



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

Case Reference : LON/00/AZ/LSC/2014/0435

Property : Flat 2 68 Sydenham Park London
SE26 4 DP

Applicant : Sixty Eight Ltd

Representative : Mr P Mertens of Counsel

Respondent : Mr A Facey

Representative : Mr S Alomo Solicitor

Type of Application : S27A and s20C Landlord and
Tenant Act 1985

Tribunal Members : Mrs F J Silverman Dip Fr LLM
Mr J Barlow JP FRICS
Mrs R Turner JP

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

Date of Decision : 12 December 2014

DECISION

The Tribunal determines that the Respondent is liable to pay the sum of £1174.71 in respect of service charges for the service charge year 2011-2012. Charges for service charge year 2013 will be payable as determined below following service by the Applicant landlord of the appropriate demands.
The Tribunal makes no order under s20C Landlord and Tenant Act 1985.

REASONS

1 The Applicant is the landlord of the premises known as 68 Sydenham Park London Se26 4DP which is divided into four self contained flats. The Respondent is the tenant of Flat 2 (the property) .

2 The Applicant issued proceedings against the Respondent in the County Court claiming arrears of ground rent, service charge and insurance premiums.

3 Those proceedings were transferred to the Tribunal on 21 March 2014 and Directions were issued by the Tribunal on 16 September 2014 . The Respondent did not attend and was not represented at the Directions hearing but accepted that he had received a copy of the Directions made in his absence.

4 The Applicant accepted that the Tribunal has no jurisdiction to consider questions relating to ground rent.

5 In relation to service charges the Applicant was asking the Tribunal to consider the reasonableness of service charges and insurance payments demanded from the Respondent for the years 2012 -14 inclusive. The service charge year runs from 1 December to 30 November in each following year.

6. The Tribunal did not consider it necessary to inspect the property.

7 The Respondent did not challenge the reasonableness of the service charge items in so far as they were chargeable under the lease but did challenge the service upon him of the various demands.

8 The Respondent did not attend the Tribunal in person and did not file or serve a witness statement in support of his case.

8 The Applicant drew the Tribunal's attention to pages 222-223 of the hearing bundle which demonstrate that the Respondent had indeed received copies of demands from the Applicant. The postal address and email address used by the Applicant to serve letters and documents on the Respondent was identical to those written by the Respondent himself on his acknowledgment of service of the county court proceedings from which this application derives (page 36). The Tribunal therefore concludes that, on the balance of probabilities, the Respondent had received the letters, demands and documents sent to him by the Applicant.

9 The Tribunal also heard oral evidence from Mr T Mitchell of the Applicant's managing agents who told the Tribunal that he routinely attached to service charge demands the tenant information shown on pages 66-68 of the hearing bundle. Prior to the appointment of the managing agents the same information in a slightly different format had been supplied to the tenants as in the example at page 69-70 of the bundle.

10 In respect of major works the Applicants referred to at page 70-78 to demonstrate compliance with s20 Landlord and Tenant Act 1985.

11 The Tribunal therefore finds that the Applicant had, where necessary, complied with the requirements of s20 Landlord and Tenant Act 1985 , had served on the Respondent the requisite demands and tenant information at the correct postal and email addresses and therefore, that on balance, the Respondent had been correctly served with the relevant documents and information.

12 The Tribunal notes that the service charge year under the provisions of the lease is 1 December to the following 30 November. None of the accounts put before the Tribunal adhered to this timescale. In future they must do so, as the

25 As before, items relating to gardening are not claimable as they do not fall within the Applicant landlord's remit, neither does cleaning (see Clause 4 (ix)) which is the responsibility of the tenants . No sums for cleaning are therefore allowable.

26 Similarly, the Applicant may not charge the Respondent for postage (page 193), or land registry fees (page 192).

27 Items which relate to the management company itself such as the company secretarial fee of £300 on page 190 and Companies House filing fees (page 187) and fees for the preparation of company accounts (page 187) do not fall within the scope of service charges and are not chargeable to the tenants.

28 The Managing Agents own management fee is permissible under the terms of the lease and was said by Mr Mitchell to be £250 per flat per year which is an amount within the range of fees typically charged for this type of flat management. The fee actually charged in the accounts is however £300 per quarter which equates to a fee of £300 per flat per year . The discrepancy in this sum was not explained to the Tribunal. The Tribunal does not consider that the management of the block has been carried out either competently or efficiently during the past and considers that in these circumstances the £250 per flat per year quoted by Mr Mitchell would be a reasonable sum to be charged for these services.

29 The Tribunal disallows the sums charged for Callout services (page 187 £52.80, and page 190 £48) as these sums should be integrated into the managing agents' annual fee and not be charged in addition to that fee.

30 The fee for an electrical safety test (pages 129 and 187 £180) is allowable as is the £300 for fire risk assessment (page 191), the surveyor's fee of £600 (page 191) and the £350 charged by LE Electrical Services for repairs (page 107) .

31 Court costs of £245 (page 123) are not recoverable under the service charge provisions contained in the lease.

31 The insurance premium of £1,170.20 is recoverable from the tenants (page 114) as is the £90 for general rubbish removal (page 102).

32 The invoice on page 118 relating to roof repairs is subject to s20 Landlord and Tenant Act 1985 because its total exceeds the sum of £250 per flat. The Applicant did not serve a s20 notice in respect of this work and explained that as originally estimated it had not been envisaged that the work would exceed the £1000 limit. The Applicant said that it did not intend to charge the tenants more than £250 each for this work and would bear the small excess from its own funds.

33 The Tribunal will also allow the sum of £8.85 in respect of key cutting (page 192).

34 The Tribunal is sympathetic to the needs of the landlord to maintain their property and the difficulties and constraints created by a poorly drafted lease. It suggests that the parties should seek to agree a deed of variation in order to regularise the proportions in which the tenants pay service charge under their respective leases, the items which are chargeable by way of service charge and to make provision for payments on account and for the establishment of a sinking fund.

- (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 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

- (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.

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) 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).

Judge F J Silverman as Chairman
Date 15 December 2014

Note:
Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking