



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

Case Reference : **LON/00AZ/LSC/2013/0714 & 0786**

Property : **Flat B, 26 Manor Park, London
SE13 5RN**

Applicant : **Perseus Property Company Ltd**

Representative : **Mr R Wright (Director of
Applicant)**

Respondent : **Mr G Okoye**

Representative : **In person**

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

Tribunal Members : **Mr L Rahman (Barrister)
Mr K M Cartwright FRICS
Mr P Clabburn**

**Date and venue of
Hearing** : **3rd March 2014
10 Alfred Place, London WC1E 7LR**

Date of Decision : **15.4.14**

DECISION

Decisions of the Tribunal

- (1) The Tribunal determines that the sums claimed by the Applicant in respect of the service charges for the year 2012 and the estimated service charges for the years 2013 and 2014 are payable by the Respondent.
- (2) The Tribunal makes the determinations as set out under the various headings in this Decision.
- (3) The Tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985.
- (4) The Tribunal determines that the Respondent shall pay the Applicant £360.00 within 28 days of this Decision, in respect of the reimbursement of the Tribunal fees paid by the Applicant.
- (5) The Tribunal does not make an order for costs under paragraph 13(1)(b) of The Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013.
- (6) Since the Tribunal has no jurisdiction over County Court costs and fees, claim number LON/00AZ/LSC/2013/0714 should now be referred back to the Bromley County Court.

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 Respondent in respect of the service charge years 2012, 2013, and 2014.
2. Proceedings were originally issued in the Northampton County Court under claim no. 3QT59388 concerning service charge year 2012 and the estimated service charge for the year 2013. The claim was transferred to the Bromley County Court and then in turn transferred to this Tribunal, by order of District Judge Brett on 11.10.13. The Applicant started separate proceedings at this Tribunal on 19.11.13 concerning the estimated service charge for the year 2014. Both the matters have been linked to be considered together.
3. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

4. The Applicant was represented by Mr Wright at the hearing and the Respondent appeared in person.
5. The parties handed in further documents at the hearing, namely, a typed opening statement and breakdown of the estimated service charge for 2012 by the Applicant and a "defence" by the Respondent.

The background

6. The property which is the subject of this application is a detached building arranged over lower ground, raised ground and two upper floors beneath a pitched roof. Internally the building is arranged to provide six self contained flats. The lower and raised ground floors each contain two bed flats. Each of the two upper floors contains 2 one bed flats. The Respondents flat is on the raised ground floor. The lower ground floor flat is occupied by a lessee. One of the upper floor flat is also owned by a lessee. The remainder of the flats are owned by the Applicant and let under Assured Shorthold Tenancies.
7. 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.
8. The Respondent 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 below, where appropriate.

The issues

9. At the start of the hearing the parties identified the relevant issues for determination as follows:
 - (i) Whether the Applicant was required to provide audited accounts with the 2012 service charge demand.
 - (ii) The apportionment of the amounts payable by the Respondent.
 - (iii) The reasonableness of the service charge for the year 2012 relating to the costs for management, insurance, defective lights, down lights, TV aerial, and cleaning.
 - (iv) The reasonableness of the estimated service charge for the years 2013 and 2014.

10. The Applicant confirmed at the hearing that whilst a claim for £100 administration charge was included in the County Court claim, the Respondent had not yet been served with a demand for payment of that £100 administration charge. This was therefore not yet due.
11. 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.

Was the Applicant required to provide audited accounts?

12. The Applicant states there was discussion at the pre trial review to provide a "reconciliation statement" concerning the service charge year 2012 and for the accounts to be sent to the Respondent. Whilst the Tribunal Direction states "audited" accounts, Mr Wright believed that to mean the account audited by the Applicant, not an audit by an external accountant. Audited accounts were not provided with the service charge demands as it was not required under the Lease. When a lessee insists, the Applicant does provide audited accounts. The Applicant states audited accounts are not required unless a written request is made. The Applicant has now in any event provided audited accounts for 2012 (section 14 of the bundle).
13. The Respondent states this Tribunal directed, at the pre trial review, that the Applicant provides audited service charge accounts for the year 2012. The failure to provide audited accounts amounts to a flagrant breach of the Tribunals order such that it is fatal to the Applicants claim. Furthermore, under s.21(6) of the 1985 Act, the Applicant was required to provide with the service charge demand a statement by a qualified accountant. This requirement overrides whatever may be stipulated in the Lease. The Respondent conceded he did not make a written request for a written summary of the costs incurred in relation to the service charges but he relied upon the Tribunals Direction that the Applicant provide an audited account.
14. The Respondent stated at the hearing he received the "rights and obligations" with the service charge demands.
15. The Tribunal finds the Applicant was not required to provide audited accounts with the 2012 service charge demand. The Lease does not stipulate that audited accounts are provided with service charge demands. Audited accounts are required under s.21 of the 1985 Act only if a tenant makes a written request to supply a written summary of the costs incurred in relation to the service charges and the service charges are payable by tenants of more than four dwellings. The Respondent accepts he did not make a written request and the tenants of only 3 dwellings are liable to pay the service charges.

16. The Tribunals Direction concerning "audited" accounts does not invalidate the service charge that was properly demanded prior to the matter coming before this Tribunal. In any event, the Applicant has now provided audited accounts for the 2012 service charge year which matches the end of year reconciliation statement that was provided to the Respondent in February 2013 (section 9 of the bundle).

The apportionment of the amounts payable by the Respondent

17. The Applicant states the Lease does not state the percentage payable by each flat and it is left to the discretion of the landlord. The Applicant inherited the pre-existing arrangement when it purchased the freehold interest in January 2010, when there were already six flats.
18. The Applicant relied upon a letter from its predecessor, dated 14.1.10 (page 105-109), which explains the percentage that was to be paid by each of the flats. In particular it states (page 108 of the bundle) "*With regard to the proportion of service charges I did have a discussion with our lawyers at the time the lease was granted and we agreed that on a floor area basis flats A and B should pay 25% each and the four smaller units 12.5% each. This has not been disputed by anybody and I have to say generally that the management has caused us very few problems*".
19. The Applicant stated the Lease for the lower ground floor flat (flat A) actually states it is liable to pay 25%. The Lease for flat D (one of the upper floor flats) actually states that it should pay 12.5%. Therefore, the Applicant is bound by those Leases.
20. Flat A occupies the entire lower ground floor. The Respondents flat occupies the entire raised floor except the area occupied by the staircase leading to the upper floors.
21. The Applicant stated that whilst the Respondent disputed the service charge, this was the first time he had raised any issue with paying 25%. The Respondent must have been told at the time he purchased the leasehold interest, on 15.6.2005, what was stated in the Lease.
22. The Respondent accepts the Lease does not stipulate what percentage is payable by him. However, the Respondent states the Applicant is arbitrarily charging him 25%. The Respondent states his property does not occupy 25% of the physical space within the property. Furthermore, when he purchased his leasehold interest in the property, there were only four flats. There are now two further flats on the first floor, thus increasing the number to six flats in the building. Therefore, requiring him to pay 25% is unreasonable and unfair. He should only pay 1/6.

23. The Respondent initially stated at the hearing that his own flat and flat A were about the same size. The Respondent then changed his evidence and stated flat A had about 5-10% more floor space. The size was based on his estimate and he did not have it surveyed. The Respondent stated that each of the upstairs flats were half the size of his own flat.
24. The Respondent initially stated a substantial portion of the service charges are in relation to common areas, of which a greater portion is on the staircase leading to the first floor and the areas around the first floor, to which he has no access or use. The upstairs flats have two people in each flat whereas he lives alone. Therefore, the "footprint" is higher upstairs and they should pay more. However, the Respondent then stated he agreed he should pay towards the costs of the communal areas, but he should only have to pay 1/6 and not 25% as there are six flats.
25. The Respondent stated he did not pay any service charge prior to the Applicant becoming the landlord as he was never charged by the previous landlord. He raised issues regarding the percentage he was paying in 2010 but he did not have any supporting evidence with him.
26. The Tribunal finds the Respondent is liable to pay 25% of the overall costs.
27. The Tribunal notes the Respondent had only raised the issue about the apportionment at the pre-trial review. The Respondent did not raise this issue in his defence in relation to the County Court proceedings (page 7 of the bundle).
28. Both parties agree the Lease does not stipulate the percentage to be paid. Clause 3(2) of the Lease states *"to pay the proper proportion...attributable to the demised premises PROVIDED THAT if the Lessor and Lessee shall fail to agree what constitutes the proper proportion...the matter shall be determined by the Managing Agents for the time being of the Lessor whose decision shall be final and binding on the parties hereto"*.
29. Flat A is required to pay 25% under its Lease. Flat D is required to pay 12.5% under its Lease. The Respondent accepts his own flat is twice the size of flat D. The Respondent initially stated his own flat was the same size as Flat A. Although the Respondent then changed his evidence and stated flat A had about 5-10% more floor space, the Tribunal notes the Respondent was simply expressing an estimate and flat A had not been surveyed. The Tribunal finds there is no significant difference between the size of flat A and the Respondents own flat. Based upon the size of the properties within the building, the decision by the Applicant to charge 25% each from flats A and B and 12.5% each from flats C, D, E, and F, is not arbitrary but a reasonable and fair apportionment.

30. Under Schedule 5 of the Lease (Clause 8), the Respondent is required to contribute towards the costs incurred by the Applicant in the provision and supply of such services "*for the benefit of the lessees of the Building*". The Respondent conceded at the hearing he was liable to pay towards the communal areas.

The reasonableness of the service charge for the year 2012

31. The Respondents share of the estimated service charge for the year was £1,271.00. The Respondents share of the actual service charge for the year was £1,612.00. The Respondent had paid the estimated service charge but refused to pay the excess of £341.00.
32. The Applicant explained the actual cost for the year had been higher than the estimate because of extra repairs which required the supply and erection of steel rods to secure the entire concrete half landing where the cast iron staircase was repaired, unblocking the entire drainage system, locksmiths having to attend and replace the lock to the main door, and the replacement of the TV aerial. This increased the estimated costs for "general repairs".

Management fee (£1,400.00)

33. The Respondent states he should pay 1/6 and not 25%. The Respondent also stated he did not know why and how the charge was calculated.
34. The Applicant stated it had decided to refund £150.00 each to the Respondent and the lessee of Flat A so that they each only paid £200 towards the cost of the management fee for the year (letter dated 28.2.12 on page 48 of the bundle). The Applicant stated it decided to make the refund due to the protest from the Respondent and the lessee from flat A and because it accepted the charge was too high for a building that was easy to run.

Insurance (£1,274.00)

35. The Respondent stated the charge for the year was too high. He had a quote of £600-£900.
36. The Applicant stated it was unable to comment on the quotes because it had not seen them until the hearing. It did not know what terms and conditions applied to the Respondents quote. It purchased its insurance through brokers who checked the market on a yearly basis. Its insurance was with Aviva, a good and reliable company.

Defective lights (£140.00)

37. The Respondent stated he had a quote of £53.80 for 12 lights.
38. The Applicant stated the Respondent had not previously raised this issue. The lights were replaced by NCMS Ltd, a firm they were introduced to by the lessee from flat A. The Applicant found the company to be very good. They have electricians. The Applicant had been using the company since 2011. An invoice was sent for the relevant job, which also required the hire of an extended ladder. The occupants of flat F had since confirmed the lights were working.

Down lights (£165.00)

39. The Respondent stated he had quotes of £4.45 per LED down light therefore replacing four lights should have cost £20.00.
40. The Applicant stated it did not have the invoice for the job at the hearing. However, it stated the accounts were audited and also matched the reconciliation statement sent to the Respondent.

TV aerial

41. The Respondent states he has no access to a TV aerial and has no need for one either therefore he should not have to pay for it.
42. The Applicant states a couple of the other flats had trouble with the signal, therefore the TV aerial was replaced at a cost of £360.00 (inclusive of vat). The charge was recoverable under the Lease (clause 8 of the fifth schedule) as it was for the benefit of lessees.

Cleaning (£567.00)

43. The Respondent states the cleaners spend 30-40 minutes each month. They Hoover the stairs and the communal areas. The Respondent states it should cost less. The Respondent had a quote for either £25.00 for a session each fortnight or £30.00 per session each month (inclusive of VAT).
44. The Applicant stated the Respondent had not previously raised this issue and it was unable to provide a breakdown of the works at the hearing. It imagined the work involved vacuuming the carpet on the ground, first, and second floors and the stairway, emptying the bins, and sweeping the driveway. The cleaners paid for their own materials. The charge was £40.00 plus vat per month. It had been using the same firm over a number of years and also at other premises. It stated the

other tenants / lessees in this building and the occupants of the other premises have not complained about the service.

45. The Tribunal finds the overall service charge for the year reasonable and payable.
46. The Applicant failed to provide relevant invoices and information as it stated the Respondent had failed to serve its "defence" within the time set down by the Tribunal. The Respondent failed to serve its defence in time as it claimed the Applicant had failed to provide an audited account. The Respondent stated he did not serve the quotes he wished to rely upon as he was not sure when they should be sent in. He assumed they could be considered on the day of the hearing. The Tribunal did its best to deal with the issues based upon the oral evidence from both parties.
47. Based upon the Tribunal's knowledge and experience of such matters, the Tribunal does not find any of the costs to be disproportionate. The Applicant had voluntarily reduced the management fee to £200 per year. The Applicant explained the cost of changing the bulbs involved also the cost of hiring a ladder. The Respondent does not have to benefit from the provision of the aerial as the charge is recoverable under clause 8 of the Fifth Schedule as it is for the benefit of the lessees of the building. The 2012 account has been audited. The Applicant had sent reconciliation statements to the Respondent. There are two other lessees, one of whom is also paying 25%, and none of them have complained about the service charge.

The reasonableness of the estimated service charge for 2013 and 2014

48. The Applicant stated the actual cost for 2012 was £6,449.00 (the Respondent's share being £1,612.00). The estimated service charge for 2013 was £7,660.00 (Respondent's share being £1,915.00) and for 2014 it was £7,860.00 (Respondent's share being £1,965.00). The estimated costs for 2013 had gone up due to unexpected building works and the estimate for 2014 had gone up because of the extra building works completed in 2013 and the anticipated works for 2014. The Applicant stated the 2014 budget had been accepted by the two other lessees.
49. The Respondent challenged in his "defence" the various items for 2013 as he had for 2012.
50. The Tribunal notes the Respondent had not challenged any of the items for 2014 either in writing or at the hearing.
51. The Tribunal finds the estimated service charges for 2013 and 2014 reasonable and payable. They are based on audited accounts for 2012

and anticipated extra works that are required. The Tribunal note the previous landlord did not do very much hence the Respondent not being charged any service charges prior to the Applicant becoming the landlord. It is reasonable to assume the building would need some attention, therefore, it is reasonable for the estimated service charges to be higher. If the Respondent disagrees with the actual costs at the end of each of those years, the Respondent can challenge them.

Application under s.20C and refund of fees and payment of costs

52. At the end of the hearing, the Applicant made an application for a refund of the fees that had been paid (£45.00 to transfer the matter to this Tribunal, £190.00 for today's hearing fee, and £125.00 paid in relation to the separate application made to the Tribunal concerning the 2014 service charge year). Having heard the submissions from the parties and taking into account the determinations above, the Tribunal orders the Respondent to refund the fees paid by the Applicant within 28 days of the date of this decision.
53. The Respondent did not apply for an order under section 20C of the 1985.
54. The Applicant applied for an order for costs at the hearing. The Applicant stated the lessees were not subsidising the Applicant, the Applicant also pays service charge for its three flats, the Applicant is the custodian for the lessees accounts, the bank account is overdrawn because of the failure by the Respondent to pay service charges on time and has resulted in the need to arrange overdraft facilities and to pay interest, the Respondent has not paid any service charge for the previous three years, and has not paid anything for 2013 and 2014. The Applicant wanted to claim costs on an indemnity basis in the sum of approximately £2,240.00.
55. The Tribunal may make an order in respect of costs only if a person has acted unreasonably in bringing, defending or conducting proceedings (paragraph 13(1)(b) The Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013). The word "unreasonable" is not defined but it was held in Ridehalgh v Horsefield [1994] 3 All ER 848 "*Unreasonable' also means what it has been understood to mean in this context for at least half a century. The expression aptly describes conduct which is vexatious, designed to harass the other side rather than advance the resolution of the case, and it makes no difference that the conduct is the product of excessive zeal and not improper motive. But conduct cannot be described as unreasonable simply because it leads in the event to an unsuccessful result or because other more cautious legal representatives would have acted differently. The acid test is whether the conduct permits of a reasonable explanation. If so, the course adopted may be regarded as*

optimistic and as reflecting on a practitioners judgment, but it is not unreasonable."

56. The Tribunal makes no order as to costs under paragraph 13(1)(b). There is no evidence to suggest and the Applicant did not state, that the Respondents behaviour was vexatious or that it was designed to harass the Applicant. The previous landlord, rightly or wrongly, did not charge for services. The Respondent was facing increasing service charges year on year since the Applicant became landlord. On the face of it, some of the charges, for example the cost of changing the light bulbs, appeared to be high in the absence of an explanation, which was provided at the hearing. The Respondents Lease did not specify the proportion payable by him. In all the circumstances, the Tribunal is satisfied the Respondent has not acted unreasonably.
57. Given the above conclusion, the Tribunal makes no findings concerning the amount claimed by the Applicant. If the Applicant seeks to recover any such costs as a service charge, the Respondent may, if the reasonableness of the sum claimed is challenged, make an application under s.27A of the 1985 Act.

The next steps

58. The Tribunal has no jurisdiction over County Court costs. Claim number LON/00AZ/LSC/2013/0714 should now be returned to the Bromley County Court.

Name: Mr L Rahman

Date: 15.4.14

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 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.

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.