

10892



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

Case reference : LON/00AC/LSC/2015/0061

Property : 12 Montgomery Court, 66
Mountfield Road, London N3 3NP

Applicant : Montgomery Court RTM Company
Limited

Representative : Mr Glen Tilley, Urban Owners

Respondent : Mr Sam Parsno

Representative : Newman Law

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

Tribunal members : Mrs S O'Sullivan
Mr D Jagger MRICS

Date of decision : 6 May 2015

DECISION

Decisions of the tribunal

- (1) The tribunal makes the determinations as set out under the various headings in this Decision
- (2) The tribunal declines to make an order in respect of the reimbursement of the tribunal fees paid by the Applicant

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 Applicant in respect of the service charge years 2013, 2014 and 2015.
2. The relevant legal provisions are set out in the Appendix to this decision.

The background

3. The property which is the subject of this application is a flat contained in a purpose built block of 12 flats.
4. Directions were made in this matter on 26 February 2015. These provided that this matter would be considered by way of a paper determination unless a hearing was requested. Neither party requested an oral hearing and accordingly this matter was due to be considered on 6 May 2015. At 11.28 on 6 May 2015 the solicitors for the Respondent emailed the tribunal. In this email it was said that the Applicant's bundle was not complete as invoices in relation to recent works and consultation notices under section 20 had not been included. A request was made for further directions and/or an oral hearing to consider these matters.
5. The directions made in this matter were clear and stated that any request for a hearing must be made within 28 days, that is, by 2 April 2015. The Respondent made no such request and as such has consented to this matter being dealt with on paper. The Respondent is now out of time. Likewise the tribunal declines to make further directions. In any event the tribunal does not consider that the further documentation which the Respondent's solicitors suggest be contained in the bundle is relevant to the issues before it and will not be of any assistance to the tribunal. The tribunal is being asked to consider whether in principle a reserve fund contribution may be demanded. It is then asked to consider whether the sums demanded were reasonable. Such matters do not involve the tribunal considering whether those reserve funds have been utilised and whether valid consultation under section 20 has

taken place. The Respondent may raise a challenge to those service charges by way of a separate application.

6. 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.
7. 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 and will be referred to below, where appropriate.

The issues

8. The tribunal has identified the relevant issues for determination as follows:
 - (i) Whether paragraph 7 of Chapter 12 of the lease allows the landlord to collect a reserve fund;
 - (ii) If the answer to 8(i) is yes, whether the sums demanded in respect of the reserve fund in 2013, 2014 and 2015 are reasonable; and
 - (iii) Whether an order for the reimbursement of application fees should be made.

The lease

9. The Respondent holds the property pursuant to a lease dated 2 January 2007 made between Linden Homes Chiltern Limited (1) and the Respondent (2) (the "Lease").
10. The Lease comprises a lease deed which sets out the particulars of the lease and attaches what is described as a leasebook (the "Leasebook"). The Lease is granted subject to the provisions contained in the Leasebook.

Does the lease allow for the collection of a reserve fund?

11. The Applicant relies on clause 4.3 which provides that "*you must...pay service charges as set out in Chapter 12*".
12. The Applicant then relies on clause 12.7 of the Leasebook which states;

“the budget may include, and the management company may recover as a service cost, reasonable provision for a major future cost it is reasonable to spread that costs over a number of service charge periods”.

13. The Respondent’s solicitors made a statement in response dated 7 April 2015. It is asserted that the provisions of the Lease are *“at best ambiguous”*.
14. It is not clear from the statement whether the Respondent in fact disputes that a reserve fund contribution is payable. However the contribution is disputed on the basis that he has not been consulted about these works and had no opportunity to discuss the need for them. It is also said that the works are not future major works as many have been carried out.
15. Reference is also made in the decision to recovery charges, these are not the subject of the application and the tribunal therefore has no jurisdiction to make any determination in this regard.

The tribunal’s decision

16. The tribunal determines that the Applicant may recover a contribution to the reserve fund in respect of major future costs.
17. The Lease is stated to be granted subject to the provisions of the Leasebook. There is clear provision in the Leasebook at clause 12.7 for the recovery of a contribution to a reserve fund for major future costs. The tribunal does not consider there is any ambiguity in the provisions in relation to the collection of a reserve fund.
18. The issues of consultation are not relevant to the issue of whether in principle the Applicant may collect a reserve fund. Such matters may be challenged by way of a separate application under section 27A although the parties would be well advised to meet and review the works which have taken place to date given that the Applicant says that they did not meet the threshold for consultation under section 20.

Are the amounts demanded by way of reserve fund contribution reasonable?

19. The Applicant also seeks the tribunal’s determination in relation to the reasonableness of the sums demanded for the years 2013, 2014 and 2105 in the sums of £691.55, £502.94 and £251.48 respectively.
20. The Respondent’s contribution is 12.57361% of the total which is based on square footage. The Lease provides for the share to be a *“fair and*

reasonable proportion” and the landlord says that this is a fair and reasonable method.

21. The Lease provides for the share to be a “*fair and reasonable proportion*” and the landlord says that this is a fair and reasonable method.

22. The total demanded in respect of service charge for the years in issue is therefore;

2013 £5,500

2014 £4,000

2015 £2,000

23. The Applicant explains that the reserve fund is collected for the cost of future major works and will avoid leaseholders being hit by larger one off bills in the future. The fund is to cover the cost of redecoration of the lower external walls and garages, making good areas of disrepair on the external of the building (sic) and internal re-decoration. These works are said to be necessary now that the building is 8 years old. The majority of the reserve fund currently held has not been expended with only decorating works to the car park (£1,930) and exterior decorating (£2,250) having been carried out. As at April 2015 the amount held is £24,347.

24. The Respondent does not appear to dispute the amounts sought but rather questions the necessity for the fund at all given the age of the building. It is also said that the works are not future works but have already been carried out.

25. It is also asserted for the Respondent that the methodology used is neither fair nor reasonable as the service charges do not relate to one particular flat but to the block as a whole and particularly the common parts which serve all owners.

Reasonableness of sums demanded - the tribunal’s decision

26. The Applicant has confirmed that the service charge is calculated based upon the respective sizes of all the flats in the block. We consider this to be the standard method of apportionment and that this is a reasonable method in which to ascertain a “*fair and reasonable proportion*” for service charge purposes. Such a method is based upon the net internal area of all the flats and excludes all common parts of the block. This appears to be the method adopted by the Applicant as it refers to using the “*respective sizes of all the flats in the block*”.

27. The tribunal is therefore satisfied that the apportionment to the Respondent is fair and reasonable.
28. We went on to consider the actual sums demanded by way of reserve fund for the years in question. We noted that the amounts demanded have declined over the three years as the fund has been built up. The Applicant has clearly identified a planned maintenance programme. We note that these objectives were discussed with all leaseholders in 2013. The tribunal considers it good practice to build up a sufficient reserve sum to protect leaseholders from large and unexpected service charge demands. In view of the age of the building and the works considered to be necessary in the near future we considered that the amounts demanded were reasonable in amount.

Application for refund of fees

29. In the application the Applicant made an application for a refund of the fees that it has paid in respect of the application. However no submissions were made in relation to this application. In the circumstances the tribunal declines to make any order.

Name: S O'Sullivan

Date: 6 May 2015

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.