



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

Case reference : **LON/00BG/LSC/2017/0411**

Property : **Flat C201 Port East Apartments, 14
Hertsmere Road, London E14 4AX**

Applicant : **West India Quay (Warehouse
Property) Limited**

Representative : **Mr D R Foulds of Foulds Solicitors
Limited**

Respondent : **Mrs Nina Seaborn**

Representative :

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

Tribunal members : **Tribunal Judge Dutton
Mr S F Mason BSc FRICS FCI Arb
Mr C S Piarroux JP CQSW**

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

Date of decision : **10th May 2018**

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the sum of £9,178.95 is payable by the Respondent in respect of the service charges for the years in the periods set out below.
- (2) The Tribunal determines that the respondent shall pay to the Applicant the sum of £360 in respect of legal fees incurred in the recovery of the sums claimed as set out below.
- (3) Since the tribunal has no jurisdiction over county court costs and fees, nor ground rent, these matters should now be referred back to the County Court at Mayors & City of London Court under case D62YM431.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") as to the amount of service charges and administration charges payable by the Respondent in respect of the estimated service charge years 25th March 2016 to 24th March 2017 and 25th March 2017 to September 2017. The Administration fees relate to the costs of Foulds Solicitors Limited in the recovery of the monies claimed and total £360.
2. Proceedings were originally issued in the County Court at Mayors & City of London Court under case D62YM431. The claim was transferred to this tribunal, by order of District Judge Avent on 21st December 2017.
3. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

4. At the hearing the Applicant was represented by Mr Foulds, who was accompanied by Mr Clarke an Associate with Lee Baron, Chartered Surveyors, who are the Managing Agents for the Applicant. The Respondent failed to attend. The case officer contacted her by telephone on the morning of the hearing and was told by the Respondent that she was not attending.
5. It is worth recording that on 29th April 2018 the Respondent contacted the Tribunal to say that she had slipped and broken her left ankle, apparently on 8th April 2018. A copy of a Statement for Fitness for Work, issued by the orthopaedic Department of St Mary's Hospital

dated 26th April 2018 was produced indicating non fitness for work for a period of 4 weeks.

6. The Tribunal wrote to the Respondent on 1st May 2018 indicating that the Judge had considered the matter and was minded to agree an adjournment but directed that the Respondent specify the period of the postponement and that she had complied with direction 2, provision of her statement of case.
7. No reply was received from the Respondent and accordingly the Tribunal wrote again on 4th May 2018, the deadline for compliance with the letter of 1st May, stating that whilst the Judge was sympathetic to the Respondent's position in the absence of any response to the letter of 1st May and other matters set out in the letter of 4th May, the postponement was refused.
8. The matter therefore proceeded on 10th May 2018 in the Respondent's absence.

The background

9. The property which is the subject of this application is a flat in a development of some 76 flats in 4 blocks. In addition on the development there are 30 commercial units. The Applicant is the Landlord for these properties and its involvement is set out in the witness statements of Ian Barbour and Peter Welborn included in the bundle of papers before us.
10. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.
11. The Respondent holds a long lease of the property 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 issues

12. It was difficult to discern the Respondent's complaints. Apparently at the CMC she had indicated that there had been damage to her apartment, trespass and concerns over the identity of the Landlord. None of these matters appear in an application which she issued at the Tribunal received on 24th October 2017. In fact this application was, by agreement, struck out as it post dated the County Court proceedings. Neither do they appear in the defence she filed at the Court.

13. The Respondent had failed to comply with direction 2 which required her, by 27th March 2018, to send to the Landlord a full statement in reply to the statement of case, which the Applicant produced dated 14th March 2018.
14. At the start of the hearing the Applicant identified the relevant issues for determination as follows:
 - (i) The payability and/or reasonableness of the estimated service charges for the periods set out at paragraph 1 above
 - (ii) The administration charge of £360
15. Having heard evidence and submissions from the Applicant and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

Estimated charges

16. We were told by Mr Foulds that the sums claimed were as set out on the schedule attached to the Particulars of Claim at page 21 of the bundle. However, the previous arrears of £1,916.62 had been waived, a matter which had apparently been confirmed to the respondent at the CMC on 13th February 2018. In addition, on completion of the actual accounts for the period to 24th March 2017 it was discovered that there was a credit due to the lessees, of which the Respondent's share was £141.46. This amount was deducted from the estimate for that period and is reflected in the statement of account annexed to the Claim form, reducing the sum claimed for the half year March 2016 to September 2016 to £2796.61
17. We were told by Mr Clarke that the estimated charges were based on a number of factors. These included the historical records of expenditure, changes in legislation which may impact on costs, new tendering, the previous years actual costs and the fact that the building is Grade 1 listed.
18. We had the chance to consider the estimated charges for the period to March 2017 against the actual costs and there is only a small difference. That sum, as we have indicated above resulted in small credit to the Respondent.
19. The lease of the subject flat was included in the bundle. The Respondent is the original lessee, under the name Nina Toursina. The lease is dated 25th November 1999 and is for a term of 125 years from 24th June 1999. The service charge monies are recoverable as rent, see clause 3.1. The lease also provides for the Landlord to take over the management of the estate if the lease appointed management company

(East Port Apartments (Management) Limited) was dissolved, which was the case.

20. There are differing percentages payable by the lessee relating to Block, Residential, Estate and Insurance charges and those percentages are set out in the definitions element of the lease. The Third Schedule of the lease includes provision for payment of estimated service charge monies in advance on 25th March and 29th September in each year. There is also at paragraph 4 of this schedule provision for reserve fund payment.
21. It is appropriate to note that it is these reserve fund monies which are being used to fund the costs of the refurbishment of the reception areas. S20 consultation had taken place in 2017 and does not appear to be the subject of any challenge by the respondent. Certainly Mr Clarke told us that he had not received any representation from the respondent during the consultation process nor during the period of works, when he was in regular contact with all lessees.

The tribunal's decision

22. The tribunal determines that the amount payable in respect of the estimated service charges is £9,178.95.

Reasons for the tribunal's decision

23. We are satisfied from hearing from Mr Foulds and Mr Clarke and from considering the papers before us that the estimated charges were prepared appropriately and reflected well against known actual costs. Furthermore in the absence of any clear indication as to the complaints that the Respondent wished to raise we are satisfied that the sums claimed are due and owing.

Administration charge of £360

24. We were told that Foulds Solicitors Limited charged £180 for the letter before action, which complied with the Debt Collection protocol and included all necessary searches to establish the identity and address of the Respondent. A further charge of £180 was made for dealing with the preparation and issue of proceedings, this being in addition to the fixed costs on the claim form of £100.

The tribunal's decision

25. The tribunal determines that the amount payable in respect of the administration charge is £360.

Reasons for the tribunal's decision

26. The terms of the lease allow the recovery of legal costs, see clause 4.10 and in particular clauses 4.10.3 and 4.10.5. The costs claimed, are we find, reasonable and are payable by the Respondent.

Name: Tribunal Judge Dutton **Date:** 10th May 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).

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.]

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).