



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

Case Reference : **LON/00AG/LSC/2014/0317**

Property : **28 The Pryors, East Heath Road,
London NW3 1BS**

Applicant : **John Watson**

Representative : **In person**

Respondent : **The Pryors Ltd**

Representative : **N/A**

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

Tribunal Members : **Ms L Smith (Tribunal Judge)
Mrs J Davies, FRICS**

**Date and venue of
Hearing** : **1 October 2014
10 Alfred Place, London WC1E 7LR**

Date of Decision : **13 October 2014**

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the sum due from the Applicant for service charges for the year 2012 should be reduced by the sum of £188.33.
- (2) 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
- (3) The tribunal determines that the Respondent shall pay the Applicant £125 plus any hearing fee within 28 days of this Decision, in respect of the reimbursement of the tribunal fees paid by the Applicant

The application

1. The Applicant seeks 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 the Applicant in respect of the service charge years 2012 and 2013 in relation to surveyor's fees.
2. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

3. The Applicant appeared in person at the hearing with his co-lessee Ms Momondi. The Respondent did not attend and indeed has not engaged at all in these proceedings.

The background

4. The property which is the subject of this application ("the Property") is a 3 bedroomed flat in a purpose built block of flats. The Property forms part of Block A of a larger development.
5. 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.
6. The Applicant holds a long lease of the Property ("the Lease") which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The Lease was originally dated 3 December 1975 but was varied by a Deed of Variation dated 10th August 2012 which is made supplemental to the Lease.

Reference to the specific provisions of the Lease referred to below are to the original lease as varied by the Deed of Variation.

The issues

7. At the start of the hearing the parties identified the relevant issues for determination as follows:
 - (i) Whether the surveyor's fees charged as part of the service charge are recoverable under the Lease.
 - (ii) Whether if they are so recoverable, they are reasonable.
8. Having heard evidence and submissions from the Applicant and considered all of the documents provided, the tribunal has determined those issues as follows.

Whether the surveyor's fees are recoverable under the Lease

9. The Applicant has sought information from the Respondent as to the relevant clause of the Lease which provides for payment of surveyor's fees. It is not in dispute that a surveyor was engaged by the Respondent to oversee works to the building in which the Property is situated and another block (Block B). The Applicant disputes that the Lease contains any clause which enables the Respondent to recover the surveyor's fees.

The tribunal's decision

10. The tribunal determines that the surveyor's fees are payable (so far as reasonable) under clause 2.2 of the Lease.

Reasons for the tribunal's decision

11. Although the Respondent has completely failed to respond to the Applicant's reasonable request for information in relation to the clause of the Lease which applies in relation to this claim, the Tribunal has inspected the Lease for itself and considers that the following clauses enable the Respondent to seek payment for surveyor's fees.
12. By clause 5.2.i of the Lease, the Respondent covenants to "*maintain repair and redecorate and renew and where appropriate to keep clean and well lighted (a) the structure and in particular the main walls roofs foundations chimney stacks gutters and rainwater pipes of the Building*". The Building is defined by the Lease as "*the Block(s) of flats known as "The Pryors"*". By clause 2.2 of the Lease, the Applicant covenants to pay "*a proportionate part equal to 1.5694 per centum of*

the expenses which the Lessor shall in relation to the Building reasonably and properly incur in performing its obligations contained in Clause 5 hereof..."

13. The Tribunal is of the view that the obligation to repair etc provided for by clause 5 would properly encompass fees for a surveyor to specify those works. Accordingly, clause 2.2 requires the Applicant to contribute to those fees.

Whether the surveyor's fees claimed for the service charge years 2012 and 2013 are reasonable

14. The Applicant's complaint in this regard is that the surveyor either failed in his duties or was not properly instructed by the Respondent in relation to works, in particular to the roof of Block A. The Property forms part of that block and has been liable to water ingress from the roof of Block A both before and after the work to repair the roof which was carried out in 2011. The roof is a pitched roof. The Applicant had understood from the Respondent that the roof was to be overhauled as part of a larger programme of works in 2011. Scaffolding was erected for the contractor to gain access. The Applicant has not been able to inspect the repairs to the roof himself. The Property though continues to suffer from leaks from the roof. The Applicant has inspected the internal slopes of the roof which are visible from the corridor outside the Property. That inspection revealed dozens of defects, such as split tiles, and the Applicant is of the opinion therefore that the repair works have not been properly carried out and blames the surveyor for failing to properly inspect the works.
15. It has been particularly difficult for both the Applicant and the Tribunal to assess what part of the service charge is attributable to the surveyor's fees as apparently the Applicant has never been provided with a breakdown of the service charge. He has simply received a demand for his proportion of the overall sum each year. He has made a request to inspect the service charge accounts but to no avail. The Tribunal reminds the Respondent of the statutory right of a tenant to information about his service charge by virtue of regulations made under section 21 Landlord and Tenant Act 1985 (as amended) (The Service Charges (Summary of Rights and Obligations and Transitional Provisions) (England) Regulation 2007). That obligation applies to a RTM company by reason of paragraph 4 of Schedule 7 to the Commonhold and Leasehold Reform Act 2002.
16. The Applicant informed the Tribunal though that he had been told that the surveyor's fees for the 2012 year were £34,000 excluding VAT. The Applicant calculated this to be approximately £40,000 including VAT. From that, he had assessed his contribution to be £640.15. Working on the basis that the surveyor's fees for 2012 represented approximately 8.5% of the total service charge, the Applicant had applied the same

percentage to the 2013 year and calculated that his contribution to the surveyor's fees was £160.08. It was the total of those 2 sums that the Applicant has thus far refused to pay to the Respondent.

17. From close questioning of the Applicant and Ms Momondi, the Tribunal was able to ascertain that the works to the roof of Block A took place in 2011 and were therefore presumably charged as part of the service charge for 2012. It was also clear that the works were to more than just the roof. The Respondent's Board had apparently told the AGM that it spent £100,000 on the roof of a total contract price of £350,000. In 2012, works were being carried out to Block B and not Block A and the Applicant had been told by the Respondent that surveyor's fees for 2013 had been not very much as he was only being instructed for ad hoc works.

The tribunal's decision

18. The tribunal determines that the amount payable by the Applicant in respect of service charge year 2012 should be reduced by £188.33. The service charge for the year 2013 should not be reduced.

Reasons for the tribunal's decision

19. The Tribunal accepts the Applicant's evidence that the repairs to the roof of Block A were not properly completed as leaks from the roof continue into the Property. The Respondent has not responded to the claim and has not refuted the Applicant's evidence. It has been very difficult to ascertain who is responsible for that failure but since the Applicant appears to blame only the surveyor, the Tribunal has accepted his claim that it is the surveyor's fees which should be reduced.
20. Doing the best it can from the information provided, it appears to the Tribunal that the surveyor has probably charged 10% of the cost of works (his fees are said to be £34,000 for 2012 and the contract price is said to be about £350,000). Assuming therefore that the cost of the roof works is £100,000, the surveyor's fees for those repairs would be £10,000 + VAT (£12,000). The Applicant's share of those costs is 1.5694% and therefore equates to £188.33. The service charge payable by the Applicant for the year 2012 should therefore be reduced by that sum.
21. In relation to 2013, however, there is no evidence that any work was done to the roof of Block A in the previous year. The Respondent has also informed the Applicant that very little was spent on surveyor's fees in that year. The work done in 2012 was apparently to Block B. The Applicant is bound to contribute to the cost of that work via the service charge (as the Building encompasses both blocks). There is no evidence

that, even if surveyor's fees were the same proportion of the service charge for 2013, that the work which was covered by that charge (presumably that carried out in 2012) was in any way sub-standard. Accordingly, the service charge for 2013 should not be reduced.

Application under s.20C and refund of fees

22. The Applicant made an application for a refund of the fees that he had paid in respect of the application and hearing¹. Although the Tribunal has reduced the service charge by less than contended for by the Applicant in relation to the 2012 year and not at all in relation to the 2013 year, the failure by the Respondent to engage in these proceedings has prevented any compromise of this matter without the need for a hearing and has undoubtedly made the job of both the Applicant and Tribunal more difficult in dealing with the issues. The Tribunal therefore orders the Respondent to refund any fees paid by the Applicant within 28 days of the date of this decision. £125 was paid on application. There is also likely to have been a hearing fee.

23. In the application form, the Applicant applied for an order under section 20C of the 1985 Act. For the same reasons as at paragraph 22 above, the tribunal 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. Given the total lack of engagement by the Respondent in the proceedings, however, the Tribunal would not expect there to be any such costs.

Name: Ms L Smith

Date: 13 October 2014

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

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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,

- (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 a leasehold valuation 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 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 21

- (1) The appropriate national authority may make regulations about the provision, by landlords of dwellings to each tenant by whom service charges are payable, of information about service charges.
- (2) The regulations must, subject to any exceptions provided for in the regulations, require the landlord to provide information about—
 - (a) the service charges of the tenant,
 - (b) any associated service charges, and
 - (c) relevant costs relating to service charges falling within paragraph (a) or (b).
- (3) The regulations must, subject to any exceptions provided for in the regulations, require the landlord to provide the tenant with a report by a qualified person on information which the landlord is required to provide by virtue of this section.
- (4) The regulations may make provision about—
 - (a) information to be provided by virtue of subsection (2),
 - (b) other information to be provided (whether in pursuance of a requirement or otherwise),
 - (c) reports of the kind mentioned in subsection (3),
 - (d) the period or periods in relation to which information or reports are to be provided,
 - (e) the times at or by which information or reports are to be provided,
 - (f) the form and manner in which information or reports are to be provided (including in particular whether information is to be contained in a statement of account),
 - (g) the descriptions of persons who are to be qualified persons for the purposes of subsection (3).
- (5) Subsections (2) to (4) do not limit the scope of the power conferred by subsection (1).

COMMONHOLD AND LEASEHOLD REFORM ACT 2002

SCHEDULE 7

Paragraph 4:

- (1) Sections 18 to 30 of the 1985 Act (service charges) have effect

SERVICE CHARGES (SUMMARY OF RIGHTS AND OBLIGATIONS AND TRANSITIONAL PROVISION) (ENGLAND) REGULATIONS 2007

(9) You have the right to write to your landlord to request a written summary of the costs which make up the service charges. The summary must-
Cover the last 12 month period used for making up the accounts relating to the service charge ending no later than the date of your request where the accounts are made up for 12 month periods; or

Cover the 12 month period ending with the date of your request, where the accounts are not made up for 12 month periods

The summary must be given to you within 1 month of your request or 6 months of the end of the period to which the summary relates whichever is the later

(10) You have the right, within 6 months of receiving a written summary of costs, to require the landlord to provide you with reasonable facilities to inspect the accounts, receipts and other documents supporting the summary and for taking copies or extracts from them.

(11) You have the right to ask an accountant or surveyor to carry out an audit of the financial management of the premises containing your dwelling, to establish the obligations of your landlord and the extent to which the service charges you pay are being used efficiently. It will depend on your circumstances whether you can exercise this right alone or only with the support of others living in the premises. You are strongly advised to seek independent advice before exercising this right.