



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

Case Reference : LON/00BK/LSC/2015/0085

Property : Flat B, 131 Westbourne Park Road,
London W2 5PN

Applicant : Mr Timothy Neale

Representative : None

Respondent : Beitov Properties Limited

Representative : BLR Property Management Limited

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

Tribunal Members : Mr L Rahman (Barrister)
Mr W R Shaw FRICS

**Date and venue of
Hearing** : 20.5.15 at 10 Alfred Place, London
WC1E 7LR

Date of Decision : 20.5.15

DECISION

Decisions of the Tribunal

- (1) The Tribunal determines that the Applicant had been overcharged service charge in the sum of £265.14.
- (2) The Tribunal determines that the overpaid service charge should be recovered from the new freehold owners and not the Respondent.
- (3) The Tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985.
- (4) Since the Tribunal has no jurisdiction over county court costs, fees, and interest, this matter should now be referred back to the County Court sitting at Romford.

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.
2. Proceedings were originally issued in the County Court under claim no. A5QZ062J. The claim was transferred to this Tribunal by order of District Judge Wright dated 2.2.15, sitting at the County Court at Romford.
3. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

4. The Applicant wrote to the Tribunal on 30.4.15 stating he would not be attending the hearing as his father had passed away on 8.4.15. He did not request an adjournment and stated that he was happy for a decision to be made on the evidence that had been provided. The Respondent was represented by Mr G Abrahams (one of its directors) and Mr J Galliers from BLR Property Management Limited, who was previously managing the property.

The issues

5. The Tribunal identified the relevant issues for determination as follows:
 - (i) Whether there had been an overpayment of service charges;

(ii) If so, should the Respondent reimburse the Applicant.

6. Having considered all the documentary evidence provided by both parties and the oral evidence and submissions on behalf of the Respondent, the Tribunal has made determinations on the two issues as follows.

Overpayment of service charge

7. The Applicant states that under the terms of the lease he is required to pay 24.25% of the service charge costs. Instead, he had been charged 28.65% for certain expenses, which he paid on or before 27.3.14. He calculates the overpayment in the sum of £310.02.
8. The Respondent accepts the Appellant is required to pay 24.25% under the terms of the lease. The Respondent stated that its managing agent, under its instructions, decided to charge a 28.65% contribution from the Applicant in relation to the costs concerning the communal parts of the building, without varying the lease.
9. The Respondent stated at the hearing that the building has four flats above what used to be a retail unit. At some point prior to the Respondent owning the freehold, the retail unit had been changed to residential use. Therefore, there was an additional flat on the ground floor. The lease granted to the ground floor flat stipulated that the ground floor flat was not required to contribute towards the costs concerning the communal parts of the building. Given the contributions payable under the lease by the four upstairs flats, this resulted in the landlord not being able to recover 100% of its costs in relation to the expenditure concerning the communal parts. However, this was not a problem until 2010, as all five flats were contributing towards the communal costs. Once the ground floor lessee objected to paying towards the communal costs, as they did not have the use of the communal areas, the Respondent took the view that it was more convenient for the four upstairs flats to increase their contribution rather than wasting time and money to vary the leases.
10. The Respondent stated that the overcharge was £265.14 and not £310.02. The Respondent referred the Tribunal to a letter dated 27.3.15 (page 25 of the bundle) to clarify the sums involved. The Respondent stated the Applicant was charged £299.68, representing 28.65% of the cleaning and lighting costs in the sum of £1,046.01 for the 2010 accounting year. If the Applicant were charged at 24.25%, he would have paid £46.02 less. The applicant was charged £1,426.77, representing 28.65% of the £4,980.00 costs concerning the works to the common parts during the accounting year 2012. If the Applicant were charged at 24.25%, he would have paid £219.12 less. Therefore, the overpayment was £265.14. The Respondent stated that the Applicant had calculated his contribution and therefore any

overpayment on the basis of the budget figure for the 2012 works (in the sum of £6,000.00) instead of the actual costs (in the sum of £4,980.00) and had failed to take into account the resulting credit to his account.

11. We find that the Applicant had been overcharged. He is required to pay 24.25% under the terms of the lease. The Respondent, whilst providing a reasonable explanation for its decision, was not entitled to charge 28.65% without varying the terms of the lease.
12. We find the overpayment amounts to £265.14. The Applicant has not provided an explanation as to how he arrived at the sum of £310.02, the Applicant has not challenged or responded to the Respondents evidence contained in its letter dated 27.3.15, and the clarification provided by the Respondent at the hearing satisfies us that the Applicant had miscalculated the amount of the overpayment.

Should the Respondent reimburse the Applicant

13. The Applicant states the monies were paid to the Respondent and therefore the Respondent should reimburse him.
14. The Respondent states it had sold its freehold interest to the Applicant and the three other lessees of the upper floor flats. The sale was completed on 2.5.14. To finalise completion, the Respondent paid £426.60, as set out on page 26 of the bundle (although the completion statement is referred to as an estimate, the Respondent stated that the actual amount was in fact £426.60). The Respondent states that any overpayment was paid into the service charge account and has now been transferred to the new freehold owners. Therefore, any overpayment of service charge should be reimbursed by the new freehold owners. Otherwise, the Applicant would have the benefit of having the overpayment in the service charge account, which has now effectively been transferred to him as one of the new freehold owners, and receive an additional payment from the Respondent.
15. The Tribunal noted that the Respondent had raised the argument, that any overpayment should be reimbursed by the new freehold owners, in its defence submitted at the County Court. The response provided by the Applicant on this issue is contained in his letter dated 7.5.15, in which he states *"I was advised by my lawyer to cover the overcharge so that we could complete the purchase of the freehold and then request that I be reimbursed. The defendant has claimed that the unauthorised sum of money taken either passes to the successors of the title or rests with the leaseholder of the ground floor flat. What did pass to Beitov when it purchased the freehold was a defective lease which did not legally enable the company to recover 100% of the internal repair costs, nor certain other expenses"*.

16. We find that the overpaid service charge should be recovered from the new freehold owners. Whatever monies were collected by the Respondent, including any overpayment, were put into the service charge account. When the Respondent sold its freehold interest, a "completion statement" was prepared and the service charge account was transferred to the new freehold owners. The overpayment should be paid from the service charge account, now under the control of the Applicant and the lessees of the three other upper floor flats.

Application under s.20C and refund of fees and costs

17. The Tribunal noted that the Respondent had acknowledged from an early stage that the Applicant had been overcharged but that the new freehold owners should reimburse any overpaid service charge. Having found in the Respondents favour on the issue, the Tribunal does not order the Respondent to refund any fees paid by the Applicant.
18. The Applicant did not apply for an order under section 20C of the 1985.

The next steps

19. The Tribunal has no jurisdiction over interest or county court costs. This matter should now be returned to the County Court sitting at Romford.

Name: Mr L Rahman

Date: 20.5.15

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 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.