



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

Case Reference : **LON/OOBB/LSC/2014/0048**

Property : **Upper Flat, 70 Terrace Road,
London E13 OPB**

Applicant : **Dalkator Ltd.**

Representative : **Circle Residential Management
Ltd.**

Respondent : **Mr Sukhvir Singh Lakham**

Representative : **None notified**

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

Tribunal : **Judge Goulden**

**Date and venue of
Hearing** : **Wednesday 16 April 2014 at 10
Alfred Place, London WC1E 7LR**

Date of Decision : **16 April 2014**

DECISION

Decisions of the Tribunal

(1) The Tribunal determines that the sum of £993 per annum is payable by the Respondent in respect of his contribution of 50% towards the interim service charges as shown in the budget for the year 2014. The said sum is payable by two instalments of £496.50.

(2) The Tribunal makes no Order as to costs and/or reimbursement of fees.

The applications

1. The Applicant seeks a determination pursuant to s.27A (3) of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of the interim service charge payable by the Respondent in respect of the service charge year 2014. The application was dated 24 January 2014 and was received by the Tribunal on 29 January 2014.
2. Directions of the Tribunal were issued on 4 February 2014 and were amended on 6 March 2014.

The hearing

3. No application was received from or on behalf of either the Applicant or the Respondent for an oral hearing.
4. The matter was determined by way of a hearing on consideration of the documentary evidence provided by the parties. The paper hearing took place on Wednesday 16 April 2014.

The background

5. 70 Terrace Road, London, E13 OPB ("the property") which is the subject of this application is described in the application as a terraced property comprising two self contained flats.
6. Neither side requested an inspection and the Tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.
7. A copy of the long lease of the Upper Flat at the property had been supplied to the Tribunal within the hearing bundle. This lease required the landlord to provide services and the tenant to contribute towards the costs by way of a variable service charge.

The issues

8. The issues relate to building repairs, buildings insurance, year end accounting and management fees.

The Applicant's submissions

9. Written submissions dated 17 February 2014 were received from Ms E Walpole of Circle Residential Management Ltd., the Applicant's managing agents. A copy of the interim service charge demand was supplied.
10. The Applicant stated, inter alia, that the budget item for building repairs was in relation to *"unknown reactive maintenance works that might occur during the period in question. We are now finding that with the ever increasing obligations under Health and Safety regulations....even simple guttering or roof repairs can incur significant costs where, for example, scaffolding or working platforms are now required to undertake repairs at height."*
11. In respect of buildings insurance, the Applicant stated, inter alia, that it was important that the quality of insurance cover was appropriate, and *"the broker tests the market every three years to find the policies which represent best value for money; The freeholder is not "connected" with the broker in any other way than a usual principle/agent relationship. It is the Applicant's position that the quality of the cover is appropriate and the cost reasonable...The actual cost of insurance for the period was £858.77 against a budget of £900"*.
12. In respect of year end accounting, the Applicant stated, inter alia *"the budget figure of £186 is based on a fixed fee agreement entered into between the landlord's managing agents and the accountant. Such a fixed fee arrangement provides best value to the tenants and is consistent with the market costs for undertaking such work"*.
13. In respect of management fees, the Applicant stated that the property comprised two flats and the management fee was calculated on a cost/unit basis of £300 per unit plus VAT and the budgeted management fee was consistent with other comparable properties and the scope of work to be undertaken by the management agent. It was also stated *"the management fee charged is in respect of the flowing items defined within paragraph 2.4 of the Service Charge Residential Code"*.
14. In the response to the Respondent's submissions (referred to below) it was contended that the only budget item which had been disputed by him was the insurance, but the alternative insurance quotation was not

detailed enough in order to carry out a thorough comparison. It was stated, inter alia, that the alternative quotation did not offer the same level of cover, there appeared to be no terrorism cover, the sum insured was too low and it related to the Respondent's flat alone, rather than the building. The Applicant said that its broker, Lockton Companies LLP, had carried out a market exercise (details of which were provided) and Aviva remained the most competitive.

The Respondent's submissions

15. In written submissions dated 21 March 2014, the Respondent contended the cost of insurance cover and said that he had made enquiries of the insurers to support his contention that it was too high. He thought it would be preferable for the lease to be varied in order that he could insure the property himself. An alternative insurance quotation was provided.
16. The Respondent said that the budget had increased considerably and "*the management fee has increased when no additional work has been undertaken*".
17. In further submissions dated 9 April 2014, the Respondent again addressed the issue of insurance and repeated his objection in respect of the management fee and said that he had always found the landlord's managing agents "*extremely demanding and aggressive*" which why he suggested arranging his own insurance.

The Tribunal's Decision

18. The Tribunal has considered the parties submissions and determines that the interim services charges sought under the headings building repairs, buildings insurance, year end accounting and management fees would be reasonably incurred and payable by the Respondent. In particular, the Respondent has not made specific submissions in respect of the issues relating to building repairs or year end accounting.
19. The Applicant does not have to obtain the cheapest insurance cover for its property, and accepts the Applicant's criticisms of the Respondent's alternative insurance quotation.
20. The management fee is on the high side but was within an acceptable range of reasonableness, particularly in view of the fact that the property includes only two flats, where the per unit costs could be expected to be higher than, for example, a large block of flats.
21. The Applicant made reference in its application for a determination in respect of costs and reimbursement of fees under Rule 13, but neither party addressed the same in submissions. The Tribunal makes no Order as to either costs and/or reimbursement of fees.

Name: J Goulden

Date: 16 April 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 20

- (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) a leasehold valuation 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 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.