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

**Case reference** : LON/00BH/LSC/2018/0307

**Property** : Flat 11 Essex Mansions, 1 Essex Road  
South, London E11 1JP

**Applicant** : Mr Richard Nagle, Mrs Margaret Nagle  
and Mr Gavin Nagle

**Representative** : Mr Gavin Nagle

**Respondent** : Mr Remi Anthony Adegbite

**Representative** : No appearance

**Type of application** : Liability to pay service charges

**Tribunal member** : Judge Robert Latham

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

**Date of Decision** : 13 November 2018

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**DECISION**

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**Decisions of the Tribunal**

- (1) The Tribunal determines that the following sums are payable and reasonable: (i) Service Charge Year 2016/7: £1,461.96; (ii) Service Charge Year 2017/8: £1,459.86; and (iii) Service Charge Year 2018/9: £1,457.70.

- (2) The Tribunal determines that the Respondent shall pay the Applicants £100 within 28 days of this Decision, in respect of the reimbursement of the tribunal fees paid by the Applicants.

### **The Application**

1. By an application received on 13 August 2018, the applicant landlords seek a determination under section 27A of the Landlord and Tenant Act 1985 as to whether service charges are payable. The Applicants' claim relates to service charges totalling £4,379.52 for the years 2016/7, 2017/8 and 2018/9.
2. On 11 September, Directions were given at an oral Case Management Hearing (CMH). Mr Gavin Nagle attended on behalf of the Applicants. Mr Adegbite did not attend. He is a Buy to Let landlord and does not reside at the premises, On 30 August 2018, the Tribunal had informed the Respondent of the date of the CMH. The letter stressed the importance of the parties attending the CMH. The Respondent was requested to return a Reply Form; he failed to do so. The Tribunal had listed the matter for a CMH to ascertain whether the Respondent has any substantive defence to the claim.
3. The Tribunal directed the Respondent to file his Statement of case by 2 October. The Tribunal notified the Respondent that if he failed to comply with this Direction, the Tribunal would strike out his case pursuant to Rule 9(3)(a) of the Tribunal Rules. The Respondent failed to comply. On 10 October, Judge O'Sullivan made an Order notifying the Respondent that his case had been struck out.
4. There has been a history of proceedings involving this Respondent which have not been seriously disputed:
  - (i) LON/00BH/LSC/2011/0816: On 24 February 2012, a Tribunal determined and found that the following service charges were payable: interim service charges (£309.39 payable on 1 October 2010 and £321.26 payable on 1 April 2011) and a demand made on 25 November 2011 for £5,405.26 for works to roof. The Respondent attended late and indicated that he had no issue with the sums demanded.
  - (ii) LON/00BH/LSC/2012/0786: 12 March 2013, a Tribunal determined and found that two interim service charges were payable (£482.10 payable on 1 April 2012 and 1 October 2012).
  - (iii) On 17 May 2013, a Judge at the Central London County Court struck out the Respondent's defence in 2YK59679. Judgment was entered for the Applicants in the sum of £1,387.37 and interest.

5. On 8 November, the Applicants filed a Bundle of Documents in support of their application.

### **The Lease**

6. The Respondent occupies Flat 1 pursuant to a lease dated 29 June 1978 (at p.57-73). The Applicants have filed a detailed statement setting out the relevant terms of the lease namely:
  - (i) The tenant's contribution to the service charge: 3.41% (Clause 2(2)(a));
  - (ii) The payment of the service charge half-yearly in advance (Clause 2(2)(b)(vi));
  - (iii) The tenant's liability in respect of the insurance (Clause 2(2)(a)(i));
  - (iv) the tenant's liability for the cost of employing managing agents (Clause 2(2)(a)(vi));
  - (v) The landlord's right to collect a contingency sum and establish a reserve fund (Clause 2(2)(b)(v)).
  - (vii) The tenant's liability in respect of the other service charges which have been demanded pursuant to Clause 2(2) of the lease.
7. The Applicants' statement also sets out how the landlord has sought to comply with their obligations under the lease.

### **The Tribunal's Determination**

8. Essex Mansions is a purpose built block of thirty flats. Flat 11 has one bedroom. The Applicants have provided a Reserve Fund Planned Maintenance Report at p.75.
9. The Applicants claim service charges of £42,873 for the Service Charge Year 1 April 2016 to 31 March 2017. The Respondent's 3.41% share is £1,461.96. The following sums are claimed: (i) Building Insurance: £3,484; (ii) Management Fees: £7,020; (iii) Cleaning: £5,200; (iv) Removal of Fly-tipping: £660; (v) Repairs & Maintenance: £2,000; (vi) Building Surveyor and Professional Fees: £1,000; (vii) Audit Fees: £480; (viii) Monitor and Clean roof water tanks: £1,548; (ix) Pest Control: £302; (x) Communal Electricity: £540; (xi) Stairwell handrails which are part of s.20 works: £4,234; (xii) Contingency (10%): £2,647; (xiii) Reserve Fund provision: £13,758.

10. The budget for 2016/7 is at p.74. The service charge demands dated 25 March and 29 September 2016 are at p.76 and p.77. The Service Charge Accounts for the year are at p.78-81. The Tribunal is satisfied that the sums demanded are payable and are reasonable.
11. The Applicants claim service charges of £42,811 for the Service Charge Year 1 April 2017 to 31 March 2018. The Respondent's 3.41% share is £1,459.86. The following sums are claimed: (i) Building Insurance: £3,872; (ii) Management Fees: £7,380; (iii) Cleaning: £5,616; (iv) Removal of Fly-tipping: £520; (v) Repairs & Maintenance: £1,858; (vi) Building Surveyor and Professional Fees: £722; (vii) Audit Fees: £480; (viii) Monitor and Clean roof water tanks: £2,255; (ix) Pest Control: £302; (x) Communal Electricity: £667; (xi) Repair gullies and render plinth at rear: £2,740; (xii) Contingency (10%): £2,641 (xiii) Reserve Fund provision: £13,758.
12. The budget for 2017/8 is at p.82. The service charge demands dated 25 March and 29 September 2017 are at p.83 and p.84. The Service Charge Accounts for the year are at p.85-88. The Tribunal is satisfied that the sums demanded are payable and are reasonable.
13. The Applicants claim service charges of £42,748 for the Service Charge Year 1 April 2018 to 31 March 2019. The Respondent's 3.41% share is £1,457.70. The following sums are claimed: (i) Building Insurance: £3,951; (ii) Management Fees: £7,500; (iii) Cleaning: £5,616; (iv) Removal of Fly-tipping: £480; (v) Repairs & Maintenance: £2,845; (vi) Building Surveyor and Professional Fees: £1,000; (vii) Audit Fees: £480; (viii) Monitor and Clean roof water tanks: £2,718; (ix) Pest Control: £302; (x) Communal Electricity: £750; (xi) Waltham Forest Bin Charges: £515; (xii) Contingency (10%): £2,616; (xiii) Reserve Fund provision: £13,975.
14. The budget for 2018/9 is at p.89. The service charge demands dated 25 March and 29 September 2018 are at p.91 and p.92. The Service Charge Accounts for the year are not yet available. The Tribunal is satisfied that the sums demanded are payable and are reasonable.

#### **Application for Refund of Fees**

15. The Applicants apply for a refund of the fees that they have paid in respect of the application pursuant to Rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. In the light of the above determinations, the Tribunal orders the Respondent to refund any fees paid by the Applicants within 28 days of the date of this decision.

**Judge Robert Latham**  
**13 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).

## **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.