12438

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AP/LSC/2017/0235**
Property	:	**Flat 2, Adelphi Court, 11 Ashfield Road, London N4 1PU**
Applicant	:	**Mr Harry George Thomas James**
Representative	:	**Mr James In person**
Respondents	:	**Triplerose Limited** **Mr K Foster 4, Adelphi Court** **Ms S A Ford 5, Adelphi Court** **Mr A Glazzard &** **Ms S Mitchell 6, Adelphi Court** **Mr C Garlick 7, Adelphi Court**
Representative	:	**Mr Richard Granby Counsel For Triplerose Ltd**
Type of Application	:	**Section 27A Landlord and Tenant Act 1985 – determination of service charges payable**
Tribunal Members	:	**Judge John Hewitt** **Mr John Barlow FRICS**
Date and venue of hearing	:	**2 November 2017** **10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**8 November 2017**

DECISION

The issues for the tribunal and its decisions

The issues:

1. The fair and reasonable proportion of the cost of electricity payable by the applicant to the respondent in respect of the service charge years 2015/16 and 2016/17;

2. The applicant's application for an order pursuant to s20C Landlord and Tenant Act 1985 (the Act);

3. The respondent's application to strike out these proceedings; and

4. The respondent's application for a costs order pursuant to rule 13(1)(b) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (the Rules) .

The decisions:

1. The reasonable proportion of the cost of electricity payable by the applicant to the respondent is one seventh, so that the following sums are payable:

Year	Total Expense	Proportion payable (1/7th)
2015/16	£535.95	£76.56
2016/17	£501.21	£71.60

2. An order under S20C shall be made to the effect that any costs incurred by the respondent in these proceedings prior to 3 October 2017 shall not be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the applicant (or Ms Denise Mary O'Sullivan).

3. The respondent's application to strike out these proceedings is refused; and

4. A costs order shall be made in favour of the respondent in the sum of £300 and the applicant shall pay that sum to the respondent by **5pm Friday 1 December 2017**

The reasons for these decisions are set out below.

Background – not in dispute

5. Adelphi Court is a modern in-fill development in an established residential street, probably constructed in the mid-2000s, comprising three self-contained flats plus four houses. One of the flats at first floor runs across a gated archway or entrance way to a rear courtyard where the four houses are located. The residents sometimes refer to that archway as the 'undercroft'.

6. Leases of the three flats were granted by Harringay Properties for terms of 125 years from 25 March 2006 as follows:

Flat 1 20.07.2006 Title Number AGL162113

Flat 2	07.07.2006	Title Number AGL190187
Flat 3	25.08.2006	Title Number AGL158432

The freehold interest in the four houses was transferred by Harringay Properties Ltd as follows:

House 4	Transfer dated 17.11.2006	Title Number AGL174227
House 5	Transfer dated 16.02.2007	Title Number AGL165372
House 6	Transfer dated 29.11.2006	Title Number AGL162593
House 7	Transfer dated 12.10.2006	Title Number AGL173788

7. The lease of flat 2 was granted jointly to the applicant, Mr James, and Denise Mary O'Sullivan both of whom were registered at Land Registry as joint proprietors on 1 August 2008.

So far as material to these proceedings the lease provided:

'The Building' is defined to be the building known as 1-7 Adelphi Court
A covenant on the part of the lessee to pay a fair proportion of the reasonable expenses incurred by the landlord on a range of matters concerning the Building including *"... and the provision of services therein and thereon and the other heads of expenditure ... set out in the Schedule..."*
The Schedule includes:
"3. The reasonable cost of the supply of ... electricity ... for all purposes..."

The service charge year is the period 25 March to the following 24 March.

8. The freehold interest in Adelphi Court is registered at Land Registry under Title Number MX159652. The sales of the freeholds of the four houses have been carved out of that title.

There was no evidence or information provided to us as to how the original landlord managed the development and apportioned costs incurred across the seven properties.

It appears that at some point the freehold became vested in Magic Homes Limited. The Proprietorship Register of Title Number MX159652 records that by a transfer dated 12 August 2010 the freehold of part of the rear courtyard was transferred by Magic Homes Limited to Adelphi Court Owners Limited. That parcel of land is now registered with Title Number AGL217300.

There was no evidence or information provided to us as to how Magic Homes Limited managed the development and apportioned costs incurred across the seven properties.

9. On 4 March 2015 the respondent, Triplerose, was registered at Land Registry as the proprietor of what remained the freehold interest in

Adelphi Court and thereby became the immediate landlord of the applicant, Mr James.

10. Following its acquisition, Triplerose made demands of Mr James for very substantial alleged arrears of a range of service charges.

11. Mr James declined to make payment of the sums demanded an on 19 June 2017 he made an application to this tribunal for the sums in issue to be determined.

Directions were issued and the application came on for hearing before us on 21 August 2017. At that hearing a director of Triplerose, Mr Jack Ost, was not present, because he was away on holiday, and no papers had been provided by Mr James because he claimed that he had not received the directions. What did become clear was that Triplerose had withdrawn nearly of all the claims to alleged arrears of service charge and that the only live issue between the parties was the appropriate way to apportion the cost of the electricity supply to the development in the service charge years 2015/16 and 2016/17. At that time, there was no information before us as to the manner in which Triplerose had effected an apportionment and Mr James was of the view that some of it should be borne by the four house owners.

The hearing on 21 August 2017 was adjourned to 2 November 2017 and further directions were issued as follows:

The respondent shall by **5pm Tuesday 29 August 2017** serve on the applicant copies of the electricity bills included in the annual service charge accounts for the two years 2015/16 and 2016/17.

Each party shall by **5pm Friday 13 October 2017** file three copies of all reports, witness statements and other documents which that party wishes to rely upon at the hearing and shall serve one copy of them on the opposite party (free of charge).

Notes 4 and 5 to those directions provided as follows:

4. The question now is how the electricity bills should be apportioned. That will turn on the broad view of the likely consumption of energy between the three elements mentioned above. It is to be hoped that that parties will be able to reach agreement on that point. If not, it will be determined by the tribunal at the hearing at which each party will be required to provide evidence to support the rival contentions they wish to put forward.

5. Ideally the hearing would have taken place sooner but a clash of diary commitments and interests of several persons involved have prevented that. However, there is a substantial period to which the parties should make good use to try and arrive at a compromise settlement.

12. In early October 2017 the tribunal received a witness statement signed by Mr Jack Ost. It was supported by a statement of truth and appended to it were copies of the electricity bills for the two years in issue.

Those bills may be summarised as follows:

	2015/16	**2016/17**
Standing charge	£408.15	£386.06
Energy consumed	£100.62	£ 87.74
Feed in tariff charge	£ 1.67	£ 3.56
	£510.44	£477.46
VAT @5%	£ 25.51	£ 23.87
	£535.95	**£501.23**

13. The tribunal did not receive from Mr James a statement or any documents in answer.

14. At a fairly late stage an application was made by the four house owners (4, 5, 6 and 7 Adelphi Court) to be joined in the proceedings as respondents. An order to that effect was made. Those respondents have not taken any part in the proceedings save that Mr Foster, on behalf of all four of them, filed a document dated 4 October 2017 addressed to: 'To Whom it May Concern'. It does not appear that it was copied by Mr Foster to Mr James and/or Triplerose. Mr Foster did not attend the hearing. A copy of the document was handed over for Mr James and Mr Granby to read. They did so. It was not controversial. The gist of the document was that the four house owners were content to pay their fair share of the cost of electricity. They did not put forward any submissions as to what that share might be.

15. What Mr Foster did, which was helpful was to summarise the consumption of electricity at the development, some is enjoyed by the house owners only, some by the flats only and some by all seven properties. His breakdown was as follows:

Flats only
Flats entrance hall and stair lights;
Flats entrance door-latch; and
Flats common parts cleaning

Houses only
2 LED 11W lights in the courtyard; and
Courtyard gates

All 7 Properties
12 LED 20W overhead entrance lights; and
2 intercom entry systems

Mr James accepted that was a fair summary. Mr Granby raised no objections to it.

There was attached to Mr Foster's document a summary of the specification of the gates and a guess as to what the monthly cost of the electricity referable to the gates might amount to.

The hearing

16. The hearing was listed to commence at 10:00. By that time Mr Granby and a Mr Stern from the respondent's managing agents were present. Mr James was not. The tribunal requested its case officer to make a call to Mr James to ascertain his whereabouts. It was reported back to the tribunal that Mr James was unaware that a hearing was due to take place, but that he would be able to get to the tribunal in about 20 minutes. In fact he arrived at 11:00. Evidently on the way over Mr James remembered that he was aware of the hearing date because he was present on 21 August 2017 when the new hearing date was discussed and agreed.

17. Mr Granby opened by making an application to strike out the proceedings on the footing that Mr James had again not complied with directions and had not filed and served a statement of case. Mr Granby said he did so on instructions.

    Mr James opposed the application. He stated that he had sent three copies of a statement of case to the tribunal and one copy to the respondent. His recollection was that he did so some-time in September 2017. Mr Granby took instructions and informed the tribunal that the respondent had not received any statement of case from Mr James. The tribunal file was checked and there was no record of the tribunal having received Mr James' statement of case. The tribunal doubted that Mr James had sent in a statement of case in September 2017 because he was to respond to the respondent's statement of case and Mr Ost's statement was dated 3 October 2017 and we infer it was received by Mr James a few days thereafter.

18. Mr James did not appear to have with him hard copies of the statement he said he had sent in, although he may have had a copy on his laptop, which he consulted. Mr James did not make any application for an extension of time to submit the materials he wished to rely upon.

19. The tribunal decided to refuse the application because Mr James was present and entitled to make submissions to us, and it was in the best interests of all of the parties and the tribunal that the tribunal should make a positive determination on a relatively small matter and resolve the issue once and for all. To strike out the application might simply result in a fresh application being made and the whole process repeated. In accordance with the overriding objective the better course was to proceed with the hearing.

The issue

20. The issue is the fair proportion of the costs of the reasonable costs of electricity to be borne by Mr James. Although the four house owners have been joined in these proceedings at their request, this tribunal will not and cannot make any determination as to what proportion of the costs of electricity should be borne by them. There is no application for such a determination before the tribunal and no evidence has been submitted as to the legal basis (if any) which enables the respondent to recover contributions from them.

We are therefore concerned solely with the proportion payable by Mr James and Ms O'Sullivan.

21. To remind ourselves, over the two years in question the quarterly standing charge (with VAT) was just under £120 in 2015/16 and £100 in 2016/17 and the cost of energy consumed (with VAT) was just under £25 a quarter in both years.

22. The evidence of Mr Ost was to the effect that he had an agreement with the house owners that they would each contribute one seventh of the costs of electricity. He said the remaining three sevenths were attributed to the flats and divided equally between the three flat owners. The outcome was that each property owner contributed one seventh of the costs.

23. Mr Ost observed that whilst that arrangement meant that the flat owners were contributing 3/7ths to the cost of the electronic gates and courtyard lighting, the other side of the coin was that the house owners were contributing 4/7^{ths} to the costs of electricity consumed exclusively by the flats.

24. Mr Ost maintained that an equal seven way split was fair and would iron out any anomalies. Also it was administratively convenient and avoids the need for complex and time consuming computations over small amounts of money.

25. Mr Ost included in his witness statement a suggestion that the cost of running the gates 2 hours per day might be in the region of £60 per year.

26. Mr Granby adopted the arguments set out by Mr Ost in his witness statement.

27. Mr James consulted his laptop and submitted that the annual cost of electricity should be apportioned as to:

The houses only	60%
The flats only	30%
The flats + the houses	10%

Mr James did not explain how those apportionments had been arrived at.

There was a discussion as to whether the above apportionment should apply to both the standing charge + the cost of energy consumed, or whether the standing charge should be borne 7 ways and the consumption cost only apportioned as above. Mr James favoured the former approach, which he considered was fairer because of the higher consumption of energy required to power the gates.

Discussion

28. First we wish to record that the modest sums now involved in this case are verging on an abuse of process. After Mr Ost had served his witness statement Mr James ought to have served his evidence in answer and the two should have discussed the rival approaches and arrived at an amicable compromise arrangement.

29. Assuming that the total electricity bill in a year is £520. Adopting Mr Ost's approach of a 1/7th share, Mr James' contribution will amount to just under £75.

Adopting Mr James' approach his share will amount to:

£520 x 30% = £156	÷ 3 =	£52.00
£520 x 10% = £52	÷ 7 =	£ 7.43
		£59.43

That is Mr James' best case. The difference is minimal. If there was evidence before us to show that the gates consumed a large portion of the energy consumed, we could see that there might just be a case to support an apportionment based on consumption. But there is no such evidence before us. All we have is three guesses. Moreover, even if there was we consider that only the cost of energy consumed might be apportioned in an appropriate way and that the cost of the standing charge should be shared equally on the footing that all seven properties benefit equally from the supply.

30. If then only the annual cost of the energy consumed of about £100 per year falls to be apportioned the resulting amount is so small as to be de minimis, and would not, in our judgment, justify the cost involved in making the necessary calculations.

31. For all the above reasons we do not hesitate to adopt the approach suggested by Mr Ost and that the apportionment should be on a 1/7th basis. It is within the range of decisions open to a landlord acting reasonably and fairly. That may be a little crude but overall it is not unfair to Mr James, and it is a reasonable, pragmatic, sensible and proportionate approach to adopt.

32. During the course of the hearings there was a suggestion put forward that the supplies might be separated, so that there was one for the flats and one for the houses. There was a view that that would be expensive to achieve and would still open leave the shared supply to all seven

properties. None of the parties advanced that as being a sensible solution to pursue.

The section 20C application

33. Mr James had included a section 20C application. Mr James submitted that Triplerose had made unwarranted and unjustified claims to substantial arrears of services charges going back to 2010 and, long before it had acquired the freehold interest, that it was reasonable for him to bring the application and having done so Triplrose abandoned most of the alleged arrears. In those circumstances, even if the terms of the lease did empower the landlord to put the costs of these proceedings through the service charge account, it ought not be allowed to do so.

34. Mr Granby opposed the application and said that the terms of the lease should prevail.

35. In our consideration of this application we are not required to make a determination as to whether or not the lease does empower the landlord to put such costs through the service charge account. We are concerned only with the question that if there is a contractual right to do so, should that right be curtailed or limited to some extent.

36. We find there is some force in Mr James' submission, at least until 3 October 2017 when Mr Ost made his witness statement explaining the approach of the landlord as regards the electricity. We find it would be unjust if Triplerose was able to recover through the service charge costs incurred in pursuing substantial alleged arrears against Mr James, which claims were then abandoned in the course of these proceedings.

37. However, by 3 October 2017 those claims had been abandoned and the sole issue was the cost of electricity. If the lease gives the landlord a contractual right to recover through the service charge the costs of tribunal proceedings such as these, we see no reason why that right should be curtailed as regards any costs reasonably and properly incurred after 3 October 2017.

38. If Triplerose was to pass any costs of these proceedings through the service charge account, it will be open to Mr James or any other lessee or person concerned to challenge them on the usual basis in due course when the 2017/18 service charge accounts are issued.

39. We have made a rule 13(1)(b) costs order in these proceedings for the reasons set out below. At this point we wish to make clear that if Triplerose was to pass any costs of these proceedings through the service charge account, credit should be given for the amount of the costs order we have made.

Rule 13(1)(b) costs order

40. At the conclusion of the hearing Mr Granby made an application for a costs order under rule 13(1)(b). Mr Granby submitted that Mr James had acted unreasonably in conducting these proceedings in that he had twice failed to comply with directions and had failed to file and serve a statement of case. Mr Granby drew attention to the guidance given by the Upper Tribunal in *Willow Court Management Company (1985) Limited v Mrs Ratna Alexander and others* [2016] UKUT 0290 (LC) and subsequent authorities.

41. Mr Granby did not put forward an amount of costs sought but he observed that managing agents had spent time on preparation of the proceedings and a reasonable charge-out rate was £100 per hour + VAT. He also mentioned that his brief fee was £750 + VAT. Mr Granby did, however, realistically in our opinion, acknowledge that it was not reasonable for Triplerose to have incurred the cost of counsel appearing at the hearing and that the issue was straightforward and modest such that any competent managing agent should be capable of presenting the case for the landlord.

42. Mr James opposed the application. He repeated that it was reasonable for him to have brought the proceedings given the substantial arrears alleged and which were abandoned.

43. We have given careful consideration to the authorities and the guidance given as to the approach we should adopt. We acknowledge that the bar is set high. We find that post 3 October 2017 Mr James' conduct of the proceedings was unreasonable within the meaning of rule 13(1)(b). Mr James failed to file and serve a statement of case in answer to that of Mr Ost, Mr James failed to provide any evidence to support his submissions. Mr James failed to contact Triplerose to endeavour to resolve the issue by agreement, a course strongly hinted at in the directions dated 21 August 2017. Mr James was late in arriving at the hearing causing the respondent's representatives to have to sit around for an hour waiting his arrival The combination of these reasons against a backdrop of a dispute about a small amount of money leads us to the conclusion it would be fair and just to make a costs order pursuant to rule 13(10(b).

44. Inevitably, Triplerose' managing agents have incurred costs in the preparation for the hearing and in correspondence with the tribunal on procedural matters. Taking a broad view we find that the costs order should be in the sum of £250 + VAT, a total of £300, and we have made an order to that effect.

Judge John Hewitt
8 November 2017

ANNEX - RIGHTS OF APPEAL

1. 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.

2. 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.

3. 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.

4. 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.