

10450



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

**Case Reference** : LON/00AY/LSC/2014/0482

**Property** : Flat A, 31 Ellora Road, London,  
SW16 6JG

**Applicant** : Mr Zvi Benveniste

**Representative** : Circle Residential Management Limited

**Respondent** : Mr Peter Cornelius Kruger

**Representative** : No appearance

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

**Tribunal Members** : Judge Robert Latham  
Mrs Sarah Redmond BSc (Econ) MRICS

**Date and venue of  
Hearing** : 2 December 2014  
at 10 Alfred Place, London WC1E 7LR

**Date of Decision** : 2 December 2014

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**DECISION**

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- (1) The Tribunal determines that the interim service charge of £3,266 is payable. This includes the following items: (i) Building Repairs: £600; (ii) Building Insurance: £800; (iii) Year End Accounting: £186; (iv) Management Fee: £720; and (v) External Decorations: £960. The Respondent is liable for 60% of this, namely £1,959.60.
- (2) The Tribunal determines that the Respondent shall pay the Applicant £125 within 28 days of this Decision, in respect of the reimbursement of the tribunal fees paid by the Applicant.

### **The Application**

1. By an application, dated 18 September 2014, 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 Respondent. The Tribunal is asked to determine the interim service charge that is payable for the year 2014. The total service charge is £3,266. This includes the following items: (i) Building Repairs: £600; (ii) Building Insurance: £800; (iii) Year End Accounting: £186; (iv) Management Fee: £720; and (v) External Decorations: £960. The Applicant contends that the Respondent is liable for 60% of this, namely £1,959.60.
2. On 23 September, the Tribunal gave Directions. The landlord was directed to serve its Statement of Case by 10 October. This is at pp.2-6 of the Bundle. The tenant was directed to serve his Statement in Response by 24 October. He has failed to do so. Indeed, he has played no part in these proceedings.
3. In his application form, the landlord stated that he was content for this matter to be determined on the papers. The tenant has not sought an oral hearing. The matter has therefore been set down before us today for a paper determination.
4. The legislative provisions are set out in the Appendix annexed hereto.

### **The Background**

5. Interim service charges for the year became payable on 1<sup>st</sup> January and 1 July 2014. It is apparent that these were demanded, but not paid. On 11 August 2014, the landlord issued a Pre-Action Demand in respect of the outstanding charges of £1,959.60 (p.51). The letter was accompanied by a Summary of the Tenants' Rights and Obligations. In a separate letter, the landlord asked the tenant to agree that the budget for the year was reasonable (p.54). The tenant failed to pay the sum due and did not respond raising any issue in dispute.

6. A tenant has a duty when service charges are disputed to identify those costs in dispute, to identify a range of reasonableness and identify how far outside the range the costs demanded fall. It is incumbent on the tenant to pay those items not in dispute. What is unacceptable is for a tenant to refuse to pay the sums that are lawfully due without any explanation for his default.
7. On 13 November 2013, a First-tier Tribunal determined an earlier dispute between these parties (LON/00AY/LSC/2013/0619). We have that decision at p.92 of the Bundle. The Tribunal was asked to determine two consolidated applications, namely (i) the interim service charge for 2013; and (ii) the estimated cost of demolishing and rebuilding the front boundary wall. The tenant played no part in these proceedings.

### **The Lease**

8. The lease is dated 15 February 2003 and is at pp.11-41 of the Bundle. We note that the tenant was the original lessee. The landlord summarises the relevant provisions of the lease in his Statement of Case. The Tribunal are satisfied that the sums demanded are payable pursuant to the terms of the lease. We are further satisfied that the tenant is liable for 60% of the total service charges payable in respect of the property at 31 Ellora Road.

### **The Service Charge Demand**

9. The interim service charge is made up of five elements. First, Building Repairs are estimated at £600. This budget item relates to unknown reactive maintenance works that might occur in the year in question. In the previous year, £730 was spent on building repairs. There is no evidence that this cost provision is either inappropriate or unreasonable.
10. Secondly, £800 is claimed in respect of Building Insurance. The landlord explains how a broker tests the market every three years to identify the policies that represent best value for money. The relevant correspondence is at p.57-61. There is no evidence that the quality of the cover is inappropriate or that the cost is unreasonable.
11. Thirdly, Year End Accounting is claimed in the sum of £186. The budget figure is based on a fixed fee agreement between the landlord's managing agents and the accountant. The landlord suggests that this fixed fee provides best value to the tenants. There is no evidence to contradict this.
12. Fourthly, a Management Fee of £720 is claimed. The management fee is calculated on a cost/unit basis of £300 per unit. There is no evidence

that the fee is unreasonable. Indeed, applying our expert knowledge, we are satisfied that it is reasonable.

13. Fifthly, £960 is claimed in respect of External Decorations. This budget item is in relationship to planned external refurbishment works for which a quotation has already been obtained (see p.70-82). The landlord has satisfied us that he has complied with the relevant consultation requirements. We are satisfied that the cost provision is appropriate and reasonable.
14. We note that by approving the estimated costs, we are not being asked to find that the actual expenditure is reasonable. Having regard to Section 19(2), the Tribunal is merely satisfying itself that the interim service charge is no greater than is reasonable.
15. The Tribunal is satisfied that the Respondent is liable for 60% of the total interim service charge, namely £1,959.60.

#### **Application for Refund of Fees**

16. In his application, the Respondent applies for a refund of the fees that he had paid in respect of this application. Having regard to our determination in this matter and the conduct of the Respondent, the Tribunal orders the Respondent to refund the fees of £125 paid by the Applicant.

Robert Latham

Tribunal Judge

2 December 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 20 - Consultation Requirements**

- (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 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.

**The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013**

**Regulation 13**

- (2) The Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor.

10451



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

**Case reference** : **LON/00AN/LSC/2104/0522**

**Property** : **44 Godolphin Road, London W12  
8JF (the Property)**

**Applicant** : **David Cannon Properties Limited**

**Representative** : **Crabtree Property Management**

**Respondent** : **The leaseholders of the 4 flats at  
the Property as set out in the  
Application**

**Representative** : **None**

**Type of application** : **S27A Landlord and Tenant Act 1985**

**Tribunal member(s)** : **Tribunal Judge Dutton  
Mr N Martindale FRICS**

**Date and venue of  
determination** : **3<sup>rd</sup> December 2014 at 10 Alfred  
Place, London WC1E 7LR**

**Date of decision** : **3<sup>rd</sup> December 2014**

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**DECISION**

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## **Decisions of the Tribunal**

**The tribunal determines that the Applicant can recover part of the proposed costs of attending to the communal electricity supply and the costs of the ongoing electricity used to light the communal area at the Property.**

### **The application**

1. The applicant seeks a determination pursuant to s27A of the Landlord and Tenant Act 1985 (the Act) as to the recoverability of certain anticipated costs for *“the installation of a communal electricity supply to include a Ryefield board, RCD protected sockets outlet and two maintained emergency lighting and smoke detectors.”* We are told, in the application that such work is required *“because the communal supply has been cut off by the lessees with access to it and the works will ensure there is continual electricity supply to the communal areas”*. The two estimates obtained show costs between £3,250 and £2,931.31, in both cases plus VAT. We are asked to determine whether the works can be recovered as part of the service charges. The Applicant confirmed that we are not asked to determine whether the costs are reasonable.
2. Directions were issued on 24<sup>th</sup> October 2104 and record that a s20ZA application in respect of these works was withdrawn. The case was listed for a paper determination and directions given as to the filing of papers. At the determination we had a bundle of papers filed by the applicant but nothing from the leaseholders who were named as Respondents in the application.
3. The bundle filed contained copies of the application, leases of the four flats, the directions referred to above, certain correspondence and a short statement of case on behalf of the Applicant. This statement of case, after addressing the background and the law set out the questions we were asked to consider by reference to certain clauses in the leases, which appeared to be common to all, save possibly the basement flat. We were asked to find that the Applicant is the responsible party for the works outlined in the application, including the supply of electricity to the communal area and the future upkeep of same and that accordingly the costs could be recovered as a service charge.

### **THE LEASE**

4. It appears that three clauses of the leases of the flats in the Property relate to this matter. They are clauses 3(4), 3(6) and 5(4).

5. Under the lessees covenants set out in clause 3 of the leases owned by the Respondents clause 3(4) says as follows: “ *Contribute and pay to the Landlord or to such one or more of the Covenantees as the case may be as shall incur the costs and expenses hereafter mentioned one fourth part of the costs and expenses incurred in keeping in substantial order and condition pursuant to the provisions in that behalf contained or to be contained in the Leases of the other flats forming part of the Block or in the hereinbefore recited Deed of Covenant such of the following parts of the Block as do not form part of a Flat that is to say all roofs.....and such of the following as are enjoyed or used in connection with two or more of the flats forming part of the Block namely...electric cables and wires stair carpets and staircases entrances passages and landings and the cleaning and lighting thereof...*”
6. Clause 3(6) says “*Between dusk and midnight each evening to adequately light and keep lighted the staircase and landings of the Block*”
7. Under the covenants of the Lessor set out at clause 5 of the leases the following wording is to be found “*5(4) Subject to the landlord receiving any moneys hereinbefore covenanted to be paid by the Lessee referred to in clause 3(4) hereof to keep in substantial order and condition all roofs.....and such of the following as are enjoyed or used in connection with two or more of the flats forming part of the Block namely....electric cables and wires stairs and staircases entrance passages and landings and the cleaning and lighting thereof between dusk and midnight each night*”.
8. Although the lease for the ground floor flat indicates that in respect of the basement flat clause 3(6) should be deleted, no such deletion appears to have taken place in what is described in the First Schedule to the lease, as the semi basement flat.

## **DECISION**

9. It is not clear to us what access any of the lessees have to the electricity supply to the common parts and how they can control same. It may be that the communal electricity comes from a specific flat and has been disconnected. That is an unsatisfactory situation, both in respect of the supply and the disconnection of same. It creates, as is set out in the application, a risk to health and safety of the residents. The position should be resolved.
10. The lease terms are confusing. Clause 3(4) is, in our view clear enough. It requires the lessee to each contribute  $\frac{1}{4}$  of the costs as set out therein, which includes the electrical wiring and the lighting of the communal area. Quite what clause 3(6) is intended to achieve is not wholly clear. It appears to mirror the provisions of clause 5(4) as to the

obligation to keep the stairs and landings lit, but perhaps not the entrance passages, whatever they may be.

11. Our review of the lease leads us to this conclusion. The lessee has to pay  $\frac{1}{4}$  each of the costs incurred under the provisions of clause 5(4) of the respective leases. Such payment would not seem to be due until the cost has been incurred or notice given that the cost was to be incurred. This would include, in our finding, part of the works anticipated by the Applicant and the ongoing costs of the electricity supplied to the communal lighting. We find that the provision of clause 3(6) is a requirement to adequately light the stairs and landings, in effect, not to interfere with the lighting of these areas. In our finding it is more appropriate for the Applicant to take on this responsibility and for the costs associated with same to be recoverable as a service charge. This affords the lessee the protection of s19 and 27A of the Act.
12. However, we do not consider that all the works envisaged are recoverable under the lease. The lease terms contain no provision for improvement and we consider that the installation of emergency lighting and smoke detectors, whilst eminently sensible, is an improvement which is not recoverable as a service charge. It may be that by agreement the lessees will be willing to pay for these additional items. In the alternative the Applicant, as a responsible landlord, may consider this is an expense which should be borne by it in any event.
13. The remaining works of installing a communal supply, upgraded as it is, would, we find, fall within the provisions of the "keep in substantial order and condition" such as might be the case with, for example as has been held in other cases, the replacement of defunct windows with new modern ones. The sum therefore attributable to these works can be charged as a service charge, once it has been established.

**Name:** Tribunal Judge  
Andrew Dutton

**Date:** 3<sup>rd</sup> December 2014