

93 78



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

Case Reference : LON/00AJ/LSC/2013/0381
LON/00AJ/LSC/2013/0630

Property : Flat 2, Mabourne Court, Blandford
Road, Southall, Middlesex UB2 4JY

Applicant : Longmint Limited (In
Administration)

Representative : Thompson Allen LLP

Respondent : Mr Stephen Paul Eggleton

Representative : Assisted by BPAC

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

Tribunal Members : Judge O'Sullivan
Mr H Geddes JP RIBA MRTPI
Judge Wayte

**Date and venue of
Hearing** : 10 Alfred Place, London WC1E 7LR

Date of Decision : 19 November 2013

DECISION

Decisions of the tribunal

- (1) The tribunal makes the determinations as set out under the various headings in this Decision
- (2) The Applicant having consented, the tribunal makes an order under section 20C of the Landlord and Tenant Act 1985
- (3) Since the tribunal has no jurisdiction over statutory interest and court costs and fees, this matter should now be referred back to the Uxbridge County Court.

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 Respondent in respect of the service charge years 2011, 2012 and 2013.
2. Proceedings were originally issued in the Northampton County Court under claim no. 2YLO9110 and transferred to the Uxbridge County Court and then in turn transferred to this tribunal, by order of Deputy District Judge Sofaer on 10 January 2013. These proceedings concerned the service charge years 2011 and 2012. The Applicant subsequently made an application to the tribunal dated 3 September 2013 for a determination in respect of the service charge year 2013.
3. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

4. The Applicant was represented by Ms Thompson, a solicitor, of Thompson Allen solicitors. The Respondent appeared in person and was assisted by Ms Saggu and Ms Shehu of BPP Legal Advice Clinic.

The background

5. The property which is the subject of this application is a 1 bedroom flat in a purpose built block of flats.
6. 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.

7. 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

8. At the start of the hearing the parties identified the relevant issues for determination as follows:

The payability and/or reasonableness of service charges for the years 2011, 2012 and 2013.

9. It was confirmed that insurance, accountancy fees and electricity are not challenged for any of the service charge years before the tribunal.
10. By way of background the tribunal heard that the landlord is in administration.
11. 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. The tribunal provides only a summary of the evidence it heard, the majority being in any event contained in the bundles before it.

2011

Professional fees £330

12. The Respondent challenged an invoice in the sum of £275 plus Vat for the cost of a safety audit. This related to a safety audit report dated 24 May 2011. The tribunal was provided both with a copy of the invoice and the report. It heard that the report had been commissioned by the administrators to flag any issues. The Respondent accepted that the report had been commissioned but argued that the property was very insecure and none of the recommendations in the report were carried out.
13. The tribunal allowed the cost in full. It considered that some of the recommendations had been carried out, in particular the garden had been cleared and included on a maintenance schedule. It considered the cost reasonable for a report of this nature.
14. Management charges were also challenged for 2011 and are considered below.

2012

Cleaning

15. The tribunal heard that this charge related to a monthly clean of the common parts in the sum of £20.17 plus Vat per month. There was no specification and the contract was oral.
16. The Respondent challenged the cleaning as he did not consider the cleaners did very much but did not provide any evidence of the alleged poor standard such as photographs or letters of complaint to the managing agents. He accepted that the cleaners did attend for 15-20 minutes each month. He offered to pay £10 a month for the cleaning.
17. The tribunal allowed the cleaning in full. Copy invoices had been provided. It was disappointing not to have seen a specification or breakdown of the work carried out. However it considered the monthly charge of £20.83 plus Vat fell within a reasonable range. It had no evidence of any poor standard of cleaning and it was accepted by the Respondent that the contractors did attend on a monthly basis. The importance of providing evidence of any alleged poor standard and/or comparable evidence had been stressed to the Respondent at the case management conference.

Gardening

18. This charge related to a monthly charge of £31.17 plus Vat for gardening. There was no specification and the contract was oral. In this service charge year there was an additional fee of £370 which was described as “ *a one-off tidy-up of front and back garden. Removed and disposed of all debris*”.
19. The Respondent’s challenge to these charges was on the basis that the garden was extremely small and there was no gardening at all during the winter months. However no evidence of the condition of the garden was provided in support. It was accepted that the “*one-off tidy*” had taken place but the Respondent submitted that this was excessive and thought a fee of between £70-£100 would be reasonable.
20. The tribunal allowed the gardening charges in full. The challenge made was on the basis of an alleged poor standard. It had no evidence from the Respondent that the gardening had been poor or the service erratic. It had been provided with copy invoices and considered the charges fell within a reasonable range.
21. The tribunal also allowed the cost of the “*one-off tidy*”. It was accepted that this had been carried out and the tribunal noted that this had formed one of the recommendations in the safety audit. The tribunal

had no comparable evidence and was satisfied that the cost fell within a reasonable range.

Minor repairs

22. The following minor repairs were challenged;

- (i) At page 97 an invoice in the sum of £313 for the repair of a porch light and replacement of security lights. This was challenged on the basis that there were no security lights installed but that the bulbs had simply been replaced.

The tribunal allowed this charge in full. It was satisfied the work was done, the invoice had been provided and the Respondent had provided no comparable evidence.

- (ii) At page 98 an invoice in the sum of £222 for a new 2D light was challenged as excessive.

The tribunal allowed this charge in full. It was satisfied the work was done, the invoice had been provided and the Respondent had provided no comparable evidence.

- (iii) At page 99 an invoice in the sum of £10.68 had been challenged but the challenge was withdrawn at the hearing.

23. Management charges are also challenged for 2012 and are considered below.

2013 – estimated charges

Cleaning

24. The cost of cleaning was estimated at the monthly charge of £20.13 plus Vat.

25. It was challenged on the same grounds. The tribunal allowed the charges in full on the same basis as referred to above.

Gardening

26. The gardening was estimated at the monthly charge of £31.17 per month plus Vat.

27. It was challenged on the same grounds. The tribunal allowed the charges in full on the same basis as referred to above.

Fire risk assessment

28. The cost of a fire risk assessment in the sum of £240 was challenged. The Respondent accepts that this was carried out but challenged it as only a bulk invoice has been provided with no reference to the specific property details. The tribunal was referred to a copy of the invoice and a copy of the report and heard that this was a risk assessment which had been carried out across the portfolio and the properties had been billed in batches.
29. The cost of the fire risk assessment was allowed in full. The tribunal had been provided with a copy of the report and considered the cost fell within a reasonable range.

Stock condition survey

30. The cost of a stock condition survey in the sum of £240 was challenged on the basis that there was no reference to the subject property and the valuation had not been provided. The tribunal heard that this related to a valuation for insurance which had been carried out across the portfolio by Savilles.
31. The cost of the stock condition survey was disallowed. The tribunal had no evidence as to what this related to and considered it may well be in connection with the proposed sale of the portfolio by the administrator.

Minor repairs

32. The cost of the minor repairs was not challenged.
33. Management charges are also challenged and are considered below.

Management fees

34. The management fees were challenged for all of the service charge years before the tribunal.

35. The charges are as follows;

2011	£171.25 plus Vat
2012	£180 plus Vat
2013	£204.58 plus Vat

36. The Respondent submitted that the management of the property had been very poor. He had been unable to issue proceedings against the landlord without the Court's permission as the landlord is in administration. He had therefore withheld his service charges for 2011-13.
37. The property manager did not attend the hearing. Ms Thompson explained that this was due to an attempt to keep costs down as the portfolio was being sold. However it would have been helpful to the tribunal if a property manager had attended the hearing to give evidence on the services provided and the complaints made by the Respondent.
38. The tribunal was not provided with a copy of the management agreement. It heard that one was believed to exist but that the Applicant's solicitors had been unable to locate it. This agreement was believed to cover the whole portfolio. The managing agents are a wholly owned subsidiary of the landlord. The tribunal had no evidence of the services provided under any management agreement.
39. The tribunal was further informed that there was only one property manager for the whole of the South East who did not have any direct knowledge of this property. It was conceded that the property had not been visited since 2009.
40. The Respondent informed us that he had contacted the managing agents about problems at the property but these were never rectified. He complained that it took months for lightbulbs to be changed. The Respondent asked that the management fees be reduced to £90 per annum.
41. The tribunal concluded that the management service provided had been basic. The Respondent had failed to provide documentary evidence to support his claim despite the importance of this being emphasised to him at the case management conference. However the tribunal was satisfied that there had been a lack of visits to the property since 2009, the management had been reactive and there had been an apparent failure to engage with the tenant. It therefore considered it appropriate to make a reduction to the management charges which are allowed at the following rates:

2011 £120 plus Vat

2012 £160 plus Vat

2013 £180 plus Vat

Application under s.20C

42. The Respondent applied for an order under section 20C of the 1985 Act. The Applicant consented to the order being made and accordingly the tribunal 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 Applicant may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge.

The next steps

43. The tribunal has no jurisdiction over statutory interest or county court costs. This matter should now be returned to the Uxbridge County Court.

Name: S O'Sullivan

Date: 19 November 2013

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 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.