



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

Case reference : LON/00BG/LSC/2014/0566

Property : 418C Sims House Commercial Road
London E1 0LQ

Applicant : London Borough of Tower Hamlets

Representative : Mrs Aderonke Kokoruwe, solicitor,
Tower Hamlets Homes

Respondent : Mr C G Good

Representative : Mr Jayesh Jotangia Counsel

Type of application : For the determination of the
reasonableness of and the liability
to pay a service charge

Tribunal members : Judge Carr
Mr A Lewicki
Mrs L Walter

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

Date of decision : 27th April 2015

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the sum of £6843.40 is payable by the Respondent in respect of the service charges for the years April 2008 – April 2013.
- (2) The tribunal makes the determinations as set out under the various headings in this Decision
- (3) Since the tribunal has no jurisdiction over county court costs and fees, this matter should now be referred back to the 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 Applicant in respect of the service charge years April 2008 – April 2013.
2. Proceedings were originally issued in the County Court at Northampton under claim no. A78YM937. The claim was transferred to the County Court at Basildon and then in turn transferred to this tribunal. The Applicant’s bundle did not contain a copy of the transfer order.
3. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

4. The Applicant was represented by Mrs Aeronke Kokoruwe a solicitor with the London Borough of Tower Hamlets at the hearing. She was accompanied by Mr Gabriel Brown a leasehold services manager with Tower Hamlets Homes. The Respondent did not attend the hearing. He was represented by Mr Jayesh Jotangia, counsel.
5. Immediately prior to the hearing Mr Jotangia applied for an adjournment as his client resides in Florida but would be returning to the UK on 5th of May 2015 for a period of a few months. He suggested that there had been problems in his client’s dealings with the Applicant, for instance the bundle had only just been received and specific requests for further information had not been complied with.
6. The Tribunal asked whether the Respondent had informed the Tribunal that he wished for an adjournment because he was not available in the country. Mr Jotangia said that although the Tribunal had been informed that the Respondent would be applying for an adjournment it

was on the basis that the Respondent had a hearing date in the County Court in connection with his application to have the case struck out. He had no information that the Respondent had informed the Tribunal that he would not be present in the country.

7. The Applicant strongly opposed the application for an adjournment. Every effort had been made to ensure that the bundle was served in accordance with the instructions of the Respondent and reasonable enquiries had been responded to. The Application needed to be determined as soon as possible and the Applicant was fully prepared to proceed with the hearing.

The decision of the Tribunal

8. The Tribunal adjourned briefly to consider the application. It decided to refuse the application for the adjournment.

Reasons for the decision of the Tribunal

9. The Tribunal decided that it was in the interests of justice and consistent with the overriding objective of the procedural rules that the hearing should take proceed. The Respondent should be aware that considerable public resources are utilised in organising a Tribunal and that the Applicant had also gone to considerable expense in preparing a comprehensive bundle and preparing for its attendance.
10. The Tribunal gave Counsel a brief adjournment to allow him to contact his client and receive further instructions. In the event he was unable to contact the Respondent.

The background

11. The property which is the subject of this application is one of 12 flats within a purpose built block.
12. 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.
13. The Respondent holds a long lease of the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease will be referred to below, where appropriate.

The issues

- (i) The Tribunal considered the statement of case of the Respondent which had been drafted by Counsel (although not Mr Jotangia). Although the issues were not clearly pleaded the Tribunal understood that the Respondent's main concerns related to whether or not the Applicant was barred by the statute of limitations in claiming the service charges.
- (ii) The statement of case raised issues in connection with compliance with the statutory consultation requirements and reasonableness in general. However the Applicant informed the Tribunal that no major works had been completed which triggered the statutory requirements. Moreover the general concerns raised were not sufficiently particularised so as to enable the Tribunal to identify the Respondent's argument or enable the Applicant to make a meaningful reply.
- (iii) The Tribunal therefore asked the Applicant to demonstrate the payability of the service charges under the lease and to respond to the issue relating to the limitation period.

14. Having heard evidence and submissions from the Applicant and considered all of the documents provided, the Tribunal has made determinations on the various issues as follows.

The payability of the service charges

15. The Applicant referred the Tribunal to the relevant clauses of the lease and explained how the amount claimed was calculated.

The tribunal's decision

16. The Tribunal determines that the service charges demanded are reasonable.

Reasons for the tribunal's decision

17. The Tribunal accepts the argument of the Applicant.

Whether the Applicant is statute barred from claiming the service charges

18. The Applicant explained that the Respondent's argument was that there was a six year limitation period on claims for arrears of service charges under the lease as the service charges were reserved as rent.

19. The Respondent had arranged for his Building Society to discharge arrears of service charges in June 2011. The Applicant had applied this money to the most longstanding arrears. There was no direction from the Building Society as to the arrears which were to be discharged and therefore the Applicant argues that it is entitled to apply the monies as it so decides.
20. The Applicant informed the Tribunal that the Respondent considered that it should have applied the monies to the most recent arrears and that it was statute barred from claiming the earlier arrears.

The tribunal's decision

21. The tribunal determines that the full amount of service charges claimed by the Applicant is payable.

Reasons for the tribunal's decision

22. The Tribunal accepts the argument of the Applicant that it was entitled to apply the monies to whatever portion of the arrears it chose. Therefore the Applicant is not barred by the limitation period in respect of the outstanding arrears.

Costs

23. In relation to the costs of the hearing before the Tribunal, the Tribunal leaves open the possibility of the Applicant making an application for its costs.
24. The tribunal has no jurisdiction over ground rent, statutory interest or county court costs. This matter should now be returned to the Basildon County Court.

Name: Judge Carr

Date: 27th April 2015

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.]

Section 20B

- (1) If any of the relevant costs taken into account in determining the amount of any service charge 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 charge 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 20C

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are

not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

- (2) The application shall be made—
 - (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
 - (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
 - (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
 - (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
 - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

- (1) In this Part of this Schedule “administration charge” means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
 - (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
 - (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
 - (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
 - (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.
- (2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

- (3) In this Part of this Schedule “variable administration charge” means an administration charge payable by a tenant which is neither—
- (a) specified in his lease, nor
 - (b) calculated in accordance with a formula specified in his lease.
- (4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Schedule 11, paragraph 5

- (1) An application may be made to the appropriate tribunal for a determination whether an administration 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) Sub-paragraph (1) applies whether or not any payment has been made.
- (3) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.
- (4) No application under sub-paragraph (1) 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.
- (6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
- (a) in a particular manner, or

(b) on particular evidence,
of any question which may be the subject matter of an application
under sub-paragraph (1).