



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

Case reference : LON/00AH/LSC/2017/0026

Property : 4 Newton House, 175 Queens Road,
Croydon, Surrey CR0 2PX

Applicant : Barbara L Johnson

Representative : N/A

Respondent : Assethold Ltd

Representative : Eagerstates Ltd Managing Agents

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

Tribunal members : Judge Carr
Mr M Taylor FRICS

Venue : 10 Alfred Place, London WC1E 7LR

Date of decision : 19th April 2017

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the sum of £690.27 is payable by the Applicant in respect of the service charges for the years 2013 -14, the sum of £1295.00 for years 2014 -5, the sum of £1,230.11 for the years 2015 – 16 and the sum of £928.31 for the years 2016 – 17.
- (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.

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 / Respondent in respect of the service charge years 2013 – 14, 2014 – 15, 2015 – 16 and 2016 - 17.
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 studio flat in a house converted into 6 flats.
4. Directions were issued by the tribunal on 21st February 2017. In those directions it was determined that the matter would be decided on the basis of the documents and written submissions provided unless a request for an oral hearing was received. No such request having been received the matter is being determined on the papers.
5. The directions named Eagerstates Limited as the Respondent. This is incorrect as Eagerstates are not a party to the lease. The tribunal therefore substitutes Assethold Ltd as the correct Respondent as it is the freeholder of the property. Eagerstates as managing agents are representing Assethold Ltd in this matter.
6. 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.

The issues

7. The directions identified that the sole issue to be determined was whether a letter signed by the applicant and dated 20th May 2015 prevents her from claiming a refund of service charges.
8. Having read the submissions from the parties and considered all of the documents provided, the tribunal has made determinations on this issue as follows.

The argument of the Applicant

9. The Applicant acquired her lease on 30th July 2013. The Applicant's argument is straightforward. Her lease stipulates that the service charges should be apportioned so that her share of the total service charge expenditure equals 9.37%. However the managing agent has been apportioning her share as 13.79%.

The argument of the Respondent

10. The Respondent argues that the Applicant signed a letter on 20th May 2015 which confirmed that they had no disputes regarding the service charges or any payments made. It argues that this precludes the Applicant from making any claims for any period prior to this including payment for the estimated account for that year.
11. It further argues that having agreed charges up to that date, it should not be possible for the Applicant to raise a query on an issue that it should have been aware of at the time of signing this agreement and therefore should not be able to challenge this going forward.
12. It also argues that the Applicant should have referred the charges to an independent surveyor who could have reviewed all the flats and provided a decision that would have been binding on all parties involved, including the other leaseholders.
13. The Respondent also suggests that the tribunal has the jurisdiction to alter the service charges to ensure that the apportioned charges equal 100% and has a duty to ensure that this is so. It therefore invites the tribunal to make such a decision.
14. The Applicant in reply to the Respondent's statement of case argues that she notified Eagerstates on 7th October 2015 and 12 December 2016 in connection with overcharging of service charges and nothing was done about this. She states that she was not aware of overcharging until she was selling her flat. As soon as she was aware of the overcharging she sent them the letters referred to above.

15. In connection with the letter she signed she points out that the attachment did not state the percentage they were charging and that she was not aware earlier of any impropriety on their side because this was the first leasehold property she had purchased.

The tribunal's decision

16. The tribunal determines that the amount payable in respect of service charge year 2013 – 14 is £ 690.27 , in respect of 2014 – 15 is £1295.00, in respect of 2015 – 16 is £1,230.11 and the amount for 2016 – 17 is £928.31.

Reasons for the tribunal's decision

17. The tribunal has considered the wording of the letter that the Applicant signed on 20th May 2015.

18. The wording of the letter, which was prepared by Eagerstates Ltd is as follows:

'I confirm that I am the leaseholder at the above flat. I confirm that I am not currently aware of any breach of my lease and that I believe to (sic) have paid all my charges due per term of lease. I confirm that I have no dispute with the freeholder or the managing agents on the property with regards to any charges demanded or paid for service charge, administration charges and ground rent or any other payments made or demanded'.

19. The tribunal has considered the wording of the letter very carefully in the light of the evidence available to it. It considers that it can be understood to mean that at the time of signing the leaseholder had no dispute with the freeholder in connection with any charges paid to that point or demanded to that point. For that reason the tribunal considers that the Applicant is bound by the terms of the letter.

20. However the tribunal does not consider that the letter binds the Applicant in connection with any future payment which she is therefore free to dispute. Therefore the tribunal considers that the Applicant is only bound to the date of that signed letter. Nothing in the agreement binds her in connection with future payments.

21. This interpretation is buttressed by the fact that the letter was signed in the context of a proposed sale of the property and the requirement by the proposed purchaser's solicitor that a Deed of Covenant be prepared for the purchase to go ahead. A letter from Eagerstates Ltd dated 18th May 2015 to the Applicant's solicitors says that they will only prepare the Deed of Covenant if the Applicant signs a letter in the terms set out above. Therefore at the time of signing the letter the Applicant

considered that her ownership of the property was about to end, and also that if she did not sign she would lose her sale. There was nothing to prompt her to consider future disputes.

22. The letters of 7th October 2015 and 12 December 2016 indicate that whatever agreement there had been that she was not in dispute with the freeholder no longer applied. Therefore the Applicant is entitled to dispute the apportionment of service charges from 2015 – 16 and 2016 – 17.
23. As the terms of the lease require that she pay 9.37% and from October 2015 she made clear that she did not agree any other apportionment, the tribunal determines that the correct apportionment for 2015 – 16 and 2016 – 17 is 9.37%.
24. The Respondent requests that the tribunal vary the Applicant's lease. As the directions made clear the Respondent is required to make the appropriate application before any such proposed course of action can be considered.
25. The tribunal notes that although there is a clause in the lease requiring the Applicant to refer disputes to an independent surveyor this does not preclude her from exercising her statutory rights.

Application under s.20C

26. In the application form the Applicant applied for an order under section 20C of the 1985 Act. Having read the submissions from the parties and taking into account the determinations above, and in particular noting that the Respondent did not respond to letters from the Applicant pointing out the discrepancy between the terms of the lease and their apportionment of charges, 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, so that the Respondent may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge.

Name: Judge Carr

Date: 19th April 2017

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

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).