11376

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00AF/LSC/2015/0447**
Property	:	**Flat 10 The Clockhouse 83 Tweedy Road BR1 1RP**
Applicant	:	**Matthew D W Doran**
Representative	:	**Debbie Randall, Applicant's mother**
Respondent	:	**The Clock House Flat Management Limited**
Representative	:	**Foulds Solicitors Limited**
Type of application	:	**For the determination of the reasonableness of and the liability to pay service charges and administration charges**
Judge	:	**Judge T Cowen**
Venue	:	**10 Alfred Place, London WC1E 7LR**
Date of decision	:	**28 January 2016**

DECISION

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Decision of the tribunal

(1) The Tribunal determines that the amount payable by the Applicant by way of interim service charge for the year ending 29 February 2016 is the sum demanded by the Respondent, namely the total amount of £1,874.25.

(2) The Tenant's application under section 20C of the 1985 Act is refused.

(3) The reasons for the decision made above are set out below.

Identity of the Respondent

1. The Respondent is named in the application and in the statements of case as "The Clock House **Management Company** Limited".

2. The Respondent's solicitors' correspondence identifies the Respondent as "The Clock House **Management Company**".

3. The management company which is a party to the lease is "The Clock House **Flat Management** Limited".

4. The managing agents' demands for payment dated 10 August 2015 and 8 October 2015 names the party to whom payment should be made as "The Clock House **Flat Management Company** Ltd".

5. The previous agents were working on behalf of the landlord, Wallace Estates Limited.

6. The accounts prepared by accountants do not include the name of a company at all.

7. It is not clear to me whether there are three different companies or whether these are all the same company. If so, I do not understand why there are so many variations of its name.

8. I shall assume for the purposes of this decision that the Respondent is the management company named in the Lease as "The Clock House **Flat Management** Limited" or the same company after a name change or otherwise a company to which the interest of the management company in the Lease has been assigned.

9. I shall determine the payability of the service charges on that basis. It is up to the parties to check whether the service charges are being paid to the correct entity under the terms of the Lease.

10. If my assumptions about the identity of the Respondent are wrong, then the parties shall have liberty to apply for a review of this decision on that issue.

11. There is also an allegation relating to a conflict of interest. It is suggested that some of the directors of the Respondent company are the same as the directors of the landlord company. That issue does not affect the payability of service charges, which is the only issue I have jurisdiction to decide in this application. In any event, neither party has cited to me any rule which prevents the landlord and the management company from being connected. I do not propose to look any further into that issue.

The application

12. The Property is a two bedroom flat in one of three adjoining blocks comprising a total of 13 flats. There is a lease of the Property dated 14 September 2005 ("the Lease") for a term of 125 years from the beginning of 2004. The Applicant ("the Tenant") is the current owner of the term of the Lease. The Respondent ("the Company") is a party to the Lease. Under the terms of the Lease, the service charges are payable by the Tenant to the Company.

13. The Tenant applied to this Tribunal by application dated 11 October 2015 under section 27A of the 1985 Act for an order as to the payability of the service charges demanded by the Company for the service charge year "2015", which in context I take to mean the maintenance year 1 March 2015 to 29 February 2016.

14. The payability of service charges falls to be determined under sections 18 and 19 of the 1985 Act. All of the above-mentioned sections are set out in full in the Appendix to this decision.

15. The Tenant is represented by his mother, Deborah Randall. The Tenant signed a letter dated 20 November 2015 authorising his mother to represent him. Both parties have consented to this matter being dealt with on paper and without a hearing.

16. The application form concerns a single issue: whether the Company is entitled to levy a charge to increase the sinking fund and if so, by how much?

The Service Charge Covenants

17. By paragraph 13.1 of Schedule 4 to the said lease, the Tenant covenanted to pay the Maintenance Charge to the Company. The Maintenance Charge is a specified fraction (1/12 or 1/13 depending on the item) of the expenses incurred by the Company in complying with its covenants and provision for future expenditure. The service charge year ends on 31 March of each year.

18. The interim maintenance charge is payable on 1 March and 1 September of each year. The Aggregate Maintenance provision is made up of two elements:

    a. The estimated expenditure for the current service charge year; and

    b. A reserve towards those irregular items of expenditure which, in the Company's reasonable determination, are likely to arise after the current service charge year.

The Relevant Demands

19. On 10 August 2015, the Company sent a service charge demand to the Tenant for the sum of £1,961.01. This included the sum of £937.12 in respect of the first half yearly charge for the 2015-2016 year made up of the sums of the £102.08 and £835.04 in relation to the two parts of the service charge schedule of the Lease (for which different contribution proportions are payable). The balance of that demand related to outstanding service charges for the previous year.

20. The Company has also sent the following demands to the Tenant for interim service charges in respect of the year in question:

    a. A demand for £937.13 dated 10 April 2015

    b. A demand for a further £937.13 dated 8 October 2015

21. That makes a total of £1,874.26 interim service charges for the entire year.

The Tenant's Case

22. In his statement of case (which was served in response to the Company's statement dated 7 December 2015 – see below), the Tenant raises a number of points, which may be summarised as follows:

a. The Company has cancelled the Tenant's standing order for the payment of monthly on-account service charges

b. The Company has not answered the Tenant's queries on the service charge demand sent on 10 August 2015.

c. Major works costing about £55,000 were carried out in 2013, so there is no good reason to increase the reserve fund, because it is unlikely that further major work will be needed in the near future.

d. The accounts of the Company show a credit of £10,039 as at 31 March 2015 (increased from £3,639 the previous year), so there is no need to ask for further reserve fund contributions.

e. There is a demand for cleaning services, but the block is not cleaned.

f. Various other complaints about how the Tenant has been treated, for instance by not being invited to meetings or by the issue of a county court claim.

23. The jurisdiction of this Tribunal on this application allows me only to consider the payability of service charges for the year in question. I cannot decide questions relating to the method of payment (standing orders etc) nor can I assist with other complaints which are unrelated to the resolution of the payability of the service charge demand in issue.

24. The Tenant does not state how much he contends would be a reasonable amount to pay by way of service charges for the year in question.

25. The Tenant has provided no evidence in support of his case other than:

(i) assertions made in the statement of case

(ii) a list of questions posed to the Company with an email from the Company stating that the enquiries are disproportionate.

(iii) Papers relating to a meeting held on 19 November 2015.

The Company's Case

26. The Company claims in its statement of 7 December 2015, in relation to the reserve fund, that its agents has commissioned building surveyors, Finnegan Associates, to prepare a 10 year plan of major works and services for the estate of which the Property is part. The commissioning of the report was with a view to calculating the reserve fund needed. As far as I can tell, that report has not yet been prepared so it does not

form the basis for the disputed demands and does not affect my decision.

27. The budget for the year in question shows a total of £24,161 (for all the flats combined) of which £6,400 is the intended contribution towards the reserve fund. That amounts to 26.5% of the budget which translates to about £500 of the amount demanded from the Tenant.

28. £700 is allocated in the budget for fortnightly internal cleaning of "residential communal areas". £617 is allocated for fortnightly "external cleaning/bin area". A total of £1,317. It is noted that the internal cleaning cost cost had been reduced as a result of negotiations carried out by the directors of the Company (presumably with the cleaning contractor). That cost amounts to 6% of the total budget being about £108 of the Tenant's interim service charge demands for the year.

29. The company accounts of the Company show that in 2014, £40,197 was taken from the reserve fund to pay for major works and that the tenants made contributions totalling £9,000 towards the reserve fund in the same year. This presumably meant that the Company was able to pay for the major works in 2013/14 without demanding a large single contribution from the tenants. That, of course, is the purpose of a reserve fund.

30. I can infer that the demand for £6,400 for last year (2014/2015) was with the intention of building the reserve fund back up to the level needed to provide for future works as intended. It follows that, the demand for the same amount this year is with the same aim.

31. The accounts also show that the amount in the reserve fund has been as follows:

2013	£34,836
2014	£3,639
2015	£10,039

32. It follows that the reserve fund will contain £16,439 by the end of the year 2015/2016 (being £10,039 plus the £6,400 now being demanded).

33. The Company filed a further statement of case on 14 January 2016 in response to the Tenant's statement of case. It produces the demand and service charge forecast sent on 10 April 2015. It does not produce anything new which affects any of the issues in this case. The Tenant has complained that it is out of time. I disagree. In any event, the Tenant has had plenty of time to respond if he wishes.

34. The statement of 14 January 2016 deals with the issue of cleaning by saying that two cleaners from a contractor called JM2 are employed to

clean for one hour fortnightly. The cleaners submit time sheets and the Company carries out checks.

Discussion

35. On the reserve fund issue, I agree with the Company. The Lease provides for a reserve fund and for the Company to demand contributions towards it which it determines to be reasonable. There was, until 2014, a reserve fund of over £30,000. That was used (together with a contribution of £9,000 from the tenants that year) to pay for £40,000 of major works. If there had not been such a reserve fund (which was presumably built up gradually over the previous years), then the tenants would have been hit with very large bills to pay for the major works. In other words, the reserve fund scheme did what it was supposed to do.

36. The Company's intention seems to be to rebuild the reserve fund over the next few years. I have no evidence from which to discover how large the Company intends to make the reserve fund or over what period it intends to raise it. I note that the Company demanded a contribution of £6,400 from the tenants in the 2014/2015 service charge year – the same as is demanded in the current year. At that rate, the reserve fund will reach its previous level in about 4-5 years' time. That seems to me to be a reasonable approach to planning ahead for future major works or unforeseen emergencies. It is certainly not outside the range of reasonable approaches which the Company could take.

37. The Tenant's case seems to be based on an assumption that the reserve fund is being raised in order to pay for some specific set of future major works. That is not correct. The Tenant does not suggest any alternative way of raising the reserve fund, which it claims to be reasonable.

38. On the cleaning issue, I also agree with the Company. The amounts being claimed for cleaning are not unreasonable on their face. £1,300 odd per year for a fortnightly service of four man-hours (two people doing one hour internally and one hour externally) amounts to about £12.50 per hour, which is not unreasonable.

39. The Tenant's case is that the service is not provided. The Tenant supplies no evidence of this – just a bald assertion. I have no way of knowing how the Tenant knows that cleaners do not attend on a fortnightly basis. I have no photographs of the state of the common parts.

40. I have no reason to reject the evidence of the Company that the cleaning contractors are hired, do the cleaning and submit accurate timesheets.

Conclusion and Costs

41. For the reasons stated above, I have reached the conclusion that the interim service charges for the year 1 March 2015 to 29 February 2016 are payable as demanded by the Company.

42. In the circumstances, namely that I have decided that there are no grounds in this application for challenging the reasonable service charges demanded by the Company, I also refuse the tenant's costs application under section 20C of the 1985 Act.

Dated this 28th day of January 2016

JUDGE TIMOTHY COWEN

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).