

10893



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

Case Reference : **LON/00AH/LSC/2015/0026**

Property : **Flats at Bridgehouse, 6 Waterworks
Yard, Croydon CR0 1UL**

Applicant : **Ms Natalie Patel and those
leaseholders whose details are set
out on the annexe to the
Application**

Representative : **Ms Natalie Patel**

Respondent : **Moat Homes Limited**

Representative : **Samantha Howard Service Charge
Officer with Moat Homes Limited**

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

Tribunal Members : **Tribunal Judge Dutton
Ms S Coughlin**

**Date and venue of
Determination** : **6th May 2015 at 10 Alfred Place,
London WC1E 7LR**

Date of Decision : **6th May 2015**

DECISION

Decisions of the tribunal

- (1) The Tribunal dismisses the application for the reasons stated below
- (2) 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

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 additional amount of service charges payable by the Applicant in respect of the service charge year 2013 - 2014.
2. The relevant legal provisions are set out in the Appendix to this decision.

The background

3. The flats in question are to be found in a block of some 75 residential and 3 commercial units constructed in 2008. Within the building are 30 shared ownership units held on leases between the Respondent and the individual leaseholder. Copies of the relevant leases were included in the bundle and appeared to be in identical terms, save as to premium and rents.
4. The Respondent holds the 30 flats under the terms of a head lease for 999 years. It is the Head Landlord's responsibility to provide services and the Respondent to pay for them. The seventh schedule of this lease sets out the Respondent's liability which includes two half yearly payments on account in January and July of each year as well as any balancing payment within 14 days of a certificate being presented showing the actual costs incurred.

The issues

5. The main issue centres around a demand made by the Respondent for a balancing charge of between £425 and £476 per leaseholder, who is a party to these proceedings. In addition, as a further complaint the question of the state of repair and facilities at the building is raised. The final paragraph of the application says this "*We are therefore asking the Tribunal to consider whether Moat are justified in requiring Bridge House residents to pay this additional fee. Given the scale of increase, the full capacity of the building, the poor service provided by the managing agent and the fact there is only one lift and very few*

communal (sic) areas it is difficult to find any justification and we urge the Tribunal to investigate this matter further”.

6. In response to the Application Moat lodged a witness statement made by Samantha Howard dated 10th April 2015. This followed on from a number of letters which told the same story, which is as follows. Moat's estimate for costs for 2013 – 14 was based on the actual service charges for the year 2011-2012. These proved to be an underestimate as a result of a substantial increase in the cost of insurance and the inclusion of a payment in respect of a reserve fund account. The statement explains why the insurance increased and the reasoning behind the inclusion of the reserve fund payment.
7. On 23rd March Ms Patel responded and we have noted the contents.

The tribunal's decision

8. We are told that the Landlords insurance brokers, Kerry London were faced with a withdrawal of cover by Aviva for reasons that are not clear. As a result a market review was undertaken and insurance was placed with Liberty for a period July 2012 to March 2013. Subsequently the cover was continued with Liberty for the following year, ending March 2014. The premium was £37,276.53. This will have caused some confusion to the Applicants and we suspect the Respondent. The initial period with Liberty is not for a full year and therefore gives an incomplete picture of the insurance premium. We do not have any accounts, either estimated or actual.
9. There is no evidence before us from the Applicants that the premiums are unreasonable. An explanation is given by the brokers for the Head Landlord, which refers to Aviva discontinuing cover, for reasons unknown, and that a market review was undertaken leading to the insurance being placed with Liberty and for the year 2014-15 now with AXA at a reduced premium of £29,743.80. Matters are further complicated as a result of confusing accounting practices but we are assured that the Respondent has reflected this and that the leaseholders will not be charged for the error. If this is not the case then the Applicants can seek a review.
10. We cannot see that any particular blame attaches to the Respondent. They relied on the budget from the managing agents. We find therefore that the additional sum claimed, in so far as it relates to the increased insurance premium, is due and owing.
11. In so far as the reserve fund is concerned we find that as a matter of principle the creation of such a fund is reasonable. The lease between the Landlord and Respondent provides for this and the Applicant has a duty to pay the sum demanded of the Respondent, which we are told is

2008 and will require redecoration and refurbishment of the interior parts in the not too distant future, a fact borne out by the Applicants' complaints and photographs.

12. The general complaint as to the lack of facilities is noted. However the existence of only one lift is a fact known to the Applicants at the time of purchase, similarly the layout.
13. There does appear something of a shortfall in the management by the Respondent and its relationship with its leaseholders. The letter from Moat dated 2nd April addressed to Ms Patel but sent to the Tribunal offices appears to accept this and hopefully address this issue. We do not know what 5% represents in monetary terms. It is certainly a fairly low percentage, although these days management costs are more properly based on a fixed fee per unit. We do not have enough information to pursue this issue any further and therefore make no reduction in so far as this year is concerned.
14. As result of our findings we dismiss the application. However, there has been some confusion and even in the witness statement of Ms Howard dated 10th April 2015 the Respondent is still awaiting further information, notwithstanding that the application was lodged in January 2015. In those circumstances we make an order under section 20C of the Landlord and Tenant Act 1985 considering it just and equitable in the circumstances.

Name: Tribunal Judge
Andrew Dutton

Date: 6th May 2015

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 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.