



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

Case reference : LON/00AM/LSC/2018/0297

Property : 39 Bamboo Court, Woodmill Road,
London, E5 9GJ

Applicant : Mr Michael Spencer

Representative : None

Respondent : Altius One (Hackney) Management
Limited

Representative : None

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

Tribunal members : Judge Robert Latham
Mr Duncan Jagger FRICS

Venue : 10 Alfred Place, London WC1E 7LR

Date of decision : 22 November 2018

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the following sums are not payable:
- (i) The sum of £278.31 which was demanded on 20 March 2015;
 - (ii) The sum of £116.62 which was demanded on 27 November 2014.

- (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 lessees through any service charge.
- (3) The tribunal determines that the Respondent shall pay the Applicant £100 within 28 days of this Decision, in respect of the reimbursement of the tribunal fees paid by the Applicant.

The application

1. By an application issued on 3 August 2018, the applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the payability of two service charges, namely:
 - (i) The sum of £278.31 which was demanded on 20 March 2015;
 - (ii) The sum of £116.62 which was demanded on 27 November 2014.
2. The applicant is the tenant of 39 Bamboo Court, Woodmill Road, London, E5 9GJ. This is a one-bedroom flat in a purpose block of flats. The applicant does not live in the flat. He is the tenant under a lease dated 22 October 2007 to which there are three parties:
 - (i) The Landlord: The landlord was George Wimpey East London Limited. The applicant understands that this interest is now held by Furatto Limited.
 - (ii) The Manager who is responsible under the lease for the repair and maintenance the estate. The Manager was, and remains, Altius One (Hackney) Management Company, the respondent to this application.
 - (iii) The Tenant: The tenant was The Exchange Insurance Company Limited. That interest is now held by the applicant.
3. The applicant issued his application against Altius One (Hackney) Management Company. He stated that its agent was "believed to be "Warwick Estates" who address was given as 89 Charterhouse Street, London, EC1M 6HR. In his witness statement, the applicant states that the Manager appointed Urban Owners as managing agents from 1 January 2014. They were subsequently taken over by Warwick Estates. On 6 August, the Tribunal sent a copy of the application form to "Warwick Estates, Third Floor, 89 Charterhouse Street, London EC1M 6HR".
4. On 17 August, the Tribunal gave Directions. The applicant had indicated in his application that he was content for the application to be

determined on the papers. The Tribunal concluded that this was the proportionate way in which to deal with the application.

5. On 21 August, the Tribunal sent a copy of the Directions to Warwick Estates. On 23 August, the Royal Mail returned this to the Tribunal. On 24 August, the Tribunal e-mailed a copy of the application, the lease and the directions to altius_directors@outlook.com, namely the e-mail address given by the applicant for Altius One (Hackney) Management Company in his application form.
6. On 26 September (received 27 September), the applicant sent the tribunal his statement. He copied this to: (i) Altius One (Hackney) Management Company, Northchurch Business Centre, Sheffield, S1 2DW; (ii) Warwick Estates; and (iii) Furatto Limited. On 7 November (received 8 November) the applicant sent the tribunal a bundle of documents. He copied this to: (i) Altius One (Hackney) Management Company; (ii) Warwick Estates; and (iii) Furatto Limited.
7. The respondent has played no part in these proceedings. It was directed to take the following steps:
 - (i) By 19 September, to send the applicant all relevant service charge accounts, together with demands for payment and details of any payments made;
 - (ii) By 17 October, to send the tenant its statement of case and any witness statements and documents upon which it intended to rely.
8. The applicant states that there has been extensive correspondence with both Urban Owners and Warwick Estates over the payability of the sums in dispute. That correspondence is not before this tribunal.

The Law

9. Section 20B of the Act provides:
 - (i) 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.

Decision in LON/00AM/LSC/2014/0491

10. On 23 January 2015, the tribunal issued its decision in LON/00AM/LSC/2014/0491. This application was also determined on the papers. The tribunal determined that:

(i) Demands for service charges (relating to both budgeted and actual costs for the 2012 service charge year were not payable by the applicant as the demands did not comply with the requirements of sections 47 and 48 of the Act 1985; and

(ii) Historic electricity charges included in these demands were not payable in any event by the applicant as the costs had been incurred more than 18 months before they were demanded (section 20B of the Act). It seems that this credit was subsequently computed to be £369.62 (see p.42).

Our Determination

Service Charge Year 2012

11. The tribunal is asked to determine the payability of the sum of £278.31 which was demanded on 20 March 2015 (p.45). The sum was demanded by Urban Owners who give their address as "Third Floor, 89 Charterhouse Street, London EC1M 6HR". There are three Credit Notes, dated 20 March 2015 which seem to have been made as a consequence of the tribunal's decision (at p.42-44). The sum demanded is stated to be "Yearly Service Charge in advance 1st January 2012 to 31st December 2012". The total is £898.50 less a balance brought forward of £628.57. The net sum is £269.93, but the applicant contends that an overpayment of £8.38 was wrongly included in the calculations, hence the sum of £278.31 which the Tribunal is asked to determine.
12. The applicant contends that all the costs must have been incurred more than 18 months before 20 March 2015, namely before 20 September 2013. The applicant is therefore not liable to pay them by virtue of section 20(B) of the Act. No contrary argument has been advanced by the Respondent. The Tribunal therefore finds that this sum is not payable.

Service Charge Year 2013

13. The tribunal is asked to determine the payability of the sum of £116.62 which was demanded on 27 November 2014 (at p.48). The sum was demanded by Urban Owners. It is stated to be "deficit for period ending 31 December 2013.

14. The applicant has provided a copy of the 2013 Accounts (at p.49-57). Under Note 6 (at p.56) it is stated that a total of £68,988 relates to 2013 or to previous years. Under Note 7, £93,988 is brought forward from the previous year. The Applicant argues that these costs would have been incurred prior to 27 May 2012 and would therefore not be payable by virtue of section 20B. No contrary argument has been advanced by the Respondent. The Tribunal therefore finds that this sum is not payable.

Application under s.20C and refund of fees

15. The Applicant applies for a refund of the tribunal fees of £100 which he has paid pursuant to Rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the Tribunal Rules"). In the light of our determinations above, the tribunal orders the Respondent to refund the fees of £100 paid by the Applicant within 28 days of the date of this decision.
16. In the application form, applicant applied for an order under section 20C of the 1985 Act. This application is probably academic as the Respondent has played no part in these proceedings and is therefore unlikely to have incurred any costs. However, in the light of our determinations above and for the avoidance of doubt, the tribunal nonetheless determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the Respondent may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge.
17. The respondent has played no part in these proceedings. If it is able to satisfy the tribunal that it was unaware of this application, it would be open to it to apply to the tribunal to set aside this decision within 28 days of the date of this decision pursuant to Rule 51 of the Tribunal Rules. The respondent would need to satisfy the tribunal that it has a good defence to this application.

Judge Robert Latham
22 November 2018

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).