert Brown of Counsel  
instructed by Guillaumes LLP**

**Respondent** : **Mr Stephen Walsh**

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

**Type of Application** : **S27A Landlord and Tenant Act 1985  
Liability to pay service charges**

**Tribunal Members** : **Judge E Samupfonda  
Mr A Lewicki  
Mr A Ring**

**Date and venue of  
Hearing** : **10 Alfred Place, London WC1E 7LR**

**Date of Decision** : **19 December 2014**

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**DECISION**

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### **Decisions of the tribunal**

- (1) The tribunal determines that the sum of £289.00 is payable by the Respondent in respect of the cost incurred in repairing and redecorating the Basement following water ingress from Flat 2.
- (2) There was no need to adjust the service charge demanded as the accounts have been reconciled to take account of the contribution from the Local Authority. The Applicant provided at the hearing a summary of the final accounts and the certified accounts for 2010, which recorded the contribution from the Local Authority..
- (3) The tribunal determines that the Applicant has failed to comply with the consultation procedures under section 20 of the Landlord and Tenant Act 1985 in that the stage 2 Notice of Estimates was served on the Respondent on 23 May 2013 after the contract had been awarded to MNM contractors. In the light of the Respondent's email dated 22 May 2013 and having heard from the Respondent, the tribunal preferred his evidence to that of Mr Alcock and accepted that work to the internal common parts had already started before the notice was served. In any event a contract awarded prior to notice expiry is also a failure to comply.
- (4) Since the tribunal has no jurisdiction over county court costs and fees, this matter should now be referred back to the Wandsworth County Court.

### **The application**

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Respondent in respect of the service charge years 2012 and 2013.
2. Proceedings were originally issued in the Northampton Court Money Claims Centre County Court under claim no. A97YJ392. The claim was transferred to the Wandsworth County Court and then in turn transferred to this tribunal, by order of District Judge Hugman on 14 August 2014.
3. The relevant legal provisions are set out in the Appendix to this decision.

## **The hearing**

4. Mr Brown of Counsel represented the Applicant at the hearing and the Respondent appeared in person. Mr Brown was accompanied by Mr Alex Tigwell, Solicitor, Ms Sunitha Kainody, Property Manager and Mr Robert Alcock, Managing agent who gave evidence

## **The background**

5. Flat 11, which is the subject property of this application is situated in a building consisting of 17 residential flats and 2 commercial units.
6. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.
7. The Respondent holds a long lease of the property that requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The Respondent also holds a long lease of Flats 6 and 10 and one of the commercial units in the building. The Respondent is a former freeholder of the building.

## **The issues**

8. At the start of the hearing Mr Brown explained that the Applicant issued proceedings in the County Court claiming the sum of £2,570.02 in respect of service charges for the years 2012 and 2013 comprising amounts for 2 Bi annual service charges and 2 Bi annual reserve fund contributions. Both parties agreed that the relevant issues for determination were as identified at the case management conference that took place on 16 September 2014, namely that the Respondent had three objections to the service charges demanded as follows:
  - (i) That he should be given credit in the sum of £298.00 as agreed by previous agents.
  - (ii) That the reconciliation account for the major works that were amended during the works in 2009 be certified and produced.
  - (iii) That the correct notices were not given in relation to the works to the common parts in 2013-14.
9. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

### **Credit of £298.00**

10. We were informed that a leak occurred from Flat 2 into the basement. Mr Walsh stated that he met up with a representative of Kinleigh Folkhard Haywood, the previous managing agent, who came and assessed the damage and agreed that he would be reimbursed any costs that he incurred in repairing and redecorating the damage caused by the water ingress. In support of this contention Mr Walsh referred the tribunal to two documents; an email dated May 5 2011 from him to John Gillon, a representative of the current managing agents HML Scotts in which he raised the issue of reimbursement following a meeting with him, and a copy of a covering letter dated 4 July 2011 addressed to "John" raising the issue again and enclosing a copy of the invoice for the sum of £298 in respect of the work he had carried out.
11. Mr Alcock told us in evidence that he had searched the property file and could find no record of such an agreement being made. Neither could he find copies of the email and letter referred to by Mr Walsh. He said that he did not make any enquiries with the previous agents. He confirmed that HML Scotts took over management of the building in 2009 and that he became junior property manager in 2012.

### **The tribunal's decision**

12. The tribunal determines that the sum of £298 is payable by the Respondent. Although there are two documents referring to water ingress and the question of reimbursement and the fact that the tribunal heard from the Respondent as to his understanding of an agreement, on the evidence provided, the tribunal was not satisfied that this was sufficient to support the Respondent's contention that he had reached a binding agreement with the previous managing agent as alleged. The documents relied on were written to the current agents.

### **Reconciliation of accounts**

13. The tribunal was informed that the Applicant undertook a project of major works to the exterior of the building in 2008/9. The scope of the work changed following an intervention from the Local Authority, which resulted in the Authority giving a conservation grant of £19,800 towards the cost of the amended work.
14. Mr Walsh informed us that despite his repeated requests for the Applicant to provide him with details of the major works carried out together with an explanation of what monies were collected and how it was spent in light of the amendments and contribution from the Local Authority, the information was not forthcoming until the Friday before this hearing.

15. The tribunal gave the parties an opportunity to study the certified accounts for the year-end 2010 and the summary of the final account produced by the Applicant at the hearing. Following a short adjournment, the Respondent agreed that the accounts had been correctly reconciled to reflect the grant from the Authority towards the cost of the works.
16. However, whilst accepting that reconciliation was no longer an issue the Respondent explained that he remained concerned about the original schedule of works and how it changed subsequently.

### **The tribunal's decision**

17. The tribunal received the summary of the contractor's final accounts together with a copy of the certified accounts for the year-end 2010. From these, it was clear that the accounts had been correctly reconciled. The Respondent, upon receiving the same documents accepted that to be the case.
18. Whilst the Respondent maintains that he has not had satisfactory answers from the Applicant regarding what was done, why it was done, why it cost what it did, these are matters which are not within our jurisdiction as the tribunal is limited to considering only those issued transferred to it from the County Court. Should the Respondent wish to raise those issues, he may do so through his own separate application.

### **Failure to serve the correct Notice**

19. The Respondent explained that in his view the Applicant has failed to comply with the consultation requirements because at the time that he was served with a copy of the Statement of Estimates dated 23 May 2013, the work to the internal parts had already started. He accepted that he was correctly served with a Notice of Intention dated 27 April 2011 to carry out work to the internal common parts and the installation of new electrical services in the form of emergency lighting and a fire detection system. The consultation period in respect of the Notice of Intention was due to expire on 27 May 2011.
20. He explained that in his response to that Notice, he had discussions with Mr Gillon. At the hearing, he produced a letter dated 20 May 2011 (ie within the period allowed for consultation) that he sent to Mr John Gillon dealing with various issues but one of which was his response to the Notice. In that letter Mr Walsh indicated that he believed the proposed fire detection works were not necessary because he had been verbally so informed by the surveyor that he had commissioned to carry out a fire risk assessment that was required as a condition to getting an agreement for him to assign the basement. The fire risk assessment

report confirming this was produced on 16 February 2012 but he was not given a copy of it until last week.

21. He referred the tribunal to his email dated 22 May 2013 sent to Mr Gillon in which he enquired about "some unusual painted panels in the common parts." He said that in response to that email he then received the Notice of Estimates the following day on 23 May 2013. He contended that he had been prejudiced by the failure to serve the Stage 2 Notice correctly as he was denied the opportunity to discuss the issues with other lessees.
22. Mr Alcock said in evidence that the Stage 2 Notice was produced on instructions from Mr Gillon and he visited the building and hand delivered the Notice of Estimates to the Respondent. At the time of his visit, he did not see any work being carried out. However he did confirm that the contract had already been awarded to MNM contractors. He did not know when the work commenced or ended. In response to the tribunal's questions, he said that he could not assist the tribunal any further as he had not brought the property file to the hearing and he could not make any enquiries with the office as there was nobody left at the office. He did not know what discussions, if any, had taken place between Mr Gillon and Mr Walsh in response to Mr Walsh's letter of 20 May 2011. He was unable to explain why the Stage 2 Notice contained the statement that no observations had been received in response to the Notice of Intention, except that when he searched the file it did not contain a copy of the letter dated 20 May 2011.

### **The tribunal's decision**

23. The tribunal determines that the Applicant failed to comply with the consultation procedures under section 20 of the Act in respect of the major works to the internal common parts. Given the proximity between the Respondent's email dated 22 May 2013 and the service of the Notice dated 23 May 2013, the tribunal reasonably concluded the Notice was served as a result of that email. Furthermore, it was Mr Alcock's evidence that the contract had already been awarded to MNM contractors thus defeating the object and purpose of a stage 2 Notice. From his demeanour and the manner in which he answered questions the tribunal did not find his evidence entirely credible. The tribunal found it implausible that he was not aware of any work being carried out at the time of his visit to the building.
24. At this stage the service charges demanded in the County Court are budget figures and are not yet attributed to particular items of expenditure. There was no evidence to indicate that, as budget estimates, those demands were not reasonable, and in the circumstances the tribunal concluded that the amount claimed is reasonable and payable by the Respondent. However, as and when

those estimates come to be reconciled with actual expenditure, any amounts attributable to expenditure on the internal parts of the building will only be recoverable from the Respondent up to the limit of the statutory maximum as a consequence of the tribunal's decision in paragraph 23 above, subject to any successful application to obtain dispensation from the statutory consultation requirements in respect of these works.

25. It is open to the Applicant to make such an application under section 20ZA of the Act in the light of our findings, as it was not appropriate for us to consider this within these proceedings.
26. By way of observation, the tribunal was somewhat disappointed that the Applicant could not have fielded a Mr John Gillon or a more senior agent who could have been more able to assist and respond to the tribunal's enquiries effectively. The inability to provide detailed information was compounded by the failure to bring the property file to the hearing.
27. The tribunal has no jurisdiction over county court costs. This matter should now be returned to the Wandsworth County Court.

**Name:** Judge E Samupfonda      **Date:** 19 December 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.

## **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) the appropriate 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.]