

91069



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

Case Reference : **LON/00BJ/LSC/2013/0404**

Property : **Flat 1, 13 Elmbourne Road, Balham,
London SW17 8JS**

Applicant : **Dr Laura Fletcher**

Representative : **In person**

Respondent : **Ouhla Properties limited**

Representative : **Ms F Ouhla, Company Secretary**

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

Tribunal Members : **Judge Tagliavini
Mr T Sennett, professional member
Ms S Wilby, lay member**

**Date and venue of
Hearing** : **10 Alfred Place, London WC1E 7LR**

Date of Decision : **7 October 2013**

DECISION

Decisions of the tribunal

- (1) The tribunal makes the determinations as set out under the various headings in this Decision:

Insurance: The Respondent has adjusted the premiums appropriately and credited the Applicant as appropriate to reflect the 1/6th payable in accordance with the lease.

Cleaning: The Tribunal finds that no sums are payable in respect of this item.

Major works: The sum recoverable is limited to £250 as the required section 20 notice requirements were not carried out.

Administration Charge: The Tribunal determines that £37.50 is payable for 2012 and 2013

Further, the Tribunal determines that until sections 47 and 48 of the Landlord and Tenant Act 1987 is complied with and a summary of rights is served, no sums are recoverable from the Applicant by the Respondent by way of service charges.

- (2) The Tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985, as the Respondent is not seeking its legal costs of this application
- (3) The Tribunal determines that the Respondent shall pay the Applicant £290 within 28 days of this Decision, in respect of the reimbursement of the fees paid by the Applicant for the application and the hearing costs.

The application

- (4) The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") payable by the Applicant in respect of the service charge years 2012 and 2013.
- (5) The relevant legal provisions are set out in the Appendix to this decision.

The hearing

- (6) The Applicant appeared in person at the hearing and the Respondent was represented by Ms F Ouhla the company secretary of Ouhla Properties Limited.

The background

- (7) The property comprises a one-bedroom ground floor flat in a Victorian conversion of a total six flats.
- (8) The Applicant holds 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 where appropriate.

The issues

- (9) At the start of the hearing the parties identified the relevant issues for the service charge years 2012 and 2013 for determination as follows:
- (i) The payability of insurance premiums charged at 31% of the total rather than the 1/6th allowed for in the lease.
 - (ii) Whether the sum of £1,086.67 demanded for exterior redecoration works is payable by the Applicant in the absence of any section 20 consultation notices?
 - (iii) Whether cleaning charges of £300 per annum of which the applicant is required to pay 1/6th are reasonable and payable?
 - (iv) Whether the sum of 15% of the service charges is reasonable and payable as an administration fee.
 - (v) Whether any sums are due and payable in the absence of the service of the Summary of tenant's rights and obligations required pursuant to section 153 of the Commonhold and Leasehold Reform Act 2002.
- (10) Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

The Tribunal's decisions and reasons

Insurance

- (11) Ms Ouhla conceded on behalf of the Respondent that the insurance premiums representing 31% of the total premium had been incorrectly charged to the applicant and the correct sum should be 1/6th of the premium as set out in the lease. The Respondent also conceded that any appropriate adjustments/credits would be made to the applicant or her service charge account

Cleaning

- (12) The Tribunal accepted the Applicant's evidence that no substantive cleaning had been carried out in the communal parts of the building. Further, the Tribunal finds that the Respondent is unable to substantiate the claims for these sums with the production of a proper invoice or contract for cleaning. Therefore, the Tribunal determines no sum is payable in respect of this item for the service charge years 2012 and 2013.

Major works

- (13) The Respondent accepted that no section 20 notices pursuant to the Landlord and Tenant Act 1985 had been served on the Applicant, but made no application to dispense with service of any or all the section 20 requirements. Consequently, the Tribunal determines that a maximum of £250 is payable by the Applicant towards these works.

Administration fee

- (14) The Tribunal finds that there is provision in the lease for the recovery of a fee incurred by the lessor where no managing agent has been appointed amounting to 15% of the service charge total *clause 7 of the Fourth Schedule*. In this case the lessor appears not to have appointed managing agents, as the Company Secretary Ms Ouhla carries out the work associated with a managing agent. However, the Tribunal is not satisfied that the Respondent has sufficiently demonstrated that all the service charges claimed are payable but accepts that some administrative works have been carried out on behalf of the lessor. Therefore, the Tribunal determines that 15% of a total of £250 for the service charge years of 2012 and 2013 is payable by the Applicant; i.e. £37.50

Payability of service charges

- (15) The Tribunal determines that until such time as the notices demanding payment of service charges comply with the statutory requirements pursuant to sections 47 and 48 of the Landlord and Tenant 1985 Act and section 153 of the Commonhold and Leasehold Reform Act 2002, the service charges demanded for the subject service charge years are not payable by the applicant.

Application under s.20C and refund of fees

- (16) At the end of the hearing, the Applicant made an application for a refund of the fees that she had paid in respect of the application and hearing¹. Having heard the submissions from the parties and taking into account the determinations above, the Tribunal orders the Respondent to refund any fees paid by the Applicant within 28 days of the date of this decision totalling £290
- (17) In the application form the Applicant applied for an order under section 20C of the 1985 Act. However, on the Respondent asserting that no legal fees would be added to the service charge in respect of this application, the Tribunal were not required to make an order under this section. However, had it been so required, the Tribunal would have had no hesitation in determining that it would not be appropriate for the Respondent to recover any of its legal costs associated with this application through the service charges.

Name: LM Tagliavini

Date: 9 October 2013

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

Appendix of relevant legislation

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

- (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 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,

- (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.

Leasehold Valuation Tribunals (Fees)(England) Regulations 2003

Regulation 9

- (1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.
- (2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).

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 a leasehold valuation 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 a leasehold valuation 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).

Schedule 12, paragraph 10

- (1) A leasehold valuation tribunal may determine that a party to proceedings shall pay the costs incurred by another party in connection with the proceedings in any circumstances falling within sub-paragraph (2).
- (2) The circumstances are where—
- (a) he has made an application to the leasehold valuation tribunal which is dismissed in accordance with regulations made by virtue of paragraph 7, or
 - (b) he has, in the opinion of the leasehold valuation tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.
- (3) The amount which a party to proceedings may be ordered to pay in the proceedings by a determination under this paragraph shall not exceed—
- (a) £500, or
 - (b) such other amount as may be specified in procedure regulations.
- (4) A person shall not be required to pay costs incurred by another person in connection with proceedings before a leasehold valuation tribunal except by a determination under this paragraph or in accordance with provision made by any enactment other than this paragraph.