



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

Case reference : LON/00AZ/LSC/2016/0072

Property : Flat 2, 51 Courthill Road, London
SE13 6DN

Applicants : Dr Jonathan Chambers and Mr
Pablo Paganotto

Respondent : Barbara H Glass

Representative : Mr C.Green, solicitor agent and Ms
Cindy Ignace, property manager

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

Tribunal members : Ruth Wayte (Tribunal Judge)
Alison Flynn MA MRICS

Venue : 10 Alfred Place, London WC1E 7LR

Date of decision : 27 May 2016

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the sum of £133.99 is payable by the Applicants in respect of the service charges for 2014/15.
- (2) The tribunal determines that the sum of £675.18 is payable by the Applicants in respect of the service charges for 2015/16.
- (3) The tribunal makes the determinations as set out under the various headings in this Decision.
- (4) The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge.
- (5) The tribunal determines that the Respondent shall pay the Applicants £220 within 28 days of this Decision, in respect of the reimbursement of the fees paid by the Applicant.

The application

1. The Applicants seek 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 them in respect of the service charge years 2014/15 and 2015/16.
2. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

3. The Applicants appeared in person and the Respondent was represented by Mr Green, solicitor and Ms Ignace of the managing agents Trust Property Management.

The background

4. The property which is the subject of this application is one of two flats converted in 2012 from a period two storey terraced house. 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.
5. The Applicants hold 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

6. The Applicants sought a determination as to the payability and/or reasonableness of service charges for 2014/15 and 2015/16. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made the following determinations.

Service charge year 2014/15

7. The Applicants purchased their lease of the property on 19 June 2013. On 27 January 2014 the freehold was purchased by the Respondent who appointed Trust Property Management (TPM) to manage the property on her behalf.
8. The lease confirms that responsibility for the service charges is split equally between the flats. The main provisions in relation to the calculation of the service charge are in the Second Schedule, as follows:

“11. The cost of the foregoing services shall be ascertained and certified by the Lessors Managing Agents (whose certificate shall be final and binding on the parties hereto) to the maintenance year end and payment shall be made within one month of the production of such certificate and until verified by the Managing Agent the Lessees shall pay on account of the Maintenance rent the amount of the on account payment by equal payments on the payment dates in each year and shall receive credit therefore against the next maintenance rent payment.

“12. If in the opinion of the Lessors Managing Agents the amount of the on account payment shall be insufficient to cover the costs of the items contained in this schedule they shall be entitled to serve one months notice requiring an increase in the on account payment which shall upon the expiry of such notice become the future on account payment.”

9. The on account payment was set at £300 as at the date of the lease (19 June 2013), payable in two equal instalments on the 24 March and 29 September.
10. Following the purchase of the freehold by the Respondent TPM wrote to the Applicants to advise them of their appointment. They subsequently issued a service charge certificate for the service charge year dated 2013/14 which stated that a credit was due to the Applicants

of £166.01 to be carried forward to 2014/15 in accordance with the lease. That was calculated by deducting the on account payment and a share of the rebated insurance from the service charge expenditure and is not in dispute.

11. On 10 July 2014 TPM sent an invoice for 2014/15 for £1,091.49 which was based on half of the estimated service charge expenditure of £2,515, less the credit of £166.01. The Applicants queried the amount and were promised a response by TPM although did not hear from them again until March 2015 when they received an invoice for £4,016.49. Dr Chambers then wrote a detailed letter dated 28 March 2015 requesting an explanation and evidence of the charges for 2014/15 and 2015/16 whereupon he stated the Applicants would be happy to settle any outstanding balance. In the meantime Dr Chambers confirmed they have only paid the ground rent and have made no further on account payments.
12. Frustrated by the failure of TPM to answer their queries the Applicants subsequently instructed their conveyancing solicitors who wrote to TPM making a formal request under section 21 of the Landlord and Tenant Act 1985 for a summary of the relevant costs and supporting information. They wrote again following a threat of forfeiture pointing out that a number of the charges claimed were unrecoverable – for example a request for a payment on account in excess of £300 and for major works without prior consultation. In order to reach a resolution the Applicants decided to issue this claim and after the Case Management Conference reported that they had reached an agreement on a number of issues. However, TPM confirmed that they could not make any concessions in relation to the building insurance or the management and accountancy fees, which therefore form the items in dispute for 2014/15 and 2015/16.
13. In contrast to 2013/14 no service charge certificate was produced to the tribunal for 2014/15. Mr Green suggested that a document in the bundle titled “Service charge accounts” sufficed. Unlike the certificate produced for 2013/14 this document was not on headed paper and contained no landlord’s details. It was also not an account in any recognisable format, as pointed out by Dr Chambers. Finally, Mr Green conceded that the document contained an error in the amount stated as expenditure. It was common ground that no credit had been given for the £166.01.
14. In the absence of a service charge certificate the lease requires an on account payment, originally set at £300 per annum. As set out at paragraph 8 above, that payment can be increased by way of written notice. Mr Green suggested that the document titled Estimated Service Charge Expenditure dated 4 July 2014 could operate as such a notice. The lease requires one month’s notice setting out the new on account payment. The document in question did not say it was a notice,

contained no reference to a month or mention the on account payment - it simply listed several items of expenditure which came to £5,030 of which half would be payable by the Applicants. Dr Chambers accepted that his on account payment could be increased but submitted that this was not a notice in accordance with the lease.

The tribunal's decision

15. As noted in paragraph 13 above, there was no service charge certificate for this period. The "service charge accounts" detailed in paragraph 13 above are not capable of being a certificate as there is no evidence that they were verified by the managing agents, as required by the lease. In the circumstances the Applicants are only required to pay the on account payment pending service of a valid certificate.
16. For the reasons set out in paragraph 14 above, the tribunal determines that the on account payment remains at £300 per annum. The Estimated Service Charge Expenditure is clearly not a notice and again does not comply with the requirements in the lease. In the circumstances the tribunal determines that £133.99 is payable by the Applicants in relation to 2014/15, being £300 less the credit given in the service charge certificate for 2013/14.

Service charge year 2015/16

17. TPM produced a service charge certificate for 2015/16 limiting the service charges to insurance and management fees. Having given a credit for accountancy fees, this produced a total of £829.65 payable by the Applicants. The certificate then gave credit for the £2,635 demanded on account, indicating that the Applicants were £1,805.35 in credit. This was clearly a mistake as no payment had been made in respect of this year.
18. The Applicants challenged the claim for insurance on the basis that the cost of £1,059.30 was unreasonable. Their evidence was their original insurance in 2013/14 which cost £467.50 and a comparable obtained from Direct Line of £398.96. They agreed that this comparable should be increased to reflect the higher rebuilding cost set by the Freeholder, which would take it in the region of £600.
19. Mr Green submitted that the Respondent's insurance premium was reasonable. Letters from the insurance brokers, Lorica, had confirmed the quote from Axa was competitive and stressed the advantages of the policy which included cover for pre-existing subsidence and other risks associated with owing a portfolio of properties. He also relied on the decision in Berrycroft v Sinclair Gardens [1996] EWHC Admin 50 in which the Supreme Court dismissed an appeal in relation to a finding that a portfolio insurance premium was neither unreasonable nor

excessive. There was no dispute from the Applicants that the risks covered were wider than the comparable they had obtained, including terrorism cover at £183.87 and cover for loss of rent.

20. The lease requires the landlord to insure “against damage or breakage arising from any cause whatever” which is in the view of the tribunal likely to include damage by terrorism, it also required insurance for loss of rent. Given the difference in cover and therefore the absence of a true comparable indicating the premium is excessive, the tribunal determines that the premium is reasonably incurred, although considers that Lorica should provide further information as to their market testing in future to ensure that the premium remains competitive. That said, TPM have claimed a premium of £1,059.30 in the Service Charge Certificate which is in fact the premium for 2016/17, rather than the £990.36 payable in 2015/16 as stated in the Property Certificate for that year. In the circumstances the tribunal determines that £990.36 is the amount reasonably incurred rather than the higher sum claimed, presumably by mistake.
21. That left the management fees of £600 plus vat. Given that no service charge certificate has yet been produced for 2014/15, the tribunal considered the management fees for both years in dispute. Mr Green submitted that although no works had been carried out to the building during that period, there had been correspondence and service charge demands, together with budget packs providing details of the charges claimed. He relied on Ms Ignace’s statement which claimed that £300 plus vat was, in her experience, low for the service provided.
22. Dr Chambers accepted that £300 plus vat could be a reasonable charge for a good service but pointed to the difficulties the Applicants had faced with TPM prior to issuing proceedings.
23. As detailed above the service provided by TPM has been extremely poor to date. Almost all of the “accounts” produced have errors, there was no service charge certificate produced at all for 2014/15 and the certificate for 2015/16 ostensibly stated that the Respondent owed the Applicants over £1,800, among other errors. The budget packs are clearly based on standard wording and bore little resemblance to the services actually provided to the property. There was no proper attempt to deal with the Applicants’ queries until these proceedings were commenced. In the circumstances the tribunal determines that only £50 plus vat is payable by the Applicants for 2014/15 and £150 plus vat for 2015/16 to reflect the slightly improved service, including the Service Charge Certificate (albeit with errors) and the fact that evidence was provided of a visit to the property to determine future works. In order to justify £300 plus vat TPM will need to fully observe the Service Charge Residential Management Code and relevant legislation and stop making mistakes.

24. There was some confusion about accountancy fees, charged at £120 but rebated in 2015/16, presumably because no accounts had been produced. As stated above, the lease does not require certified accounts and it would appear from Ms Ignace's evidence that the "accountant" at TPM is in fact not a qualified accountant at all. In the circumstances the tribunal does not consider any accountancy charges to be reasonably incurred.

The tribunal's decision

25. The tribunal determines that the amount payable in respect of the service charge year 2015/16 is £675.18, based on half the cost of the insurance premium of £990.36 and £150 plus vat for the management fees.

Application under s.20C and refund of fees

26. At the end of the hearing, the Applicants made an application for an order under section 20C of the 1985 Act and a refund of the fees that they had paid in respect of the application and the hearing¹. They relied on their evidence in support of those applications. In response Mr Green pointed to the fact that no payment on account had been made, there were likely to be some service charges outstanding and the refusal of the Applicants to go to formal mediation. Dr Chambers pointed out that the mediation was to take place after the conversation recorded in paragraph 12 above and in view of the fact that Ms Ignace stated she could make no concessions on the insurance or management fees, there was in his view no point in holding a mediation.
27. Having heard the submissions from the parties and taking into account the determinations above, the tribunal orders the Respondent to refund the application fees of £125 and half the hearing fee of £190, making a total of £220. Given the poor service provided by TPM as recorded above, the tribunal also determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the Respondent may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge.

Name: Ruth Wayte

Date: 27 May 2016

¹ The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 SI 2013 No 1169

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

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.