



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

**Case Reference** : LON/00AH/LSC/2017/0177

**Property** : 164B Canterbury Road Croydon CR0  
3HE

**Applicant** : Mr M Hussein

**Applicant's  
Representative** : In person

**Respondent** : Ms D Stoneham

**Respondent's  
Representative** : Mr Harrington , Legal executive

**Type of Application** : Section 27A Landlord and Tenant  
Act 1985

**Tribunal Members** : Mrs F J Silverman Dip Fr LLM  
Ms M Krisko FRICS

**Date and venue of  
hearing** : 23 August 2017  
Alfred Place London WC1E 7LR

**Date of Decision** : 29 August 2017

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**DECISION AND ORDER**

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- 1 The Tribunal declares that under the terms of his lease the Applicant is liable to pay ground rent for the years 2012 to 2015 inclusive and a proportion of ground rent for 2016 and/or 2017 up to the date of service of the Applicant's notice under s42 Leasehold Reform Housing and Urban Development Act 1993 (the valuation date for his extended

- lease). All sums due and owing by the Applicant have already been paid by him.
- 2 The Applicant is also liable to pay the sum of £1,229 detailed below which the Tribunal determines to be a reasonable proportion of the insurance premiums for the property. All sums due and owing by the Applicant have already been paid by him.
  - 3 The Respondent is not entitled to make any charges whatsoever in respect of service charges or management fees because the lease contains no provisions allowing such charges to be made. Similarly, no charges are payable by the Applicant in respect of court fees to recover service charges or ground rent.
  - 4 The Applicant is responsible for the Respondent's reasonable legal and valuation fees in respect of his lease extension claim and the RTM company. The Tribunal does not have jurisdiction under the present application to deal with these fees.
  - 5 All sums paid by the Applicant over and above those set out in paragraphs 1-4 above are to be refunded by the Respondent to the Applicant.
  - 6 The parties are to agree the figure owing to the Applicant on or before 30 September 2017 with payment to be made to the Applicant within fourteen days following agreement of the sum owing.
  - 7 The parties have liberty to apply to the Tribunal for further Directions if they fail to agree the figures by 30 September 2017. Such application must be received by the Tribunal by 17.00 on 15 October 2017.
  - 8 The Applicant is entitled to the reimbursement of his application fee (£100) and his hearing fee (£200), total £300.
  - 9 The Respondent's application to strike out the Applicant's claim and for costs under Rule 13 are refused.

### **REASONS**

- 1 The Applicant is the tenant of the property situate and known as 164B Canterbury Road Croydon CR0 3HE (the property) and the Respondent is the landlord of the property.
- 2 The Applicant issued an application in the Tribunal on 26 April 2017 asking the Tribunal to make a declaration under s27A Landlord and Tenant Act 1985 as to the reasonableness or otherwise of the Respondent landlord's charge for insurance premium and service and administration charges for the service charge years 2009/2010, 2012/2013, 2013/2014, 2014/2015, 2015/2016 and 2016/2017. The Tribunal was unable to assess the year 2009-2010 as it is statute barred.
- 3 Directions were issued by the Tribunal on 13 June 2017.
- 4 The matter came before a Tribunal on 23 August 2017 where the Applicant represented himself and the Respondent was represented by Mr Harrington.
- 5 The Applicant's claim is based on s27 Landlord and Tenant Act 1985, relating to the payability of and reasonableness of service charges as between landlord and tenant. Such a matter falls within the jurisdiction of the Tribunal. The Tribunal does not accept the Respondent's argument that the Applicant is prevented from bringing a claim because he paid all arrears

owing prior to the completion of the extension of his lease earlier in 2017. Section 27A allows a party to bring an application before the Tribunal whether or not the disputed amount has already been paid.

6 Under clause 4(4) of the lease the Landlord is obliged to insure the property and under Clause 3(20) the tenant promises to reimburse a reasonable proportion of the costs of insurance by way of additional rent.

7 The property occupies the ground floor of a two storey building, the upper floor comprising a second flat. The Tribunal considered that in these circumstances it would be reasonable to expect the Applicant to pay 50% of the total premium for insurance. The Tribunal assesses the annual premiums as follows: for the year 2012: £523.19; year 2013 : £559.13; year 2014: £535.97; year 2015: £428.98; and 2016: £410.73. This gives a total of £2,458 of which the Applicant's share is £1229. This sum has already been paid by the Applicant who is entitled to a refund of any overpayment. The values used by the Tribunal were those agreed by the parties in a separate discussion. For the years 2014 2015 and 2016 the Tribunal deducted the management charge which had been added.

8 Since the landlord provides no services to the tenant and the lease contains no clause allowing for the recovery of service or administration/management charges from the tenant it follows that the Applicant cannot be liable for any such charges and all sums paid by him for service charge or administration charges must be repaid to him as directed in paragraphs 5-7 above of the Decision. The lease does not place any obligation on the landlord to carry out any work, but only to insure the property.

9 The Tribunal does not have jurisdiction under the present application to deal with any issues relating to the legal costs relating to either the grant of a lease extension to the Applicant nor to the RTM company. The Applicant may have the right to make separate applications to the Tribunal in respect of these sums.

10 The Tribunal confirmed to the Applicant that his only monetary obligations under the lease had been to pay the ground rent and a proportion of the insurance premium. He also had a continuing obligation to keep the property in good repair which applied to the structure and exterior of the property as well as internal decorations. Any money which he had spent on repairs was not therefore refundable to him by the Respondent.

11 The Respondent's applications for the Applicant's case to be struck out and for costs under Rule 13 were in the circumstances inappropriate and were refused.

12 The Tribunal ordered the Respondent to repay to the Applicant the Applicant's application fee (£100) and hearing fee (£200), total £300.

### 13 **The Law**

#### **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).

## **Orders for costs, reimbursement of fees and interest on costs**

### **Rule 13.**

- (1) The Tribunal may make an order in respect of costs only—
  - (a) under section 29(4) of the 2007 Act (wasted costs) and the costs incurred in applying for such costs;
  - (b) if a person has acted unreasonably in bringing, defending or conducting proceedings in—
    - (i) an agricultural land and drainage case,
    - (ii) a residential property case, or
    - (iii) a leasehold case; or
    - (c) in a land registration case.

Judge F J Silverman as Chairman

**Date 01 September 2017**

Note:  
Appeals



1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking