



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

Case reference : LON/00BG/LSC/2016/0079

Property : 116 Jamaica Street, London E1 3HY

Applicant : Wellington Court@Stepney Limited

Representative : Mr J Holbrook (Counsel) instructed
by Brethertons Solicitors LLP

Respondent : Ms Nargis Banu Begum

Representative : Mr M Gregoire (Counsel) instructed
by Respondent

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

Tribunal members : Mr Ian B Holdsworth BSc MSc
FRICS
Mrs Hart

Venue : 4 July 2016 at 10 Alfred Place,
London WC1E 7LR

Date of decision : 18th July 2016
Corrected and Reissued : 9th August 2016

DECISION

- (1) The Tribunal determines that the sum of £718.89 is payable by the Respondent in respect of the service charge period 1 July to 31 December 2015.
- (2) The Tribunal also finds that an administration charge is payable amounting to £276.00 under the terms of the Lease.
- (3) The Tribunal does not make an Order under Section 20C of the Landlord and Tenant Act 1985.

The Application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") as to the amount of service and administration charges payable by the Respondent.
2. On 17 February 2016, proceedings were issued in the Bow County Court under Claim No.B21YP520. The claim was transferred by Order of Deputy District Judge Wagner to this Tribunal. The relevant legal provisions are set out in the Appendix to this Decision.
3. The County Court Claim was for advance payment of service charges for the period July 1 – 31 December 2015 as follows:
 - half yearly block reserve fund in advance £77.57;
 - half yearly block service charge in advance £229.11;
 - half yearly estate service charge in advance £412.21.
4. The County Court Claim also included the following sums:
 - £999.00 for administration fees comprising administration fee of £90,00, Claimant's Solicitors legal costs incurred enforcing the terms of the Lease of £909.00; and
 - payment of interest of £9.12.
5. The total claim in respect of unpaid service charges, administration fee, interest and Solicitors costs amounts to £1,721.01.
6. On 21 March 2016 the Tribunal gave directions on this matter. These directions explained that some of the issues raised fell within the

jurisdiction of the County Court. The parties were advised of a pilot scheme under the auspices of the Civil Justice Counsels Working Group on flexible deployment of Judges. Under this scheme the Tribunal jurisdiction could be widened to permit determination of those issues currently within the remit of the County Court. The parties were invited to agree to the Tribunal dealing with all issues in the case but agreement from both the parties to participate in the scheme was not obtained.

7. In the absence of agreement the Tribunal was directed to limit itself to the standard issues of reasonableness and payability of the advance service and administration charges only and exclude any other matters raised by the Respondent. In her letter dated 8 March 2016, the Respondent had indicated that she wished to include "any other current or forthcoming service charge bills that will arise in the course of this defence and associated counter claim as part of my ongoing dispute."
8. The Tribunal are directed that their jurisdiction is limited to those matters actually transferred by the Court.

The Hearing

9. The Applicant was represented by Mr Holbrook (Counsel) of Cornerstone Barristers, and the Respondent was represented by Mr Gregoire, under the Direct Access Scheme.
10. The Hearing bundle was prepared by the Applicant and served in accordance with the Tribunal's directions.
11. A supplementary bundle was submitted to the Tribunal by the Respondent. The Applicant had no objection to review of the Respondent's bundle.
12. Mr Mark Eddleston a senior property manager from Managed Living Partnerships, the Applicant Management Company, gave evidence to the Tribunal.

The Background

13. The subject property is a mid-terraced, two bedroomed, ground floor flat in a three storey building. It has a private entrance from the street.
14. The Tribunal was told the dwelling was built approximately 12 years ago and is of a traditional construction. The property forms part of a larger development which includes 14 residential apartments and 14 houses. These 28 dwellings together with communal gardens comprise the Estate.

15. 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.
16. The Respondent holds a long Lease of the property dated 29th May 2001 which requires the Applicant Management Company to provide services including the maintenance and management of the building and the tenant to contribute towards their costs by way of a variable service charge.

The Issues

17. At the start of the Hearing, the parties identified the relevant issues for determination as follows:-
 - Ms Begum disputed the reasonableness of the advance service charge demand made in June 2015 for the period 1st July 2015 – 31st December 2015.
 - She also disputed her liability to pay administration charges amounting to £999.00.
18. Ms Begum did not dispute the payability of the advance service charges under provisions of the Lease dated 29 May 2001.
19. Counsel for the Respondent informed the Tribunal that the issues currently before the Members formed part of the broader claim that his client has against the Applicant and are likely to be affected by the determination of pending claims before the County Court.
20. The Respondent's Counsel asked if the Tribunal would either not make a determination of the reasonableness of the advance service charges and refer back to the County Court to make a judgement on all matters or, alternatively, to make any determination subject to the respondent's evidence on the unreasonableness of previously incurred charges and how this would affect the amounts payable as advance charges between the parties. The Tribunal considered these requests and decided that they held sufficient knowledge and experience to make a determination on the information submitted.
21. Having heard evidence and submissions from the parties and considered all of the documents provided, the Tribunal has made the determination of the various issues as follows.

Service Charges

22. The service charge items relate to payments in advance as provided for in the Fifth Schedule of the Lease paragraphs 3.1 and 3.2. The Lease is at Page 122 of the bundle. These payments are limited by statute to a reasonable amount.
23. The Landlord and Tenant Act 1985 (as amended), Section 19 (2) states:

"Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable"
24. Mr Mark Eddleston, a Senior Property Manager with Managed Living Partnerships, submitted a Witness Statement. He also gave evidence to the Tribunal.
25. He referred the Tribunal to the Wellington Court 2015/2016 Budget Commentary at Page 238 in the bundle. This shows the composition of the charge made to the Respondent under the Lease terms.
26. The Tribunal questioned Mr Eddleston about each cost shown in this table. They asked him how the cost estimates were calculated. They were told that two principal sources of information were relied upon, to prepare the estimates namely:
 - The expenditure that had taken place on that particular service or maintenance item during the preceding service charge period; and,
 - an informed view of the likely future costs to be incurred at the building based upon previous experience and current knowledge of the building and Estate.
27. There was some doubt about the extent of information held on this property by Managed Living Partnerships. The Tribunal was told that the Manager who had prepared this estimate had since left the company.
28. It was noted that the 2015 period reserve fund estimate was the first for some years. Mr Eddleston justified this by claiming that a property of this type must have a reserve fund to deal with unforeseen matters.
29. He did criticise the use of contingency sums in both the estate service charge and the block service charge. He accepted these could be construed as double collection of charges. Having considered the evidence, it is apparent that any unused monies from the contingency sum at the end of each charging period were returned to leaseholders.
30. Mr Holbrook referred the Tribunal to the latest audited accounts at Page 233 of the bundle. He asked the Tribunal to note that the variance

between the advance service charge demanded and the actual expenditure in years 2014 and 2015 was small. Overall, the difference between the estimate and expenditure in 2014 was around 6% and in 2015, it was negligible. He said these outcomes indicated the accuracy of the service charge estimates.

31. Mr Gregoire for the Respondent claimed there was no justification for the reserve fund charge of £2,172.00. He also said the external cleaning service charges at £2,760.00 had increased from the previous year by almost 25% with no explanation. He also noted that the estimated cost of carrying out works to the drains had increased by £400 without any explanation.
32. He expressed a concern that the parties responsible for internal and external cleaning at the premises had an interest in the Management Company. He claimed this could influence the charges made for the work carried out.
33. The Tribunal concluded from the evidence and particularly the witness statement given by Mr Eddleston, that the management company had no defined methodology for estimate of the service charges. The explanation given of how the estimates were calculated was often unclear and illogical.
34. The Tribunal accepts that prediction of future maintenance expenditure on a building is difficult. The RICS Service Charge Residential Management Code offers guidance and advice on good practice in preparing budgets. Maintenance and Reserve costs are typically charged and allocated in accordance with a cyclical works programme. No programme had been prepared for this property or Estate in accordance with the guidance. The guidance also requires competitive tendering of services where practical. Some of the budget estimates for this property were made without competitive tendering such as those made for internal and external cleaning. This is contrary to good practice.
35. The Tribunal were told by Mr Eddleston that in future, communal cleaning will be competitively tendered and there will be no longer any reliance upon residents at the premises to provide this service. The Tribunal would emphasise that full compliance with RICS guidance on residential management by the Managing Agents is best practice.
36. Despite identified inadequacies in the budget preparation process the Tribunal noted a strong correlation between estimate and final expenditure in the years 2014 and 2015. The Tribunal reviewed each item of budgeted expenditure listed in the 2015/2016 Budget Commentary. Based on their knowledge and experience they conclude that the sums charged are reasonable given the type, age and location of property.

37. Having considered all evidence the Tribunal is satisfied that the advance service charges made are reasonable and payable.

Administration charges

38. Mr Holbrook referred the Tribunal to the Second Schedule of the Lease paragraph 4 that states,

“to pay on demand to the Lessors on an indemnity basis, all costs, fees, disbursements, charges and expenses (including without prejudice to the generality of the foregoing as payable to Counsels Solicitors, Solicitors and Bailiffs) incurred by the Lessors in relation or incidental to 4.2 the recovery or attempt of recovery of arrears of rent or any sums due from the Lessee to the Lessors”.

39. Mr Holbrook told the Tribunal that the administration charges may only be challenged on the basis that the amounts are not reasonable. He argued that no case had been made against these sums being unreasonable.
40. Mr Gregoire, when questioned by the Tribunal gave no evidence that any claim that the sums charged as administration costs were unreasonable. He did not offer any comparative evidence against which the reasonableness of the charges could be judged.
41. Under Section 21B of the 1987 Act, any demand for the payment of service charges must be accompanied by a summary of the rights and obligations of the tenants in relation to service charges. Subsection 3 provides that a tenant may withhold payment of a service charge which has been demanded from him if subsection 3 is not complied with in relation to the demand. The purpose of the legislation is to ensure that a tenant is aware of their rights should an unreasonable demand for a service charge or administration charge be made. It is not intended to create a set of procedural obstacles to a Lessor seeking to recover a sum that is lawfully due to him. They apply to these administration charges. The Tribunal reviewed the demands made of Ms Begum and identified the following correctly demanded administration and service charges.

Date of Demand	Sums Demanded	
	Legal Fees	Administration Fee
3 September 2015	£114.00	£90.00
25 September 2015	£186.00	-

42. The Tribunal reviewed other correspondence that related to unpaid administration charges made to the Respondent and they determined

that these demands did not include the requisite summary of rights and obligations or an explanation of the basis upon which the charge was made. We cannot be satisfied that these demands complied with the necessary procedures and are disallowed.

Application Under Section 20C

43. At the Hearing, the Respondent applied for an Order under Section 20C of the 1985 Act. The Respondent argued that the Managing Agents had failed to have regard for concerns about the charges, both those currently being reviewed and other matters which are currently in dispute in the County Court.
44. The Applicant's Counsel referred us to the payments that have been made by Ms Begum over the recent past. These are shown on Page 187 of the bundle. Counsel referred to the small contributions made over the last few months which he claimed constituted an unreasonable proportion of the outstanding monies. He suggested that the applicant was left with no alternative but to bring this case so it would not be just or equitable to make such an order.
45. Having heard the submissions from the parties and taking into account determinations above, the Tribunal declines to make such an Order for the following reasons:
 - Ms Begum did not have any evidence to support her claim that the advance service charges were unreasonable. There was no attempt to provide alternative cost information to justify her assertion that they were unreasonable.
 - She had failed to pay the outstanding advance charges despite requests being made for payment being made on several separate occasions, two of which are deemed to be compliant with the procedures.
46. The attitude of Ms Begum towards advance charge payment and her relationship with the Managing Agent was a contributory factor to the need for these proceedings.

Valuer Chairman Ian Holdsworth

18th July 2016

Corrected and reissued 9th August 2016

RIGHTS OF APPEAL

1. 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.
2. 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.
3. 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.
4. 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.

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.

Section 21B

- (1) A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges.
- (2) The Secretary of State may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.
- (3) A tenant may withhold payment of a service charge which has been demanded from him if subsection (1) is not complied with in relation to the demand.
- (4) Where a tenant withholds a service charge under this section, any provisions of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.
- (5) Regulations under subsection (2) may make different provision for different purposes.
- (6) Regulations under subsection (2) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

The Service Charges (Summary of Rights and Obligations, and Transitional Provision) (England) Regulations 2007

Regulation 3 relates to the “Form and Content of Summary of Rights and Obligation”. Where these Regulations apply, the summary of rights and obligations which must accompany a demand for the payment of a service charge must be legible in a typewritten or printed form of at least 10 point, and must contain (a) the title “Service Charges – Summary of tenants’ rights and obligations”; and (b) the statement set out in subparagraph (b).