



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

Case Reference	:	LON/00AF/LSC/2012/0763
Property	:	Flat 8 Brooklyn House, Anerley Road, Penge, London SE20 8AZ
Applicant	:	Brooklyn House Management Ltd
Representative	:	SLC solicitors
Respondent	:	Shakeel Mirza
Type of Application	:	For the determination of the payability of service charges
Tribunal Members	:	Judge Nicol Mr P Casey MRICS Ms S Wilby
Date and venue of Hearing	:	11th November 2013 10 Alfred Place, London WC1E 7LR
Date of Decision	:	11th November 2013

DECISION

Decisions of the Tribunal

- (1) The Tribunal determines that the sum of £4,084.21 is payable by the Respondent in respect of the service charges for the four years ending on 31st March in 2009, 2010, 2011 and 2012, subject to the court having already given judgment for the sum of £1,740.55.
- (2) The Tribunal determines that the administration charge of £50 for legal costs is not payable on this occasion for the sole reason that it was not supported by any evidence.

- (3) The Tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985.

The application

1. In March 2012 the Applicant issued proceedings in the county court for service and administration charges which the Respondent had not paid. The total of £4,134.21 was made up as follows:-

2008/9 Service Charge Year

- £195.19 balancing charge

2009/10 Service Charge Year

- £247.87 on account (less credit for sums received)
- £546.02 on account
- £240.53 balancing charge

2010/11 Service Charge Year

- £641.04 x 2 on account charges

2011/12 Service Charge Year

- £690.87 x 2 on account charges
- £95.39 x 2 reserve fund charges

Administration charge/late payment fee 29th May 2009

- £50

2. On 2nd November 2012 Deputy District Judge McKenzie sitting at Bromley County Court gave judgment for the Applicant for £1,740.55. The Respondent gave the impression to the Tribunal at the hearing on 11th November 2013 that he thought the court had ruled that this was final judgment on the claim so that he would owe no more. However, that is clearly not the case. The Respondent pointed out that there had been discussion at the court hearing of his own calculation of what he owed but that was only in the context of determining how much of the claim he admitted. The judgment was for the amount he admitted owing. The learned Deputy District Judge transferred the rest of the dispute to this Tribunal.
3. The Tribunal issued directions on 22nd January 2013 following a pre-trial review held earlier that day and attended by both parties. The Tribunal explained that it only had jurisdiction in relation to those matters transferred to it and that, if either party wished to raise disputes in relation to other years, they would have to make a separate application.
4. The parties each provided a Statement of Case. The Applicant understood the Respondent to be admitting a larger sum than they

already had judgment for. They asked the Tribunal to make a preliminary determination based on this admission. The Tribunal said the entire amount, less the existing judgment, should be regarded as in dispute. The Applicant was not satisfied with this and applied to the county court to vary its order. On 21st May 2013 Deputy District Judge Hood refused to vary the previous order but gave directions for the parties to complete a Scott Schedule, i.e. a schedule of items in dispute with each party's comments on each item.

5. In accordance with the order, the Applicant sent the Respondent a schedule and attached to it were copies of the service charge accounts for 2009-2012, a statement of the Respondent's account and relevant service charge demands. The Respondent then hand-wrote his annotations onto the schedule. He later also provided his own schedule which resulted in the Tribunal having two separate schedules.
6. The Tribunal attempted to provide direction to the proceedings by a further order on 23rd July 2013. In particular, the Tribunal clarified that, if the Respondent wished to raise issues other than those transferred by the county court, then he would have to make a separate application. This appears not to have helped. The Applicant provided a further statement and a bundle (comprised of two separate lever arch files) comprising relevant documents but the Respondent claims not to have received either of them. He did not make any application raising further issues, instead specifically stating that he did not wish to do so.

The hearing

7. The Tribunal heard the application on 11th November 2013. The Applicant was represented by Mr Chris Brookes of counsel, assisted by Mr Paul Mather of the Applicant's current managing agents, Block Management UK Ltd, and the Respondent appeared in person.
8. The Tribunal had to consider how to proceed in the light of the Respondent's claim not to have received the hearing bundle. In fact, the Tribunal was satisfied that he had received the documents on the basis of which the Tribunal was able to reach a decision, namely those attached to the Applicant's schedule (see paragraph 5 above).

The background

9. The Applicant is a lessee-owned company which owns and manages the building containing the subject property. The Respondent is the lessee of the subject property. His lease provides, amongst other matters:-
 - Clause 2.10 Service charges are payable as rent.
 - Clause 4.20.5 Provides for the payment of the Applicant's costs incurred in recovering rent and service charge arrears.

- Fourth Schedule Sets out how service charges are to be calculated, namely as 1/44th of the Applicant's costs and expenses in maintaining and managing the building.
- Paragraph 4.1 of the Fourth Schedule Provides for a reserve fund.
- Paragraph 6.3 of the Fourth Schedule Provides for payments in advance on account of service charges.

The issues

10. The Tribunal is satisfied that the documents referred to in paragraph 5 above establish on their face that the service charges, namely the amounts listed in paragraph 1 above other than the £50 administration charge, have been properly demanded and are payable. The Respondent did not provide any reason for thinking otherwise and specifically eschewed any claim in these proceedings that any service charges had not been reasonably incurred.
11. In the Tribunal's opinion, the dispute arises between the parties because the Respondent does not understand the case being made against him or his obligations under his lease:-
 - a) The Respondent objected to amounts recovered by the Applicant from his mortgagee in relation to years before 2008. No amount of explanation from the Tribunal appeared to make him understand that this was outside the matters transferred by the county court. He claimed both that making a separate application for such issues was unnecessary and that he did not realise that he should have made one, despite the clear direction given to him in two Tribunal orders.
 - b) The Respondent pointed out that judgment had been set aside in earlier proceedings for some service charges incurred before 2008 and demanded he be credited with the amount. In fact, judgment had been set aside because the money was not owed after the mortgagee had paid it. In any event, the Respondent appeared to have difficulty understanding that the set aside only meant that the court had not ruled on payability, not that the sum in question was not payable.
 - c) The Respondent pointed out that one of the amounts, £247.87 said to be owing for 2009-10, was not on his statement of account. In fact, this was the balance owing in respect of one demand after payments into the account from the mortgagee had been credited.
 - d) The Respondent claimed to understand that he made advance payments by standing order on account of his service charges with a balancing charge to be paid at the end of the year if the actual expenditure exceeded the amount paid on account. However, he then objected to what he called "extra charges" which were clearly end of year balancing charges and reserve fund contributions.

12. The Respondent admitted withholding payment of service charges. He said that he had done so because he had not received explanations for various charges. He claimed that if he received a determination as to what he owed, he would pay it. The Tribunal is not satisfied that this claim is true. He has now received adequate explanations for the charges and has a court judgment for the amount he has admitted. He has yet to pay any part of the court judgment.

13. Unsurprisingly, the Applicant has incurred costs in pursuing recovery of the Respondent's service charge arrears. The Applicant has applied some of the money which has been received towards administration charges in respect of the costs of recovery. As a result, in these proceedings they have only sought judgment in respect of one remaining item of £50. Unfortunately, this charge was allegedly incurred by previous agents, Wilmotts, and the Applicant has been unable to obtain any evidence in relation to it. Therefore, the Tribunal has not seen any relevant document and not been told how the sum was calculated, including whether it represents actual costs or a fixed charge. Given this lack of evidence, the Tribunal cannot allow this sum. Mr Brookes pointed out that it was highly credible that the Respondent was chased for his arrears but that is not enough by itself to justify any particular charge.

Application under s.20C

14. The Respondent applied for an order under section 20C of the 1985 Act. Having heard the submissions from the parties and taking into account the determinations above, the Tribunal determines that it would not be just or equitable in the circumstances for an order to be made under section 20C.

Name: NK Nicol

Date: 11th November 2013

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 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 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.

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

- (1) In this Part of this Schedule “administration charge” means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
 - (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
 - (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
 - (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
 - (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.
- (2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.
- (3) In this Part of this Schedule “variable administration charge” means an administration charge payable by a tenant which is neither—
 - (a) specified in his lease, nor
 - (b) calculated in accordance with a formula specified in his lease.
- (4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Schedule 11, paragraph 5

- (1) An application may be made to the appropriate tribunal for a determination whether an administration 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) Sub-paragraph (1) applies whether or not any payment has been made.
- (3) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.
- (4) No application under sub-paragraph (1) 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.
- (6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
- (a) in a particular manner, or
 - (b) on particular evidence,
- of any question which may be the subject matter of an application under sub-paragraph (1).