12771

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00AG/LSC/2017/0475**
Property	**:**	**Flats 1 and 3 Bloomsbury House, 9 Guildford Street, London WC1N 1DT**
Tenants	**:**	**Ms S Tron (Flat 1) and Ms Fujiko Kobayashi (Flat 3)**
Representative	**:**	**Ms Tron in person; Mr Graham Dyer (the tenant's partner) spoke for Ms Kobayashi**
Landlord	**:**	**Ismail Ismail, Osman Ismail, Djanan Ismail (also known as Djanan Kartal)**
Representative	**:**	**Lycium Properties Ltd, the managing agents, acting through Osman Ismail, a director**
Type of Application	**:**	**Service charge dispute**
Tribunal Members	**:**	**Tribunal Judge Adrian Jack and Tribunal Member Stephen Mason BSc FRICS FCIArb**
Date and venue of determination	**:**	**23rd April 2018 at 10 Alfred Place, London WC1E 7LR**
Date of Decision	**:**	**16th May 2018**

DECISION

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Procedural

1. On 8th January 2018 Lycium Properties Ltd ("Lycium") issued two claims online in the County Court. The first with action number E4QZ5738 was for the sum of £1,541.24 for service charges against Ms Tron. The second with action number E4QZ5732 was for £2,095.20 for service charges against Ms Kobayashi. The difference is explained by two reasons. First, some payments had been made by each tenant, but in differing amount. Second, Ms Tron was liable for $16^2/_3$ per cent of the total expenditure whilst Ms Kobayashi was liable for 20 per cent.

2. The first County Court case was transferred to this Tribunal from the County Court sitting at Clerkenwell and Shoreditch on 19th March 2018 by District Judge Bell. This case is currently stayed by the Tribunal. The Tribunal's reference for this is LON/00AG/LSC/2018/0159.

3. The second County Court case has not been transferred. It is unclear what is happening with that case.

4. By an application received by the Tribunal on 8th December 2017 the tenants of both Flats 1 and 3 applied for determination of the amount of the service charges for 2016-17. We heard this application on 23rd April 2018.

5. The Tribunal notes that the County Court claims for service charge were brought in Lycium's name. There is no evidence (nor any pleading) of an assignment of the claims from the landlords to the managing agent. In these circumstances, no reasonable cause of action is disclosed for any of the sums claimed. However, it would be open to the County Court to amend the parties so as to substitute the three landlords in place of Lycium. The case before us brought by the tenants proceeded on the basis of the substantive issues.

The facts

6. The property consists of a basement, ground floor and three upstairs floors. Confusingly, Flat 1 is on the third floor; Flat 2 on the second floor; and Flat 3 on the first floor. The ground and basement flats are divided into bedsits with what is described as a studio flat on the mezzanine. Flats 1, 2 and 3 are let on long leases in similar terms, save as to the percentage of overall expenditure to be reimbursed. The bedsits and studio are let on assured shorthold tenancies. The bedsits are registered as a house in multiple occupation.

7. The freehold has been in the hands of the three landlords (who are siblings) for many years. The management of both the long leases and the shortholds was in the hands of Mr Ismail Ismail. Very little work was done on the block, but Mr Ismail Ismail did insure the building.

8. Latterly there was a dispute between the landlords and Professor Dolton, who held the long lease of Flat 2. He was concerned that no works had been done to the building. A problem with the downpipe resulted in an ingress of water into his flat. As a result Mr Ismail Ismail felt that he had to put the management of the block into professional hands. He chose his brother, Mr Osmond Ismail.

9. Mr Osmond Ismail is the principal of Lycium. He is also one of the landlords, but he had no involvement with this block prior to Ismail Ismail handing the management over to him. We were not shown a copy of the management agreement. Mr Osman Ismail said that it was a contract from year to year and therefore not a qualifying long-term agreement. The failure to produce the agreement was unsatisfactory, but the Tribunal was willing to accept this evidence from Mr Osman Ismail. It is unusual for management agreements to be longer than from year-to-year and there is no reason for this one to have been. Accordingly we find that there was no qualifying long term agreement.

10. Lycium has been established over 12 years. It managed a portfolio of 102 tenancies around Central London and further afield in Finchley and Islington. Its personnel consists of Mr Osmond Ismail and his wife and a single employee, Mr Djemal. Mr Ismail is a qualified civil engineer, although his membership of the Institute of Civil Engineers has lapsed. He has extensive building experience. His charge out rate was £180 per hour (including VAT). Mr Djemal's charge-out rate was the same, but we were not told his qualifications. Mrs Ismail did the administration and was not charged out separately.

11. The management fee charged by Lycium in 2016-17 was £4,000. Mr Osmond Ismail explained that this was £800 per flat for the upstairs with £1,600 for the mezzanine, ground floor and basement. The amount of the management fee is disputed. Mr Ismail's explanation of the charge is that he keeps a timesheet. Every item of time is included either under the heading of "general" or under "section 20" (in relation to statutory consultations). Thus receipt of a standard email is billed at £18, representing a six minute unit. The total time spent on "general" work was 27 hours six minutes, costed at £4,770, but then capped by Lycium at £4,000. The time spent on "section 20" was 4 hours six minutes, billed notionally at £738, but capped at 10 per cent of the cost of the major works.

12. It is common ground that the service charge year runs from 29th September to 28th September. Historically, however, Mr Ismail Ismail adopted a more random approach. The last service charge account before 2016-17, with which we are concerned, is for the period 1st June 2015 to 28th September 2016. The total bill for the block came to £2,586.00, comprising electricity £146, repairs £40, reserve fund £2,000 and management fee £400. The amount payable by Flat 1 was £431.86 and that by Flat 3 £517.20.

13. The service charge demand for the year to 28th September 2017 was more than double, at £5,533. This comprised electricity July 2016 to 20th September 2017 £213. (No issue was raised in relation to the dates on this: the item was admitted.) H & H Roofing did repairs to the flat roof rear extension on 5th December 2016 in the sum of £380. On 23rd March 2017 the same firm did repairs to the main roof at a cost of £480 and on 19th September 2017 it unblocked down pipes from the main roof for £280. (This last item was the subject of the dispute with Prof Dolton.) On 15th December 2016 the fire alarm was serviced at a cost of £180. We discuss these items below.

14. Lycium on the landlords' behalf raised a further service charge in respect of major works to the flat roof of the extension. This had been the subject of a statutory consultation. H & H Roofing charged £3,360. Lycium's management fees for the words were £336, or ten per cent The tenants dispute that H & H Roofing was entitled to full payment. Again we discuss this below.

15. Insurance was affected on the building at a cost of £1,555 and claimed against the tenants in the appropriate proportion. No dispute arises in relation to this item. A demand for ground rent was also made, but this is not within the Tribunal's jurisdiction.

Discussion

16. We start with the management fee. Under the leases the landlord is entitled to engage managing agents and recover the reasonable cost of doing so. In the current case, Lycium is not at arms' length to the landlords, so some care needs to be taken to ensure that the sums claimed are reasonable.

17. Mr Osmond Ismail said that the Royal Institution of Chartered Surveyors encouraged managing agents to charge an hourly rate. We do not consider that this is accurate. The RICS *Service charge residential management Code and additional advice to landlord, leaseholders and agents* (3rd Edition, 2016) deals with fees in charges in paras 3.3 to 3.5. Para 3.3 says:

> "Your charges must be reasonable for the task involved and be pre-agreed with the client whenever possible. Where there is a service charge, basic fees are usually quoted as a fixed fee rather than as a percentage of outgoings or income. This method is considered to be preferable so that leaseholders can budget for their annual expenditure."

18. Para 3.4 gives a list of matters which a fixed annual fee should generally cover. The list includes most of the matters comprised in the work done by Lycium and noted as "general". The only issue which might

arise is if Lycium might be entitled to extra payments for the additional work caused by Prof Dolton. Sub-para (l) includes dealing with "enquiries from leaseholders". It may be arguable that the issues with Prof Dolton went beyond this. However, even if that is right, it does not mean that the cost of dealing with Prof Dolton is recoverable through the service charge. Mr Osmond Ismail argued that the chasing the ground rent was a chargeable item under clause 2(xvii) of the leases, but that refers to the cost of preparing a notice under section 146 of the Law of Property Act 1925 *against the tenant*, not the costs incurred in pursuing a *different* tenant.

19. Para 3.5 then suggests that matters outside the list in para 3.4 should be the subject of a "menu" of charges. Matters identified were organising section 20 consultations and attending the Tribunal.

20. The tenants argued that Lycium's fee for "general" work should be a fixed fee. We agree. It is what the RICS recommends. We should add that we would not have accepted a charge-out rate of £180 for ordinary duties of management. Such a rate is acceptable for highly specialised work. Mr Osmond Ismail's background may well justify such a fee *when he is doing highly specialised work.* However, when he is not doing specialised work, the Tribunal would need to look at the hourly rates charged generally by managing agents. These charges vary but are generally substantially lower. Typical would be junior staff being charged out at £40 to £50 an hour and more senior staff at £80 to £90 an hour.

21. What would a reasonable fixed fee be? The tenants produced a quotation of £250 per flat including VAT. We consider that that is low for central London. Whilst the quotation appears to be a genuine quotation, it frequently occurs that managing agents will bid low in order to get work and then subsequently seek to increase their rates. We remind ourselves that a landlord does not necessarily need to take the cheapest quote available.

22. In our judgment a reasonable fee for managing this block would be £300 per flat (plus VAT). Some allowance needs to be made for the fact that Mr Ismail Ismail manages the studio and bedsits. It was common ground that the block should be treated as if there were five flats. The total management fee for general oversight should be £1,800 (including VAT).

23. In addition, Lycium are entitled to 10 per cent on section 20 works. We do the calculation below.

24. A large portion of the hearing was taken up in a line-by-line analysis of Mr Ismail's time-sheets. However, in the light of our conclusion that the general work should be charged at a fixed rate, we do not need to consider the particular points raised in relation to particular items. It

was common ground that the management fees for section 20 works should be 10 per cent, so that part of the time-sheets would not have needed examination in any event.

25. For completeness, we should add that Lycium could have demanded £936 in respect of future works, but did not seek to do so in the 2016-17 service charge year.

26. Apart from the management fee, the only item which the tenants disputed was the cost of £3,360 for replacing the flat roof on the extension. The tenants' case was that the roofing felt covering had been removed from the extension, but not the insulation underneath, which was reused. Plywood and joists were not replaced. Whilst the gutter was replaced, the facia was not. They also pointed to the works being completed within a day and half, instead of six days.

27. The only evidence in support of these assertions was hearsay from Mr Roberts, the tenant underneath the flat roof. Prior to the hearing, the tenants had raised the question of obtaining a witness summons against Mr Roberts, but in the event they did not pursue such an application. Even without that procedural background, we would not accept that Mr Roberts' account is accurate. For example, it is not possible to remove felt on a flat roof without major damage to the insulation below. It is clear from the photographs that the felt was replaced. We conclude that the insulation must also have been replaced. Likewise, there is no reason to suppose that the roofers did not replace any plywood or joist which needed replacement. The suggestion seems to have arisen because Mr Roberts said that the roofers had not used all the timber they brought with them. That does not mean they did not use what they needed to use. Although the photographic evidence in relation to the facia is poor, on balance we consider that the facia has been renewed.

28. We disallow nothing in respect of the major works.

Conclusion

29. Accordingly the amount in the service charge account for 2016-17 is as follows:

Electric	£213.00
Roofing	380.00
Do	480.00
Do	280.00
Fire alarm	180.00
Ordinary management fee	1,800.00
Major works to flat roof	3,360.00
Management fee on same	336.00
Insurance	1,555.00
Reserve fund	1,225.00
Total	£9,809.00

30. Ms Tron's share is £1,622.42; Ms Kobayashi's is £1,961.80

Costs

31. The Tribunal has a discretion as to costs. Here the tenants have won on the management charges but lost on the major works. The total costs payable to the Tribunal are £300. We consider the fairest approach is to divide these equally, so that the landlord reimburses the tenants £150.

32. The tenants have sought an order under section 20C of the Landlord and Tenant Act 1985 to prevent the landlord recovering the costs of the current proceedings through the service charge. Since there is no single overall winner, we do not consider that it is appropriate to interfere with such contractual rights as the landlord may have. We emphasis, however, that we make no determination that the landlord is entitled to charge the costs of the current proceedings through the service charge.

DETERMINATION

1. Ms Tron is liable to the landlords in the sum of £1,622.42 in respect of the service charge year 2016-17.

2. Ms Kobayashi is liable to the landlords in the sum of £1,961.80 in respect of the service charge year 2016-17.

3. The landlord shall pay the tenants £150 in respect of the fees payable to the Tribunal.

4. **The Tribunal refuses to make an order under section 20C of the Landlord and Tenant Act 1985.**

Judge Adrian Jack, 16th May 2018

ANNEX: The law

The Landlord and Tenant Act 1985 as amended by the Housing Act 1996 and the Commonhold and Leasehold Reform Act 2002 provides as follows:

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, improvement 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 of 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 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 provision 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 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) a leasehold valuation 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 charges 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 charges 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 27A

(1) An application may be made to a leasehold valuation 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 a leasehold valuation tribunal for a determination whether 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."

Sections 47 and 48 of the Landlord and Tenant Act 1987 require a landlord to give his name and address and to give an address for the service of notices by the tenant on him. The Service Charges (Summary of Rights and Obligations, and Transitional Provision) (England) Regulations 2007 requires a landlord to serve a summary of tenants' rights and obligations with any demand for service charges on pain of irrecoverability of the service charges demanded.