



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

Case Reference : LON/00AQ/LSC/2015/0261

Property : Flat 15, Canons Park Close,
Edgware, Middlesex HA8 6RL

Applicant : 1-20 Canons Park Close RTM
Company

Representative : Mr C Green (Counsel) as agent for
Brady Solicitors

Respondent : Mr Sidharth Parmar

Representative : Mr Alexandrou, HACG Consultancy
Ltd

Type of Application : Determination of the
reasonableness and payability of
service charges - Section 27A
Landlord and Tenant Act 1985

Tribunal Members : Miss A Seifert FCI Arb
Mr S Mason BSc FRICS FCI Arb
Mrs L Hart

Date of Decision : 2 February 2016

DECISION

The Tribunal's Decision

1. The following sums are reasonable and reasonably incurred and are payable by Mr Parmar to the applicant:

Service charge year 2010 to 2011	£ 76.18
Service charge year 2011 to 2012	£ 1,328.68
Service charge year 2012 to 2013	£ 771.27

The tribunal's decision relates to the sums claimed in the County Court proceedings only. The explanation for the above figures is referred to in the tribunal's reasons section of this decision.

Background

2. Mr Parmar is the lessee of flat 15 ('flat 15'), Canons Park Close, Edgware, HA8 6RL ('the building'). There are 18 flats in the building.
3. Proceedings were issued by the applicant RTM Company against Mr Parmar claiming arrears of service charges in the County Court (Claim no. 3YS55968) in November 2013. Mr Parmar filed a Defence to those proceedings in December 2013. The claim was allocated to the Small Claims Track, and the matter was transferred to the Barnet County Court.
4. The applicant RTM Company maintains that in April 2014 a monthly repayment plan in respect of the alleged arrears was agreed. The representatives of the RTM Company accordingly requested that the case be stayed. It is contended that no instalments were paid. The stay was lifted at the request of the RTM Company's representatives and the proceedings were reinstated. The service charge issue was transferred from the County Court to the tribunal by order of the District Judge dated 16th June 2015.
5. The tribunal is required to make a determination under section 27A of the Landlord and Tenant Act 1985 as to the reasonableness and payability of service charges.
6. The tribunal issued directions dated 14th July 2015 a copy of which was in the hearing bundle.
7. Following a request by the applicant, the timetable for compliance with some of the directions was varied. A request in August 2015, by or on behalf of Mr Parmar, to postpone the hearing set down for 15th October

2015, was refused as stated in a letter from the tribunal dated 27th August 2015.

8. The main relevant statutory provisions are set out in the appendix to this decision.

Application for postponement

9. HACG Consultancy Ltd on behalf of Mr Parmar sent an email on the afternoon of 14th October 2015 to the tribunal, requesting a postponement of the hearing scheduled for the following day. This referred to the direction for the applicant to provide various documents by 10th August 2015. The email stated that the documentation and information was provided under cover of a letter dated 17th September 2015. It was submitted amongst other matters that there was insufficient time between 17th September and the hearing date of 15th October, and it was requested that the hearing be postponed. A different timetable was suggested with a new hearing date after 20th January 2016.
10. In response, the applicant's solicitors in an email later in the afternoon of 14th October opposed the application for a postponement. It was submitted amongst other matters that the tribunal's directions were made on 15th July 2015. The timetable in the directions had been varied at the request of the applicant. The applicant had complied with the direction for disclosure. Mr Parmar had not complied with the direction to provide the tenant's case including the Scott Schedule. Therefore the applicant produced the Scott Schedule to assist the tribunal and move matters forward. Mr Parmar had not provided any comments. The applicant's solicitors submitted that the hearing bundle was sent to the tribunal and Mr Parmar by special delivery on 9th October 2015. It was submitted that it was unreasonable that the hearing be postponed.
11. By a letter dated 14th October sent by email from the tribunal, it was stated that the hearing would proceed on 15th October and that the request for a postponement could be renewed at the start of the hearing.
12. The request for a postponement was renewed on behalf of Mr Parmar at the commencement of the hearing. Mr Alexandrou stated that HACG Consultancy Ltd is a property and business consultancy. They are not professionally instructed by Mr Parmar but were assisting him. He submitted that both parties were lax in dealing with the directions. He had been provided with the documents and information which had been disclosed by the applicant, but claimed the hearing bundle had not been received. Mr Green on behalf of the applicant opposed the postponement of the hearing. He noted that in the HACG Consultancy Ltd email of 14th October, it was not stated that the hearing bundle had not been received.

13. Having considered the submissions, pursuant to rule 6 of the Tribunal Procedure (First-tier Tribunal (Property Chamber) Rules 2013 and having regard to the overriding objective contained in rule 3, the tribunal refused the application for a postponement.
14. The hearing was listed on 15th July 2015. Extensions of time for compliance with the directions had been granted. Although there was some initial delay by the applicant complying with the disclosure requirement, the timetable was adjusted to allow sufficient time for a response. Mr Parmar did not comply with directions. The applicant provided a Scott Schedule and Mr Parmar did not respond to this. A tribunal has been booked to hear the case and a postponement at this late stage would have resulted in an unjustifiable waste of the tribunal's limited resources.
15. In the circumstances the request for a postponement was refused. However, the tribunal postponed the commencement of the substantive hearing on 15th October until 1.30 pm to provide an opportunity for the parties to consider the hearing bundle.

The Hearing

16. Mr C Green represented the applicant. Mr Alexandrou of HACG Consultancy Ltd represented the respondent. Mr Parmar attended the hearing.

The tribunal's reasons

17. Mr Parmar is the lessee under a lease of flat 15 ("the lease"). A certified copy of the lease was provided. The lease is dated 20th June 2001, for the term of 99 years from 24th June 1999 at the ground rent of £100 rising to 200 and additional rent. The parties to the lease were BPT PLC and BPT (Bradford Property Trust) Limited.
18. The lessor's interest is vested in Haysport Properties Limited. The Land Registry title documents for freehold interest in the building, showed the registered proprietor as Haysport Properties Limited, with title registered on 24th December 2001. Mr Green told the tribunal that the applicant RTM Company was incorporated on 15th January 2008.
19. It was stated in the applicant's statement of case that the bulk of the outstanding service charges claimed were in relation to general maintenance, for example cleaning, gardening, electricity, insurance and water charges. Copies of invoices for most of the costs claimed were included in the hearing bundle. The lessor's column of the Scott Schedule provided a list of lessor's costs. During the hearing the following information on the list of lessor's costs was clarified:
2011-2012: Christopher Trigg Insurance Brokers, 30.04.2013, £180.27

2011-2012: BLR Property Management, 19.07.2012, £1080.00

20. Service Charge accounts prepared by Mackenzie Field, Chartered Accountants, for the service charge years ended 24th June 2011, 24th June 2012, 24th June 2013, 24th June 2014, were included in the hearing bundle.

Matters no longer / not in issue

21. It was not in dispute that the proportion of the service charge payable by the lessee of flat 15 is 1/18 of the relevant costs.
22. It was noted that contributions to the sinking fund and charges for arrears recovery 'Arrears Recovery – Stage 2', 'Arrears Recovery - Stage 3' set out on the Tenant's Statement of Account (at pages 78 to 81 of the hearing bundle), were not pursued by the applicant. It was stated in the appellant's statement of case that on review of the lease, it was accepted on behalf of the RTM Company that the lease makes no provision for a sinking fund.
23. Mr Green explained that historically the surplus of estimated service charges had been transferred to the sinking fund. The lessees of the flats in the building had contributed different amounts to the sinking fund over time. The sinking fund is still in existence. The applicant is currently resolving how this fund would be repaid / credited. Payments to the sinking fund were not included in the figures set out in the Scott Schedule.

Matters in issue

24. Whether the estimated service charge was limited to £50 per annum.
- 24.1 Mr Alexandrou referred to clause 4.2 of the lease. This contained a covenant by the lessee:

To contribute and pay upon demand 1/18th per cent of the cost expenses outgoings and matters mentioned in the Fourth Schedule hereto and in respect of such liability to pay to the Lessor on account the annual sum of Fifty pounds on the 24th day of June in each year the first of such payments having been paid on the execution hereof in respect of the period up to the 24th day of June next PROVIDED ALWAYS that the Lessee shall pay to the Lessor or be entitled to receive from the Lessor the balance by which the said contribution respectively exceeds or falls short of the amount of the service charge payable hereunder.

He submitted that the applicant was entitled to an advance payment of £50 per service charge year only and that the balance of the sums claimed are not payable.

- 24.2 Mr Green submitted that the sums claimed from Mr Parmar were based on the estimated service charge for each year divided into 4 and charged quarterly. End of year service charge accounts prepared by the accountants were contained in the hearing bundle. The applicant had not carried out a balancing procedure when the end of year actual expenditure was known. If the actual expenditure for the service charge year exceeded the sums paid as on account service charges, the directors of the applicant decided whether to recoup the balance from the sinking fund, or seek to recoup this from the lessees. Conversely, if the actual expenditure for the service charge year was less than the sums paid as on account service charges, the balance would be transferred to the sinking fund.
- 24.3 Referring to the manner in which the applicant had dealt with the service charges, Mr Parmar said at the hearing that his father had dealt with the lease initially. When his father became unwell, he took over. As far as he was aware the service charges had 'always been dealt with like this'.
- 24.4 Having considered the evidence and submissions, the tribunal considers that the amounts recoverable for each service charge year in issue are not limited to £50.
- 24.5 The actual costs incurred for each of the service charge years in issue has been determined. The mechanism for determining the service charge costs was in effect finalised in so far as the costs incurred were confirmed in the service charge accounts. The mechanism for charging an estimated amount paid in four instalments on the usual quarter days in each year has on the evidence become the accepted method of charging and is reflected in the service charge statements.
25. Whether the invoices should have been in the name of the lessor.
- 25.1 Mr Alexandrou submitted that the service charge invoices /demands should have been in the name of the lessor rather than BLR Management, the managing agents on behalf of the RTM Company. Mr Green submitted that the RTM Company is entitled to recover the service charges.
- 25.2. Having considered the evidence and submissions the tribunal is satisfied that the RTM Company is the appropriate applicant and is entitled to serve service charge demands through its managing agents, BLT Property Management.
26. Whether payments by Mr Parmar have been taken into account.

- 26.1 Mr Parmar said he had made payments of £641.11 on 19th April 2011 and £641.11 on 1st June 2011 by debit card. Mr Alexandrou submitted that the amount claimed should be adjusted to reflect these payments.
- 26.2 Mr Green said that it was accepted by the applicant that both the above payments had been received. A letter was produced from BLR Property Management to Mr Parmar dated 1st June 2011 acknowledging receipt of a debit card payment of £641.11 on that date in relation to flat 15.
- 26.3 Mr Green submitted that the above payments had been applied as follows:

£300 had been applied in respect of the Mr Parmar's service charges for the period 25th March 2010 to 24th June 2010.

£89 had been applied in respect of late recovery fees.

£252.11 and £87.03 (total £339.14) had been applied in respect of Mr Parmar's service charges for the period 24th June 2010 to 28th September 2010.

£339.14 had been applied in respect of Mr Parmar's service charges for the period 29th September 2010 to 24th December 2010.

£126.04 had been applied in respect of Mr Parmar's service charges for the period 25th December 2010 to 24th March 2011.

£88.90 had been used for the period 25th March 2011 until the end of the service charge year.

27. Various points in respect of the invoices / other submissions

- 27.1 Mr Alexandrou submitted that the invoices at pages 82 to 133 of the hearing bundle were not relevant as these preceded the period of the claim; the invoices at pages 145 to 150 should be excluded as they appeared to relate to a different company; invoices which included lessor's expenses were not payable, for example company secretarial fees.

- 27.2 Mr Green referred to the provisions of the Fourth Schedule paragraph 10 to the lease. He submitted that this is a wide clause and covered administration expenses. This requires the lessee to pay:

Any other expenses of recurring nature which the Lessor may deem expedient in the interest of good management. The Lessor shall be entitled to add to all and any of the above items the administration expenses of the Lessor and the fees and disbursements paid to any managing agents appointed by the Lessor and where any repairs decorations or renewals are carried out by the Lessor it shall be

entitled to charge as the expenses or costs thereof its normal charges (including profits) in respect of such work.

- 27.3 He submitted that Mr Parmar could have requested the underlying statements and invoices previously but there was no evidence that any such request had been made. The applicant RTM Company must be able to claim administrative costs incurred.
- 27.4 Having considered the evidence and submissions, the tribunal has regarded any invoices included in the hearing bundle for periods prior to the claim period as part of the background evidence for the costs for the whole service charge year 2010 to 2011 (of which the claim forms part).
- 27.5 The tribunal considers that a satisfactory explanation has been provided in respect of the invoices at pages 145 to 150. The energy supply statements invoices were addressed to Haysport Properties Ltd (the freeholder / lessor) and BLR Property Management Ltd or a residential management company and BLR Property Management Ltd. However, it was noted that the supply address was 1-3 Canons Park Close Edgware Middlesex HA8 6RJ.
- 27.6 Mr Green was asked to provide an explanation in respect of the invoice for works to the roof at p.270 of the hearing bundle of £12,500 dated 15th August 2012. The figure in the service charge account for the year ended 24th June 2013 was £4,000. Mr Green said that the percentage charged to each lessee was less than £250 and was within the statutory limit.
- 27.7 Mr Parmar had indicated in the defence in the County Court proceedings that the roof of the property was left for quite a long time, that this damaged flat 15 and that he might have a counterclaim. However, Mr Parmar did not provide a statement of the tenant's case in the tribunal proceedings nor evidence to support such a claim.
- 27.8 There was no evidence to support a challenge to the reasonableness of the costs or the standard of services.

28. Summary of decision

- 28.1 The total of the sums claimed in these proceedings transferred from the County Court are as set out in the 'Tenant Statement' attached to the claim form in the County Court proceedings. Due to the concessions made by the applicant at the hearing, that transfers to the sinking fund were no longer claimed and that arrears recovery fees were not pursued, the amount of the claim as set out in the Tenant Statement was reduced to £3024.20.
- 28.2 The makeup of the sums claimed as set out in the County Court proceedings was therefore:

Period	Amount £
23/3/2011 to 23/6/2011	301.06
24/6/2011 to 28/9/2011	340.39
29/9/2011 to 24/12/2011	340.39
25/12/2011 to 24/3/2012	340.38
25/3/2012 to 23/6/2012	340.39
24/6/2012 to 28/9/2012	340.40
29/9/2012 to 24/12/2012	340.40
25/12/2012 to 24/3/2013	340.39
25/3/2013 to 23/6/2013	340.40
Total:	<u>£ 3,024.20</u>

- 28.3 However, the above charges were estimated charges, and the evidence of actual expenditure for each of the service charge years has been set out in the Scott Schedule provided by the applicant RTM Company.
- 28.4 The tribunal considers that Mr Parmar's liability is limited to the following sums, which the tribunal finds are reasonable, reasonably incurred and payable by Mr Parmar to the applicant.

Service charge year 2010-2011

The claim relates to the period 25/3/2011 to 23/6/2011 (one quarter)

Service charge year 2010 to 2011 actuals (from Scott Schedule):
£11,885.70

1/18 (lessee's proportion) of £11,885.70 = £660.32

One quarter of £660.32 = £165.08

Less £88.90 (part of the payment by Mr Parmar which Mr Green said had been used for the period 25/3/11 until 23/6/2011. However this was not shown as a credit on the Tenant Statement).

Total payable by Mr Parmar: **£76.18**

Service charge year 2011-2012

The claim relates to the whole service charge year

Service charge year 2011 to 2012 actuals from the Scott Schedule:
£23,916.24

1/18 of £23,916.24 = £1,328.68

Total payable by Mr Parmar: **£1,328.68**

Service charge year 2012-2013

The claim relates to three quarters of the service charge year.

Service charge year 2012 to 2013 actuals from the Scott Schedule:
£18,510.75

$1/18$ of £18,510.75 = £1,028.37

Three quarters of £1,028.37 = £771.27

Total payable by Mr Parmar: **£771.27**

A Seifert

Date: 2 February 2016

Judge of the First-tier Tribunal (Property Chamber)

Appendix

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

Limitation of service charges: reasonableness

- (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 provision 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 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) a leasehold valuation 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 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,

- (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 a leasehold valuation 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.