

10651



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

**Case reference** : LON/00AE/LSC/2014/567

**Property** : Flat A, 10 Anson Road, London  
NW2 3UT

**Applicant** : Nandula Patel

**Representative** : Self represented

**Respondent** : Anglefarm Limited

**Representative** : N/A

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

**Tribunal members** : Judge Hargreaves  
Hugh Geddes JP RIBA MRTPI

**Date and venue of  
hearing** : 10 Alfred Place, London WC1E 7LR  
6<sup>th</sup> March 2015

**Date of decision** : 6<sup>th</sup> March 2015

---

**DECISION**

---

**Decisions of the tribunal**

- (1) The tribunal determines that nothing is payable by the Applicant in respect of the service charges for the years 2012 2013 2014 as set out below.

- (2) The tribunal makes the determinations as set out under the various headings in this Decision.
- (3) The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge.
- (4) The tribunal determines that the Respondent shall pay the Applicant £125.00 by 5pm 8<sup>th</sup> April 2015, in respect of the reimbursement of the tribunal fees paid by the Applicant.
- (5) The Respondent must pay the Applicant the sum of £120 in respect of the costs of this application pursuant to Tribunal Rule 13 by 5pm 8<sup>th</sup> April 2015.

### **The application**

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") of the amount payable by the Applicant in respect of the service charge years 2012, 2013 and 2014. She issued her application on 7<sup>th</sup> November 2014.
2. The relevant legal provisions are set out in the Appendix to this decision.

### **The hearing**

3. The Applicant appeared in person at the hearing with the assistance of Mr Vagdia and the Respondent failed to appear or contact the tribunal to explain its non-appearance. The tribunal took the view that it was satisfied that the Respondent was aware of the hearing, and that because of its procedural history, and the comparatively low value of the amounts in dispute, it was just to proceed with the hearing pursuant to Tribunal Rule 34.
4. Procedurally the background to the hearing is as follows. On 14<sup>th</sup> October 2013 the tribunal (differently constituted) heard a similar dispute between the parties, which was resolved in favour of the Applicant for reasons which are clearly expressed in the decision. It appears that the parties were also litigating the question of ground rent arrears in Willesden County Court in 2014. It follows that this application is another in a series of disputes between the parties which are being resolved through the courts.
5. Judge I Mohabir gave detailed case management directions on 2<sup>nd</sup> December 2014. On that occasion the Respondent was represented by counsel. On 23<sup>rd</sup> December the Respondent by its director Rabe Fauzi

filed a statement of case which contained two admissions:- (i) the management charge for 2012 was not properly chargeable and (ii) the correct proportion of service charges attributable to the Applicant's property is 27.24% (as opposed to the previously levied 28.33%). This decision reflects both those concessions, which are entirely proper. Otherwise the statement of case failed to deal with any particulars as required by the December directions.

6. This tribunal considered the application for a paper hearing on 9<sup>th</sup> February 2015 and decided that the evidence was inadequate, gave further directions putting the responsibility for preparing documentation and a bundle on the Respondent, and adjourned the case to be heard on 6<sup>th</sup> March. Those directions were explicit. They were completely ignored by the Respondent which has made no contact with the tribunal in response. In particular the tribunal directed the Respondent to produce *(ii) all service charge demands relied upon by the landlord (iii) all documents relied upon by the landlord to support the service charges claimed*. The reason for this direction was simple: they had not been exhibited to the Respondent's statement of case, the Applicant had not produced any demand apart from one document, and the tribunal was entirely justified in wanting to see the evidential basis for the Respondent's service charge demands. The Respondent's failure to respond to these directions is unreasonable litigation conduct for at least two reasons (i) a disregard for reasonable tribunal requirements and (ii) an indirect confirmation that its answer to the application was inadequate evidentially and legally.
7. The Applicant was able to produce one document addressed to her dated 19<sup>th</sup> September 2014. It was on Hunterquick Ltd headed note paper and said *"this notice is given to you by your landlord Anglefarm ltd whose address is PO Box 20958 London W2 1YF"* (which according to the Respondent's evidence in the form of a copy of an ARO1 annual return for Hunterquick Ltd attached to its statement of case, is at 118-120 Queensway, not that this was drawn to the Applicant's attention). She confirmed after questioning that it was this demand which prompted her to issue the application. It refers to *"Information regarding date for payment and your rights and obligations is set out in the attached sheets"* neither party having produced any copies, we can infer that no such sheets were attached. It appears that the Applicant has paid something towards the monies demanded, but the situation was not entirely clear. She included in her documents a copy of a letter dated 1<sup>st</sup> January 2015 sent to the Respondent, copied to the tribunal, to which the tribunal has seen no substantive reply from the Respondent.

### **The background**

8. The property which is the subject of this application is a standard Victorian/Edwardian two storey brick built dwelling divided into three

flats. An engineer's report prepared for the landlord by Adam Thompson, the costs of which are disputed by the Applicant, records that *"From a visual inspection it is apparent no substantive works have been carried out externally for some time. Recent repairs have been carried out round window frames."* The Respondent does not contend it has carried out any works.

9. Some photographs of the building were provided in the hearing bundle. 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.
10. The Applicant 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. Clause 2(3)(a) contains the basic service charge provisions requiring the Applicant *"to pay and contribute to the Lessor a proportion of the cost (such proportion to be based on the rateable value of the demised premises in proportion to the total rateable values of all the flats in the building [ie 27.24%])"* of various standard costs such as insurance, maintenance, repairs etc (the cleaning of common parts is dealt with separately under clause 2(2). It includes raising a reserve sum to meet future liabilities (subject to certain conditions) and *"the reasonable fees of any managing agents or accountants for the collection of the rents of the flats ... and for the general management thereof"*: see clause 2(3)(a)(vi)(vii).
11. But the right to levy service charges is on any view governed by clause 2(3)(b): *"The amount of such contribution shall be ascertained and certified as soon as practicable after 24<sup>th</sup> March in each year by the Lessor's managing agents or accountants (whose certificate shall (save as to errors of law) be conclusive final and binding on both parties hereto) once a year in respect of the year to 24<sup>th</sup> March preceding the date of the certificate."* The Respondent has not complied with this provision.

### **The issues**

12. The question is whether any of the items charged by the Respondent set out in the notice dated 19<sup>th</sup> September or otherwise are properly due under the relevant statutory provisions, and the lease. The notice of 19<sup>th</sup> September does not include any items for 2012 and claims other items based on the years 1<sup>st</sup> January 2013-31<sup>st</sup> December 2013 and 1<sup>st</sup> January 2014-31<sup>st</sup> January 2014.
13. The "notice" of 19<sup>th</sup> September 2014 is defective as it does not comply with s21B LTA 1985 or the requirements of *Service Charges (Summary of Rights etc) (England) Regulations 2007* (SI 2007/1257). That would give the Applicant the right to withhold payment of the amounts demanded in any event.

14. Similarly there is no evidence whatsoever that any demands comply with the contractual requirements of clause 2(3)(b) of the lease which provides a perfectly straightforward scheme for recovery of service charges and which has been ignored by the Respondent.
15. These two points would justify the Applicant being successful. However, so far as the substance of the demands is concerned (if for example the tribunal is wrong about the defective nature of the demands), the tribunal finds further as follows.
16. As the tribunal has not been shown any evidence of a compliant service charge demand for the insurance premium attributable to the Applicant's property for 2012 (there is a claim for £337.12) then that is not recoverable. There is no proper demand, it has not been certified as due after 24<sup>th</sup> March, and the % proportion is inaccurate. The same point applies to the insurance premium demanded of the Applicant for 2013, though there is evidence before the tribunal that the building was insured for the two years in question (but no evidence that the information was supplied to the Applicant).
17. As far as the management fee of £125 for 2013 is concerned (in addition to the points at paragraphs 13 and 14 above), there is no evidence of any work undertaken by Hunterquick Ltd as managing agent and the Respondent has wholly failed to demonstrate why that charge is reasonable. Furthermore, the letter exhibited to the Respondent's statement of case dated 14<sup>th</sup> May 2014 asking the Applicant to pay all future rent and other sums due under the lease to Hunterquick Ltd is not evidence of the appointment of that company as a managing agent at all despite the Respondent's contention to the contrary. There is undoubtedly an overlap in registered office and personnel between the Respondent and Hunterquick and that, together with the absence of any evidence relating to the appointment of the latter as managing agent, is fatal to the Respondent's claim to be able to charge for Hunterquick as a managing agent. Further, there is no evidence that Hunterquick has actually done anything for which the Respondent would be liable to pay it and recoup the charges from the Applicant.
18. As for the engineer's report, that appears to have been provided for the Respondent's benefit and the Respondent's explanation in paragraph 6 simply fails to justify the charge or its reasonableness so far as the tribunal is concerned.
19. The final charge to be considered is the "*interim service charge for the period 1<sup>st</sup> January 2014-31<sup>st</sup> January 2014*". Based on previous years' demands one might imagine that this might include insurance but on the evidence before the tribunal it is hard to envisage what else might be recoverable. There is however no contractual basis for recovery of an interim service charge (in advance) in the lease and the provisions of

clause 2(3)(b) have been ignored. That amount is not payable. There is nothing to suggest it is reasonable.

**Application under s.20C and refund of fees**

20. At the end of the hearing, the Applicant made an application for a refund of the fees that she had paid in respect of the application. Taking into account the determinations above, the tribunal has concluded that it is appropriate to direct the Respondent to refund the application fee to the Applicant.
21. In the application form the Applicant/ Respondent applied for an order under section 20C of the 1985 Act. Taking into account the determinations above, the tribunal concludes that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the Respondent may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge.
22. In this case the Tribunal also considers that an order for costs pursuant to Tribunal Rule 13 is justified. The Respondent's failure to comply with any directions is unreasonable: it has failed to demonstrate any real defence to the application, or care much about how it sought to defend it. The Applicant is entitled to her costs of the application in addition to the hearing fee, to be assessed summarily on the standard basis. We concluded from what she said that allowing her £30 towards stationery, copying and postage costs would be reasonable, as would 5 hours at the litigant in person rate of £18 per hour, totalling an entirely reasonable £120.

**Judge  
Hargreaves  
Hugh  
Geddes**

**6<sup>th</sup> March  
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.

## **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) 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 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.

## **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 the appropriate 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 the appropriate 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).