

10369



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

Case Reference : LON/00AN/LSC/2013/0266

Property : Ground Floor Flat 6 Glazebury
Road, West Kensington, London
W14 9AS

Applicant : Dr Emilio Foxell

Representative : None

Respondent : 6 Glazebury Road Management Ltd.

Representative : None

Type of Application : For the determination of the
reasonableness of and the liability
to pay service charge under s27A
Landlord and Tenant Act 1985 (the
"Act") and costs of proceedings
before the Tribunal under s20C of
the Act

Tribunal Members : Judge Pittaway
Mr Holdsworth

**Date and venue of
Determination** : Determination without an oral
hearing in accordance with
Regulation 31 The Tribunal
Procedure (First-tier Tribunal)
(Property Chamber) Rules 2013

Date of Decision : 21 October 2014

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the sum of £30 shall be deducted from the management fees of Craig Sheehan for each of the service charge years to 30 June 2012 and 30 June 2013.
- (2) The tribunal makes an order under section 20C of the Act so that none of the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge.

The application

1. By an application dated 29 March 2013 the Applicant sought a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the Act") as to the amount of service charges payable by the Applicant in respect of the service charge year 2012.
2. The Applicant also applied under s20C of the Act for an order for the limitation of the landlord's costs in the proceedings before the Tribunal.
3. Following a preliminary hearing (held on 13 September 2013) the Tribunal determined on 7 March 2014 that its jurisdiction was limited to determining the payability of the management fees arising from the failure of the managing agents to facilitate the provision of an additional security key.
4. The Tribunal issued directions on 15 August 2014 in which it also identified the issues to be determined to be the quantum of the management fees for 2012 and 2013, and the s20C application.
5. The Tribunal directed that each party provide a statement of case and witness statements. The Tribunal further indicated that they considered the matter suitable for determination on paper; that is without an oral hearing or inspection, unless any party requested an oral hearing. No oral hearing was requested.
6. The relevant legal provisions are set out in the Appendix to this decision.

The evidence

1. The tribunal has had regard to the statement of case of the Applicant received by it on 30 September 2014 and that of the Respondent dated 16 October 2014, to the extent that they were relevant to the narrow issues that were before the Tribunal to determine in reaching their decision.
2. The applicant is the tenant of the Property under a lease dated 15 October 1976 for a term of 99 years from 25 December 1974. The lease provides at Clause 4 for the tenant to pay on fifth of the costs incurred by the Landlord under the Fourth Schedule, which include the fees of any managing agent employed to manage the building.
3. Unfortunately neither statement quantified the amount of the management fees claimed by Craig Sheehan in either of the service charge years in question. The Tribunal therefore had regard to the information that had been provided by the Respondent in their Particulars of Claim to the Northampton County Court which has previously been provided to the Tribunal. This included the audited accounts for the service charge year to 30 June 2012 which stated the managing agent's fees for that year to have been £1500. It also included a budget for the year commencing 24 June 2012 showing the budgeted managing agents fees for 2012/2013 to be £1,575. The Applicant is responsible for 20% of these fees.
4. It is the Applicant's submission that by reason of the managing agents failing to supply to him a second security key he had suffered losses which he estimated at £6000; £3,500 being economic loss and £2,500 for worry, stress and humiliation. No evidence was provided to substantiate either of these sums.
5. The Respondent's submissions were primarily directed to whether the Applicant had suffered a substantial interference with his entitlement to quiet enjoyment. They also submitted that the Applicant had not identified what losses he had suffered by reason of the absence of the key.

Reasons for the tribunal's decision

1. The service charge year runs to 30 June in any year so the Tribunal have made their determination in respect of the management fees charged for the service charge year to 30 June 2012 and the service charge year to 2013. They have based their determination on an annual management fee demanded of the Applicant in the region of £300 per annum. Their jurisdiction under s27A is limited to the extent to which this sum is reasonable in light of the managing agent's actions.

2. The managing agents will have performed a number of tasks for their fee, and the Applicant has not sought to criticise their performance, other than their failure to provide the second security key. The Respondent's statement acknowledges that the second key was not provided. This is reprehensible and the Tribunal trust that the second key has now been provided.
3. The specific failure to provide the second key is a failure by the managing agents to act reasonably in that regard and to reflect this the Tribunal consider that their fees should be reduced, but the Tribunal also had to have regard to the fact that there was no other criticism of the performance of their duties. The Tribunal have therefore determined that the managing agents' fees should be reduced by £30 for each of the years in question.
4. It is not within the Tribunal's jurisdiction to award damages as contemplated by the Applicant's submission. As determined in their decision following the preliminary hearing their jurisdiction is limited to determining whether any element of the service charge demanded (in this case the management fees) is reasonable.
5. In relation to the application under s20C the present determination has been made without an oral hearing in accordance with Regulation 31 The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 so that there were no proceedings on 21 October in respect of which the Landlord could have claimed costs.. The Landlord's solicitor had however attended the preliminary hearing on 13 September 2013 so the Tribunal was required to consider the s20C application.
6. It is the Tribunal's opinion that in the circumstances of this case it is just and equitable for an order to be made under section 20C of the Act, so that the Respondent may not pass any of its costs incurred in connection with the preliminary hearing before the tribunal through the service charge.

Name: Judge Pittaway

Date: 21 October 2014

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.