

12016



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

Case reference : **LON/00AY/LSC/2016/0485**

Property : **1 Loveday House, Bannister Close,
London, SW2 2PB**

Applicant : **Claire Maidment**

Representative : **In Person**

Respondent : **Metropolitan Housing Trust
Limited**

Representative :

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

Tribunal members : **Tribunal Judge Evis Samupfonda**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of decision : **21 February 2017**

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the sum of £1214.35 is payable by the Applicant in respect of the costs incurred in carrying out the cyclical works in 2011/12.
- (2) The tribunal makes the determinations as set out under the various headings in this Decision
- (3) The applicant did not make an application under section 20C of the Landlord and Tenant Act 1985.

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 her in respect of the costs incurred in carrying out the cyclical work in 2011.
2. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

3. The application was determined on the basis of written representations on 21 February 2017.

The background

4. The property which is the subject of this application is described as a ground floor 1 bedroom flat in a purpose built block.
5. The application is dated 6 December 2016. Directions for the future conduct of the case were made on 22 December 2016. The tribunal considered that the case was suitable for determination on consideration of the documents alone and without an oral hearing unless either party requested an oral hearing. Neither party requested a hearing.
6. On 2nd February 2004 the Property was let on a 125 year lease by the respondent to SD Paulis. By clause 3.2 the lessee covenanted: “ to pay the Association without deduction by way of further and additional rent the Service Charge.....” On 7th November 2013 the applicant became the registered proprietor of the Property.

The issues

7. In the directions, the tribunal identified, and the parties did not disagree, that the application raised a number of discreet points under section 20B of the Act as follows:
- (i) Was a valid section 20B (2) notice served on the previous owner of the applicant's flat?
 - (ii) Was the estimate of approximately £800 consistent with the judgment of Morgan J in *Brent London Borough Council v Shulem B Association Ltd* [2011] EWHC 1663?
 - (iii) Does a section 20B (2) notice suspend time for a period of only 18 months as the applicant appears to suggest?
 - (iv) Can the respondent in any event recover the difference between the estimate of £800 and the sum demanded?
 - (v) The applicant's position was also reiterated in her letter dated 25 January 2017, in which she stated that she did not think that the service charges were issued in a reasonable manner, were repeatedly not issued in the correct amount or within a reasonable time frame.
8. The applicant did not dispute that she was contractually liable to contribute towards the service. She did not challenge the reasonableness of the cost incurred or the standard of the work carried out.
9. Having considered the evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

Was a valid section 20B (2) notice served on the previous owner of the applicant's flat

10. The respondent relies on the document dated 28 September 2012 sub headed Re: Notice under s20 (b) of the Landlord and Tenant Act 1985 (As Amended) Service Charges Expenditure Incurred 01 April 2011 to 31 March 2012. This was sent by the applicant's Service Charge Operations Manager to the previous owner of the applicant's flat. To that document was attached a service charge statement of expenditure for the period 01 April 2011 to 31 March 2012. The total cost incurred in respect of the cyclical works was stated to be £1,780,624.61

11. The applicant challenges the validity of the notice on the basis that the amount for payment due from her was not identified and only an estimate of £800 was given.
12. The parties referred the tribunal to the decision of Morgan J in the case of Brent LBC v Shulem B Association Ltd [2011] EWHC 1663 (Ch)

The tribunal's decision and reasons

13. The tribunal determined that the notice served on the previous owner dated 28 September 2012 is valid for the purposes of section 20(B) (2) of the Act. Section 20 (B) (2) provides that "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 be subsequently be required under the terms of his lease to contribute to them by the payment of a service charge." The tribunal is satisfied that attached statement of expenditure identified the actual costs that had been incurred in the relevant year. The section 20 (B) notice also stated that "we intend to take these costs into account when we determine the amount of service charges you are liable to pay under the terms of your lease/transfer agreement." In Brent LBC v Shulem B Association Morgan J confirmed that "there will be a valid notification for the purposes of the subsection if the lessor notifies the lessee that it had incurred costs of £x on certain service charge matters without telling the lessee what sum the lessee will ultimately be expected to pay."
14. Therefore the tribunal concluded that the Section 20(B) notice was not invalid because it failed to specify the amount that was payable by the applicant. It was sufficient for the purposes of section 20(B) in that it clearly notified the owner that costs had been incurred for which he would be liable to contribute towards.

Was the estimate of approximately £800 consistent with the judgment of Morgan J in Brent Borough Council v Shulem B Association Ltd [2011] EWHC 1663

15. The applicant stated that an estimate of £800 was given and that she saw "at the bottom of the summary for the works there was a figure that said "total estimated service charge" and the number was £889.09." However no further information has been provided to the tribunal.
16. The respondent submitted that nowhere in the section 20B notice or covering letter served on 28 September 2012 is it stated that the liability for cyclical redecoration on behalf of the owner of 1 Loveday is limited to £800.

The tribunal's decision and reasons

17. There is no information provided to the tribunal from which it could identify the source of £800 referred to by the applicant. That figure was not referred to in the section 20B notice served. Therefore, the tribunal concluded that the notice served complied with the requirements of s20B and judgment in the cited case for the reasons set out above.

Does a section 20B (2) notice suspend time for a period of only 18 months as the applicant appears to suggest

18. The applicant asserts that it was not reasonable for the respondent to demand payment 3.5 years after the section 20(B) notice was served.
19. The respondent asserts that once a valid notice under section 20B(2) has been served section 20 provides no further time limits within which the landlord must serve his service charge demands.

The tribunal's decision and reasons

20. The respondent issued service charge accounts for 2011/12 in April 2014. The applicant stated that she had initially been charged £1861.00 and after querying this it was adjusted to £1214.35 in July 2016.
21. The tribunal considered section 20(B) and concluded that it does not impose a time limit upon the lessor by which the lessor must serve service charge demands.
22. Furthermore, Morgan J in Brent LBC v Shulem said "It should also be noted that if the lessor does operate subsection (2), time is put at large. There is no further requirement that the lessor's demand for payment of the service charge is within 18 months of the notice given under subsection (2)."

Can the respondent in any event recover the difference between the estimate of £800 and the sum demanded?

23. For the reasons set out above the amount that is recoverable is £1214.35.
24. In the application form the applicant did not apply for an order under section 20C of the 1985 Act.

Name: Tribunal Judge Evis
Samupfonda

Date: 21 February 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.