

12462



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

Case Reference : **LON/00BA/LSC/2017/0283**

Property : **49 Robinhood Lane, Mitcham, CR4
1JL**

Applicant : **Mr. U. Enekwa**

Representative : **In person**

Respondent : **Commercial Group Holdings
Limited**

Representative : **Bells Southfields Limited – Mr
Roger Taylor.**

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

Tribunal Members : **Ms. A. Hamilton-Farey**

Date of Determination : **10 Alfred Place, London WC1E 7LR**

Date of Decision : **20 October 2017**

DECISION

Decisions of the tribunal

- (1) The tribunal determines that none of the service charges claimed by the respondent are payable by the applicant in respect of the service charges for the years 2015 and 2016.
- (2) 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 lessee.
- (3) The tribunal determines that the Respondent shall pay the Applicant £100.00 within 28 days of this Decision, in respect of the reimbursement of the tribunal fees paid by the Applicant.

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 in respect of the service charge years 2015 and 2016.
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 first floor maisonette (one of two), subject to a deed of variation to the original lease for a term of 124 years with effect from 28 May 1999.
4. On 22 August 2017 the tribunal issued directions for this matter to be dealt with by way of a paper determination, that is, on the papers provided, without an inspection. The tribunal did not, in the event consider that an inspection would be useful and none was carried out.
5. The Applicant states that his lease does not permit the landlord to charge a service charge, because the repairing covenants in relation to the property are shared with the leaseholder of the ground floor maisonette. In addition the Applicant asserts in any event that the demands for service charge are not 'legal' because they were not accompanied by the requisite Summary of Rights and Obligations in relation to Service Charges. The Applicant asserts that no services have been provided by the landlord, and that therefore the accounts/bills are inaccurate.

6. The Respondent has provided a statement in reply to the application in which it asserts that the charges are reasonable, that the managing agents fees are reasonable and based on a flat-rate fee, in accordance with RICS requirements, and that *'under the terms of the covenants in the lease we feel it is incumbent upon us to have the service charge checked out by an Accountant who makes a standard charge for each flat under our management.*

The issues

7. The issues before the tribunal are therefore as follows: -
- (i) Whether the lease permits the landlord to claim a service charge in addition to the ground rent, and if it does;
 - (ii) Are the amounts claimed reasonable and payable by the Applicant;
 - (iii) Should a S.20C Order be made;
 - (iv) Should the Respondent refund the application fee incurred by the Applicant;
8. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

Service charge.

9. As noted above, the Applicant asserts that the lease is a fully repairing one between himself and the leaseholder of the ground floor maisonette.
10. The tribunal notes from the lease provided that the demise of the premises is described as:

'All that upper maisonette (hereinafter called the Upper Maisonette) situate and known as Number 49 Robinhood Lane Mitcham in the London Borough of Merton and being on the first floor of the building (including one half part in depth of the structure between the ceilings of the Lower Maisonette and the floors of the Upper Maisonette and the internal and external walls of the Upper Maisonette above the same level and the roof of the Building so far as the same constitutes the roof of the Upper Maisonette) the situation where is shown on the plan (hereinafter called the said plan) annexed thereto and thereon edged red;

In addition: Under Clause 3(3) of the lease the lessee covenanted to paint the outside of the building, maintain the roof as would normally be painted and/or repaired;

Clause 3(7) requires the tenant to do all such works as may have been required by notice by a local authority. As far as the tribunal has been made aware no such notices have been served.

Clause 4(3) requires the tenant to contribute one equal half part of the costs, expenses, outgoing and matters mentioned in the Fourth Schedule to the lease. The Fourth Schedule, covers the costs of keeping in good and substantial repair and condition the foundations and roof and water tank in the roof, gutters, rainwater pipes of the building and the cost and expense of keeping in good and substantial repair and condition any paths, drains, watercourses, pipes, cables wires and aerials belonging to or serving the Upper Maisonette in common with the other parts of the Building.

The tribunal's decision

11. The tribunal determines that the lease between the parties makes no provision for the landlord to maintain, repair or renew any part of the building at the cost of the tenants. In this case, it appears that there had been a leak from the Upper Maisonette into the Lower Maisonette and the managing agents had become involved. However, there is nothing in the lease that would enable to become involved in the matter, and repairs are to be determined between the leaseholders. If the leaseholders required the services of an agent to sort out the repairs to the building, then this would be for them to pay, and would not be service chargeable.
12. The agents may act on behalf of the landlord in the collection of ground rent, but again there is nothing in the lease which enables a charge to be made for this service.
13. In these circumstances, the tribunal determines that nothing is payable to the landlord in relation to service charges by the tenant.
14. The agents have confirmed to the tribunal that they are professional managing agents and have a portfolio of properties on which they levy management charges. In the circumstances the tribunal considers that this matter could have been resolved without the tenant having to make an application to the tribunal. The tribunal therefore considers that the landlord should refund the cost of the application (£100.00) to the tenant within 28 days of this decision.
15. Due to the fact that there are no service charge provisions in this lease, the landlord may not recover the costs of defending this application

from the applicant as part of a service charge and the tribunal, for the avoidance of doubt, makes an Order under S.20c of the Landlord & Tenant Act 1985 accordingly.

16. The tenant also makes complaint regarding his inability to purchase the freehold of this property, and the fact that the landlord sold the freehold, without allegedly comply within the relevant legislation. This is not something that comes within this type of application to the tribunal and the parties should seek appropriate legal advice.

Additional:

17. The tribunal has no jurisdiction over ground rent disputes and this is a matter between the landlord and tenants.

Tribunal: Miss A. Hamilton-Farey **Date:** 20 October 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.

- (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).