



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

Case Reference : LON/00AE/LSC/2017/0458

Property : 3 Saltercroft Close, Wembley,
Middx. HA9 9JJ

Applicant : Marcelle Moncrieffe-Johnson

Respondent : London Borough of Brent

Type of Application : Liability to pay service charges

Tribunal : Judge Nicol

Date of Decision : 15th January 2018

DECISION

- (1) The service charges for major works invoiced at £4,598.76 and £2,840.07 are limited to a total of £250 in accordance with section 20 of the Landlord and Tenant Act 1985 ("the Act").
- (2) There is no order as to costs save that, in accordance with section 20C of the Act, the Respondent may not recover any costs of these proceedings through the service charge.

Relevant legislative provisions are set out in the Appendix to this decision.

The Application

1. On 27th November 2017 the Tribunal received the Applicant's application challenging the Respondent's invoices for service charges for major works in the amounts of £4,598.76 and £2,840.07.

2. The Tribunal issued directions on 28th November 2017 identifying the sole issue in dispute as whether the Respondent complied with the consultation requirements under section 20 of the Landlord and Tenant Act 1985 and the Service Charges (Consultation Requirements) (England) Regulations 2003.
3. By letter dated 18th December 2017 the Respondent stated,

The Council have considered Mrs Moncrieffe-Johnson's application and do not consider the section 20 notices in question to have been properly served under the regulations. They therefore do not intend to contest this matter **but they will be making an application for dispensation.**
4. On 9th January 2018 the Applicant filed and served a bundle of documents ahead of the Tribunal's consideration of her application the following week. Her covering letter sought her costs for bringing her application. By letter dated 11th January 2018 the Respondent made representations as to why the Applicant should not be awarded her costs.
5. The Respondent has yet to make any dispensation application. They clearly have full notice that the Tribunal is considering the Applicant's application this week. In the light of their concession, the Tribunal is bound to decide that the relevant service charges are limited to the maximum of £250.
6. In her application, the Applicant sought an order under section 20C of the Act that the Respondent's costs of the proceedings should not be added to the service charge. It is not clear that the Respondent have any such costs or would seek to recover any but, in the circumstances, the Tribunal is satisfied that it is just and equitable to make such an order.
7. The Respondent is correct to point out in their letter of 11th January 2018 that the Applicant may only recover her costs set out in her letter of 9th January 2018 if the Respondent had acted unreasonably in accordance with rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. In *Willow Court Management Co (1985) Ltd v Alexander* [2016] UKUT 0290 the Lands Chamber of the Upper Tribunal stated that "unreasonable" in this context means conduct which is vexatious and designed to harass the other side rather than advance the resolution of the case. The Respondent has done nothing within these proceedings which could be described as unreasonable in this sense and so there is no further order as to costs.

Name: NK Nicol

Date: 15th January 2018

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 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 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.