



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

**Case Reference** : LON/00AU/LSC/2014/0553

**Property** : Flat 26 Greenaway House  
Fernsbury Street London WC1X  
OHZ

**Applicant** : The London Borough of Islington

**Representatives** : Rubina Begum – Islington Legal  
Services

**Respondent** : Mr Bryan Torfeh

**Representative** : In person

**Type of Application** : Reasonableness of and liability for  
service charges and administration  
charges under the Landlord and  
Tenant Act 1985 (Section  
27A)/Commonhold and Leasehold  
Reform Act 2002 (Schedule 11)

**Tribunal Members** : Prof Robert M. Abbey (Solicitor)  
Mr Clifford Piarroux (Lay Member)  
Mr Peter Roberts (Architect)

**Date and venue of  
Hearing** : 30th March 2015 at 10 Alfred Place,  
London WC1E 7LR

**Date of Decision** : 21<sup>st</sup> April 2015

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**DECISION**

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## **Decisions of the tribunal**

1. The Tribunal determines that as at the date when the county court proceedings were issued by the applicant there was payable by the respondent to the applicant:

### **Service charges 2012-2013**

○ Caretaking	£231.00
○ Communal electric	£28.03
○ Management fee	£206.09

### **Service charges 2013-2014**

○ Caretaking	£153.25
○ Communal electric	£33.10
○ Management fee	£205.94

### **Administration charges**

Administration fees £ 20.00

2. The file shall be returned to the County Court at Clerkenwell and Shoreditch for the determination of the following claims which this tribunal does not have jurisdiction to determine:

- Court fee and
- Costs

3. The reasons for our decisions are set out below. Later reference in this Decision to a number in square brackets ([ ]) is a reference to the page number of the hearing bundle/file provided to the Tribunal for use at the hearing.

## **The application and procedural background**

4. In the summer of 2014 the applicant landlord commenced legal proceedings [2] against the respondent as proprietor of a long lease [15] of the subject property.
5. The respondent did file a defence [4] which asserted that the Respondent was not liable for the service charges claimed because he says the services had been provided at the property to a very poor standard and that it was not reasonable that he pay for such poor cleaning, redecoration and other works and expenses claimed by the landlord.
6. The applicant's claim concerning the determination of service charges referenced A6QZ435C was transferred to this Tribunal by order of District Judge Sterlini from the County Court at Clerkenwell and

Shoreditch. The date of the order [9] was 28 October 2014. The claim made in the County court was for unpaid service charges and the administration costs of their collection.

1. The relevant legal provisions are set out in the Appendix to this decision.

### **The hearing**

2. The applicant was represented at the hearing by Ms Rubina Begum, from Islington Legal Services and the respondent appeared in person.
3. The tribunal had before it an agreed bundle of documents prepared by the applicant.
4. At the hearing the Tribunal had the benefit of hearing evidence from several witnesses for both parties. Giving evidence for the applicant were Catherine Ellery Islington Estate Services Manager, Ebenezer Newton-Mensah Islington Concierge Manager (formerly a Quality Assurance Officer (QAO)) and Richard Powell Islington Projects Manager. Giving evidence for the Respondent were Kathryn Phillips of Flat 12 Greenaway House, Catherine Dulin of flat 26 Greenaway House and the Respondent.

### **The background**

5. The property which is the subject of this application is one of twenty eight leasehold flats laid out over several storeys within a block of flats or maisonettes. The respondent occupies flat 26, and this is described in the lease [15] as being a fourth and fifth floor maisonette. Each lessee is liable for a due proportion of the total service charge expenditure incurred by the landlord.
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.
8. The landlord applicant claimed arrears of service charges for 2012/13 and 2013/14 in the sum of £1199.54. The Applicant stated at the hearing that since the claim was made actual service charges for 2013/14 have been produced giving a total claimed of £1213.15 for 2012/13 and 2013/14 combined. An administration costs claim of £20 was also included in the County Court particulars of claim.

9. The items in dispute at the hearing were identified as being for caretaking, communal electric charges, and the management fee for 2012-13 and caretaking, communal electric and the management fee for 2013-2014. The applicant says these service charges are properly payable and the respondent says they have not been reasonably incurred. All other charges for the periods in question have either been accepted by the respondent or have been the subject of an agreement between the parties and are therefore not in dispute.

### **The service charges claimed**

10. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal determines the issue as follows.

11. Dealing first with the 2012-13 service charges, the service charge expenditure listed as still being disputed [38] was

○ Caretaking	£458.64
○ Communal electric	£56.06
○ Management fee	£206.09

12. The tribunal was able to see a detailed setting out of standards and reports provided by the Applicant that sought to show what was expected from their employees in the provision of caretaking. In particular the Tribunal was able to consider a Caretaking Quality Assurance Manual that laid out in great detail what was expected from their caretaking service, [200]. Evidence was also provided of what was expected and what was seen on management inspections. The tribunal was also shown reports about the detail of the caretaking work. However, on hearing from the residents it was clear to the tribunal that the services provided were not to the expected standards set out in the manual. Indeed the council reports themselves highlighted deficiencies that seemed to continue for long periods without being remedied. In particular the Tribunal noted the evidence about the continuing problem with urine and urine odours in the lift that seemed to continue for several months. Accordingly the Tribunal decided that the caretaking service charges should reasonably be reduced to £231 from the figure set out above, i.e. to approximately 50% less.

13. With regard to the communal lighting for 2012-2013 the issue in dispute was about the length of time these lights were on namely were they on needlessly during daylight hours. The Applicant was of the view that this was not the case. However, on hearing from the residents it was clear to the tribunal that the communal lights were prone to remaining on during the day, incurring charges needlessly. Accordingly the Tribunal decided that the communal lighting service charges should reasonably be reduced to £28.03 from the figure set out above, i.e. by a reduction of 50%.

14. So far as the management fee for 2012-2013 was concerned the tribunal had some sympathy with the views expressed by the Respondent and the other residents who gave evidence regarding the management of the estate. However, the tribunal took the view that the charge was actually a reasonable one given the nature of the estate and the work involved in the provision of services and so decided that the charge would not be changed.
15. Dealing secondly with the 2013-14 service charges, the service charge expenditure listed [42] was
- |                     |         |
|---------------------|---------|
| ○ Caretaking        | £306.51 |
| ○ Communal electric | £66.21  |
| ○ Management fee    | £205.94 |
16. As noted above, the tribunal was able to see a detailed setting out of out standards and reports provided by the Applicant that sought to show what the expected from their employees in the provision of caretaking. Again evidence indicated the service was not up to standard. For similar reasons set out above in paragraph 12, the Tribunal decided that the caretaking service charges should reasonably be reduced by 50% to £153.25.
17. With regard to the communal lighting for 2013-2014 the issue was as set out for the previous year, see paragraph 13 above. For similar reasons the Tribunal found the amount claimed to be unreasonable and makes a 50% reduction to give a figure of £33.50 as reasonable for the year.
18. With regard to the management fee for 2013-2014, as noted above, the tribunal had some sympathy with the views expressed by the Respondent and the other residents who gave evidence regarding the management of the estate. However, the tribunal took the view that the charge was actually a reasonable one given the nature of the estate and the work involved in the provision of services and so decided that the charge would not be changed. Indeed in this year the charge was slightly lower than for the previous year.
19. With regard to the administration fees the tribunal was satisfied that these were reasonable and proportionate given the nature of the claim and the dispute. The tribunal therefore decided that the administration charges of £20 were payable by the Respondent.

**Transfer back to the county court**

20. There were some claims made in the court proceedings which we do not have jurisdiction to determine. We have therefore transferred the file

back to the county court so that these claims may be pursued if the applicant wishes to do so.

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

21. The applicant did make an application for a refund of the fees that had been paid in respect of the application/ hearing. Having heard the submissions from the parties and taking into account the determinations set out above, the Tribunal does not order a refund of fees.
  
22. At the case management conference the tribunal directed that costs under section 20C would be considered by the tribunal. Having heard the submissions from the parties and taking into account the determinations set out above the Tribunal determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act that the costs incurred by the Applicant in connection with these proceedings should not be taken into account in determining the amount of any service charge payable by the tenant.

**Name:** Judge Professor Robert M. Abbey      **Date:** 21.April.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 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**

#### **Administration charges**

##### Part 1 Reasonableness of administration charges

##### Meaning of “administration charge”

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.

##### Reasonableness of administration charges

2 A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

3(1) Any party to a lease of a dwelling may apply to a leasehold valuation tribunal for an order varying the lease in such manner as is specified in the application on the grounds that—

(a) any administration charge specified in the lease is unreasonable, or

(b) any formula specified in the lease in accordance with which any administration charge is calculated is unreasonable.

(2) If the grounds on which the application was made are established to the satisfaction of the tribunal, it may make an order varying the lease in such manner as is specified in the order.

(3) The variation specified in the order may be—

(a) the variation specified in the application, or

(b) such other variation as the tribunal thinks fit.

(4) The tribunal may, instead of making an order varying the lease in such manner as is specified in the order, make an order directing the parties to the lease to vary it in such manner as is so specified.

(5) The tribunal may by order direct that a memorandum of any variation of a lease effected by virtue of this paragraph be endorsed on such documents as are specified in the order.

(6) Any such variation of a lease shall be binding not only on the parties to the lease for the time being but also on other persons (including any predecessors in title), whether or not they were parties to the proceedings in which the order was made.

#### Notice in connection with demands for administration charges

4(1) A demand for the payment of an administration charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to administration charges.

(2) The appropriate national authority may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.

(3) A tenant may withhold payment of an administration charge which has been demanded from him if sub-paragraph (1) is not complied with in relation to the demand.

(4) Where a tenant withholds an administration charge under this paragraph, any provisions of the lease relating to non-payment or late payment of administration charges do not have effect in relation to the period for which he so withholds it.

#### Liability to pay administration charges

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 subparagraph (1).