

12539



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

**Case reference** : **LON/00AR/LSC/2017/0280**

**Property** : **8 Orton Court, Mawney Road,  
Romford, Essex RM7 7HX**

**Applicant** : **Ms P Clary**

**Representative** : **Sternberg Reed**

**Respondent** : **Regisport Ltd**

**Representative** : **Gateway Property Management Ltd**

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

**Tribunal members** : **Tribunal Judge S Brilliant  
Mr H Geddes**

**Date and venue of  
hearing** : **30 October 2017  
10 Alfred Place, London WC1E 7LR**

**Date of decision** : **7 December 2017**

### **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 and administration charges payable by her in respect of the service charge years ending 31 December 2013, 31 December 2014, 31 December 2015, 31 December 2016 and 31 December 2017.
2. The relevant legal provisions are set out in the Appendix to this decision.

### **The hearing**

3. The hearing took place on 30 October 2017. The Applicant was represented by her solicitors, Sternberg Reed. The Applicant’s partner, Mr Conway, also attended. The Respondent was represented by its managing agents, Mr Mullen and Mr Coe of Gateway Property Management Ltd (“the managing agents”).
4. Immediately prior to the hearing, the tribunal conducted an inspection.

### **The background**

5. The property which is the subject of this application (“the flat”) is a second floor two-bedroom flat in a modern purpose-built block (“the building”). There are 8 flats in the block. There is a small garden at the front, and a lawn and parking area at the rear. The Applicant has a designated parking space.
6. The Applicant holds a long lease of the flat dated 14 June 1989 (“the lease”) which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease will be referred to below, where appropriate. The Applicant purchased the flat in 1992.

### **The issues**

9. The issues before us concern the reasonableness of and the liability to pay the service charges arising for the years ending 31 December 2013, 31 December 2014, 31 December 2015, 31 December 2016 and 31 December 2017.
10. We have been shown final service charge accounts for the years ending 31 December 2013 [712], 31 December 2014 [722], 31 December 2015 [737] and 31 December 2016 [757]. The final service charge account for the year ending 31 December 2017 has not yet been prepared and we were shown the estimated service charges for that year [771].

11. Directions were issued by the tribunal on 22 August 2017 following a case management conference held that day [1-6]. In paragraph 4 of the direction the following heads of expenditure were identified as being in dispute: (1) the cost of repairs and renewals; (2) charges for health and safety and fire risk assessment; (3) cost of cleaning of communal areas; (4) charges for legal costs. The tribunal is to determine whether the costs of the works are reasonable, and is to consider the nature of the works, the quality of the works carried out, the contract price and the supervision and management fee.
12. The Applicant was directed to send to the Respondent by 6 September 2017 a schedule in the form attached to the directions setting out, by reference to each service charge year, the item and amount in dispute, the reason why the amount was disputed and the amount the tenant would pay for that item.
13. Unfortunately, the schedule provided by the Applicant [645-647] is not easy to follow. In each of the relevant five years, there are only two headings for each year, "Repairs and renewals" and "Admin charges".
14. It transpired that the reference to "Admin charges" is not a reference to administration charges, properly so called, within the meaning of schedule 11 to the Commonhold and Leasehold Reform Act 2002. It is a reference to an annual amount of £19.99 described as "Insurance Administration Fee" collected by the Respondent [27]. Payment for insurance is not collected by the managing agents through the service charge. There is an insurance rent payable by the Applicant, pursuant to clause 3(30) of the lease [145], which is charged directly by the Respondent.
15. The representatives of the managing agent were in no position to deal with this issue which had not been flagged up in the directions. It is not a matter that we are able to adjudicate upon in these proceedings.

### **The lease**

16. Clause 1(4) of the lease provides that the demised premises means the property specified in Part 4 of the Sixth Schedule to release [128]. This is the second floor flat shown on plan 1 annexed to the lease [166]. By clause 1(4)(b) of the lease the demised premises includes one half in depth of the ceilings and floors of the demised premises [128].
17. By clause 2 of the lease, the Applicant is to pay by way of additional rent the service charge set out in clause 3(2) of the lease [130]. By clause 3(2)(a) of the lease, the Applicant is to pay by way of service charge a contribution to all proper and reasonable costs, charges and expenses incurred by the Respondent in carrying out its obligations under clause 4 of the lease and the Fourth Schedule. The service charge contribution

is to be paid by two equal instalments on 24 June and 25 December in each year [131]. By clause 1(6) of the lease [129] and Part 7 of the Sixth Schedule to the lease [166], the amount of the contribution is 12.5% of the total expenses.

18. By clause 4 of the lease the Respondent covenanted, amongst other things, to repair the building, to maintain the common parts and to keep the accessways and passageways clean and tidy [146-147]. The Fourth Schedule entitles the Respondent to charge for, amongst other things, the costs of repairing the building, of employing staff to perform services, of employing managing agents, of doing all acts necessary or advisable for the management and maintenance of the building, and of maintaining and repairing the automatic door-entry system [161-163].
19. By clause 3(2)(b) of the lease the Applicant is to pay the service charge at the times and in the manner provided in the Third Schedule [131]. The Third Schedule provides for an estimated service charge to be paid in advance, with an adjustment to be made once the exact figure is known after the end of the service charge year [158-161].

#### **1 January 2013 - 31 December 2013**

20. The expenditure for this year is set out at [712]. In the Scott schedule [645], the Applicant takes issue with the sum of £870.00 for repairs and renewals. She says:

*No works were carried out. The Tenant paid £389.64. But believes £0 should be paid.*

21. The Applicant's share of £870.00 is £108.75, not £389.64. There is no basis for the Applicant's objection to paying her share of the sum of £870.00. We were shown the three invoices justifying the expenditure of £870.00 [714-716], and the Applicant conceded the sum was recoverable. We note in passing that the Respondent charged in this year a management fee of £220.00 plus VAT per flat, which we consider a reasonable amount.
22. The Applicant is liable to pay her share of £5,916.00 for this year, which amounts to £739.50.

#### **1 January 2014 - 31 December 2014**

23. The expenditure for this year is set out at [722]. In the Scott schedule [645], the Applicant takes issue with the sum of £1,000.00 for repairs and renewals. She says:

*No works were carried out. Works to the garden are still outstanding.*

*The Tenant paid £687.55 but believes £0 should be paid.*

24. In fact, the amount charged for repairs and renewals in this year was £1,378.00, not £1,000.00. The Applicant's share of £1,378.00 is £172.00, not £687.55. We were shown the six invoices justifying the expenditure of £1,378.00 [726-731]. In fact, these invoices total £1,331.28. There is a separate charge for refuse in the sum of £212.00, although the invoices show £240.00 was spent [724-725].<sup>1</sup>
25. There is no basis for the Applicant's objection to paying her share of these costs. The refuse collection related to non-domestic waste caused by fly tipping and the charges are reasonable. The Applicant challenged the cost of clearing out all the gutters using a gutter vacuum and repairing a damaged wall in the sum of £475.00 [730]. Although the two pieces of work should have been separated out, no comparables were provided by the Applicant. Whilst the Applicant had spent £100.00 in 2015 on clearing out gutters, this was in respect of a much smaller section of the roof. We are satisfied this cost was reasonable. Equally, we are satisfied that the cost of installing the noticeboard for £99.53 [731] was reasonable.
26. Whilst a photograph taken on 17 July 2013 shows the garden to be unkempt [468], it is not correct that works to the garden are still outstanding. We accept the evidence of the managing agents that work was carried out to the garden during this service charge year.
27. The Applicant is liable to pay her share of £10,543.00 for this year, which amounts to £1,317.88.

### **1 January 2015 - 31 December 2015**

28. The expenditure for this year is set out at [737]. In the Scott schedule [645], the Applicant takes issue with the sum of £1,730.82 for repairs and renewals. She says:
  - (1) *In 2015 the roof began to leak. Water was pouring from the roof into the lounge. The landlord's agents refused to carry out the repairs.*
  - (2) *The main floor boards at the premises are retained and should be maintained by the landlord. Since 2015 the floorboards through the premises have been damaged and are a health and safety hazard. The tenant has paid in total £657.13 towards her service charge but believes she should pay £0.*

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<sup>1</sup> The total for (1) refuse and (2) repairs and renewals comes to £1,571.28 rather than £1,590.00, a difference of £18.72 or £1.56 per flat. This can be ignored as de minimis.

29. In fact, the amount charged for repairs and renewals in this year was £5,050.00, so the Applicant's share was £631.25, not £657.13. The Respondent produced invoices relating to this expenditure [741-751]. The Applicant challenged a number of them as being too expensive, but she provided no alternative quotations and we find, on balance, that the work was done and at a reasonable cost. We note in passing that the Respondent charged in this year a management fee of £233.33 plus VAT per flat, which we consider a reasonable amount.
30. As far as the roof is concerned, the water penetration occurred in October 2015. It is not correct that the managing agents refused to carry out repairs. Roof works, which involved scaffolding, were carried out on behalf of the Respondent and were completed around 18 January 2016.
31. As far as the floorboards are concerned some bowing was noticeable on our inspection but they did not appear to us to present any obvious danger. We are not persuaded, on the evidence before us, that the part of the floor which is out of repair is not part of the demise. Indeed, this is the view of the Applicant's surveyor, Mr Cochram, in paragraph 6.23 of his report following his inspection on 2 September 2017 [331].
32. The Applicant is liable to pay her share of £12,765.00 for this year, which amounts to £1,595.63.

### **1 January 2016 - 31 December 2016**

33. The expenditure for this year is set out at [757]. In the Scott schedule [645], the Applicant takes issue with the sum of £2,781.00 for repairs and renewals. She says:

*The premise was redecorated in April [2016] beginning to show through the ceiling of the lounge. On or around October 2016 water penetration, damp and mildew had ruined the redecoration. The entire premise smells of damp.*

*In June 2016 the tenant stopped making payment towards her service charge due to the landlord's failures to carry out repairs. The tenant has however continued to pay her ground rent and Insurance to the landlord's agents Pier Management. Works to the roof were later carried out in December 2016 by the landlord; the tenant believes that the work was not carried out adequately as the roof continued to leak.*

*The tenant has in total paid £674.03 towards her service charge but believes £0 should be paid in respect of the work carried out.*

34. The Respondent produced invoices relating to this expenditure [759-770]. The Applicant challenged a number of them as being too

expensive, but she provided no alternative quotations and we find, on balance, that the work was done and at a reasonable cost.

35. We accept the Respondent's evidence that it was not until 30 November 2016 that the Applicant made a further complaint about water ingress into the flat.
36. The Applicant is liable to pay her share of £11,187.00 for this year, which amounts to £1,398.38.

### **1 January 2017 - 31 December 2017**

37. The estimated expenditure for this year is set out at [771]. In the Scott schedule [645], the Applicant says:

*Subcontractors known as BT Management attended the premises. The tenant believed they would investigate the cause of the leak to the roof and carry out repairs to rectify the leaking roof. The contractor climbed into the loft and looked around and informed the tenant that he would return but never did.*

*On 27 March 2017 Gateway Management invoiced the residents £69 on s.20 for investigation into roof damages. The tenant believes this should have been carried out in 2015 when the problem first arose and not in 2017.*

*(3) The intercom system has been faulty since March 2017. The landlord's Management agent Gateway agreed in court on 22 August 2017 this would be repaired by 23 August 2017, the repair has not been carried out and the intercom system is still faulty.*

*The tenant believes that £0 should be paid in respect of the work carried out by the landlord.*

38. The total anticipated service charge expenditure for the year ending 31 December 2017 is £9,687.00. This is less than the annual expenditure for recent years. The intercom system is now working, and we find that the anticipated expenditure is reasonable in amount.
39. Throughout this year the flat has been suffering from damp and, in our judgment, the Respondent has failed to respond timeously to the Applicant's complaints. Evidence of damp particularly affects the larger bedroom at the rear and the reception room to the front.
40. We asked the managing agents why the Respondent had taken no steps since November 2016 to investigate the further complaints about damp in the flat. We were told that this was because the Applicant had not

been paying her service charges. We enquired whether there was anything in either the lease or in the RICS Code which justified this stance, and there is not.

41. In accordance with the decision in Continental Property Ventures Inc v White [2006] 1 EGLR 85, we propose to allow the Applicant to set off during the current service charge year general damages of £250 as compensation for the damage to the decor and mould growth suffered as a result of the Respondent's failure to deal promptly with the matter.

### **Section 20C application**

41. In the light of our findings we do not propose making an order under section 20C of the 1985 Act.

**Name:** Simon Brilliant

**Date:** 7 December 2017



## **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.