9516

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00BH/LSC/2013/0473**
Property	:	**623A Station Parade, High Road, London E10 6RF**
Applicant	:	**Mr M. Sadiq (landlord)**
Representative	:	**Ms Smith (of counsel) instructed by Brethertons LLP (solicitors) with Ms Z. Altaf (Hexagon Property Co. Limited, managing agents for the landlord)**
Respondent	:	**Mr P. Ofori (leaseholder)**
Representative	:	**Mr J. Allie of Spencer Horne (solicitors)**
Type of Application	:	**Determination of service and administration charges, (under the Landlord and Tenant Act 1985 and the Commonhold and Leasehold Reform Act 2002) following a transfer from the Bow County Court.**
Tribunal Members	:	**Professor James Driscoll, solicitor, (Tribunal Judge) and Mr Richard Shaw FRICS (Tribunal Member)**
Date and venue of Hearing	:	**The hearing took place on 25 September 2013 at 10 Alfred Place, London WC1E 7LR. A further statement was made on behalf of the landlord was received by the tribunal on 3 October 2013.**
Date of Decision	:	**9 December 2013**

The decisions summarised

1. We are satisfied that the landlord is alive and that the claim for non-payment of service and administration charge is being properly conducted.

2. The service charges demanded in advance for the service charge year 2012-2013 and the subject of a claim in the court and transferred to this tribunal for a determination under section 27A of the 1985 Act are reasonable except for (a) the insurance was calculated incorrectly and (b) the landlord has decided that the demand for a contribution to the reserve fund should be withdrawn.

3. We determine under the 2002 Act that administration charges of £120 are reasonable and recoverable.

4. The landlord should send a fresh demand to reflect these determinations.

5. The claim should be returned to the Bow County Court for any further action that may be needed.

Background

6. The parties to this application are respectively the landlord and the leaseholder of one of the flats in the subject premises which consists of flats and some commercial premises.

The County Court claim

7. The dispute started when the landlord claimed that the leaseholder was in arrears with service and administration charge payments. Proceedings were instituted in the County Court and they were eventually transferred to the Bow County Court under claim number 3YJ62898. In these proceedings, the landlord claimed the total sum of £1,644.20 and interest and costs. This sum was made up of estimated service charges, administration charges and ground rent. In addition interest and costs were claimed in the county court.

8. Following a hearing at the Bow County Court on 19 June 2013, when the parties were legally represented, a default judgement previously given was set aside and the claim was transferred to this tribunal and, as the leaseholder suggested that the landlord was deceased, those representing the landlord were directed to file an affidavit confirming that the landlord was still alive.

The pre-trial review

9. Following the transfer to this tribunal a pre-trial review was conducted (without a hearing) on 9 July 2013 and directions were given. The directions stated that the ground rent claim, the interest and court costs were outside the jurisdiction of the tribunal and remained within the remit of the court.

10. In accordance with these directions, those advising the landlord prepared a bundle of documents. This bundle included statements made by or on behalf of the parties, a copy of the county court documents (including the pleadings), a witness statement made on behalf of the landlord and a copy of relevant correspondence. This was a carefully prepared and comprehensive, well-indexed and easy to follow.

The hearing

11. Ms Smith, counsel for the landlord made opening remarks and she told us that the disputed charges relate to the service charge year 31 March 2012 to 30 March 2013.

12. She was accompanied by Ms Altaf of the landlord's managing agents. Ms Smith said that the basis for the claim is set out in a statement made by Ms Altaf dated 19 August 2013. In this statement she explains that the practice of her firm is to charge administration charges in cases where a leaseholder falls into arrears with service charges or ground rents. These charges, she says, are for the time spent by the managing agents in pursuing arrears and they include a charge where the decision is taken to ask their solicitors to institute court proceedings to pursue the arrears.

13. In this case Ms Altaf contends that all service charge demands have properly been made, the statutory notices that must accompany the demands were given and that the landlord is entitled to recover as administration charges, the costs in pursuing the arrears. She complains that the leaseholder has failed to explain the basis on which he challenges the service and administration charges. She adds that as the costs of major works to the leaseholder was less than £250 that the statutory consultation process under section 20 of the Act were not triggered so that the leaseholder's complaint of failure to consult has no merit.

14. For the leaseholder Mr Allie, his solicitor, told us that there is a preliminary issue that has to be decided, namely the belief held by his client, the leaseholder in this case, that the landlord is deceased. This matter was raised at the County Court. Mr Allie also told us the leaseholder was currently abroad. His belief that the landlord was deceased is based on having visited the landlord at his home and being told by those present in the property that the landlord had died.

15. We were handed a document called 'Reply to Statement of Case' which had been prepared by Mr Allie. This document reiterates the claim that the

landlord has died and that the lack of 'proof of capacity' the 'hearing cannot proceed' (paragraph 1). The administration charges were also challenged as being unreasonable. Challenges were also made to the service charges including the contention that there should have been a section 20 consultation. Attached to this statement are some photographs of the rear car park. This statement also questions some invoices as being charges relevant to a later financial year.

16. In response from our questions, Mr Allie told us that he considered that as a matter of law the rent is no longer recoverable as the right to recover it has passed to the Crown under the bona vacantia rule.

17. Ms Smith referred us to a witness statement made by Mr Q. Ali, a director of the management company dated 19 August 2013. This statement included a 'statement of truth' and claimed that Mr Ali is alive and that he attended his firm's offices (at 115 Fencepiece Road, Hainault Essex) on 14 August 2013 to discuss the property. Mr Ali was not present at the hearing to answer questions. However, Ms Altaf, who had not included this issue in her written statement, told the tribunal that she has met the landlord in the office 'about a month ago' which she confirmed that she was referring to the month of August 2013.

18. We note that the leaseholder was basing his assertion on the death of the landlord on a verbal statement.

19. On the balance of probabilities we have concluded that the landlord is not deceased. We must balance the evidence submitted by Mr Allie and the oral testimony and written statement of Ms Altaf.

20. In any event, Mr Allie's submission that the supposed death of the landlord prevents this determination of the charges was not, in our opinion, supported by any legal authority. It seems to us that on ordinary principles that if the landlord had died any property and debts owing at the time of death pass to the estate of the deceased and are recoverable by those administering the estate and they do not pass to the Crown.

21. Turning to the leaseholder's case, the bundle of documents included a defence which was filed in the court proceedings on 18 March 2013 and supported by a witness statement dated 5 April 2013 which was largely devoted to describing his problems in obtaining legal advice. In both documents he asserted that the statutory consultation procedures (prescribed under section 20 of the Act) had not been complied with. We summarised the various challenges in paragraph 15 of this decision.

22. Mr Allie also questioned the costs of the insurance and whether the commercial leaseholder was required to contribute to these costs. He also queried whether service charges were maintained in a reserve account.

23. Those advising the landlord were unable to respond to these two questions and it was agreed that a written statement dealing with these two issues would be filed with the tribunal by 2 October 2013 and that those

advising the leaseholder would have the right to give a written reply by 16 October 2013.

24. On 3 October the tribunal received by email a copy of a statement by Ms Altaf along with a covering statement in that email from the landlord's solicitors which showed that the leaseholder's solicitors had been copied in on the message.

25. In this statement dated 2 October 2013 she stated that the commercial leaseholders in the building are required to contribute 60% towards the costs of the insurance with the balance being shared by the residential leaseholders. Ms Altaf went on to state that the residential leaseholders had been over charged for the insurance. For the service charge year in question the commercial leaseholders should have paid a total sum of £5,067.06 whilst the residential leaseholders should have paid a total of £3,338.04. However, the residential leaseholders had wrongly been charged for the whole of the costs so her company will arrange a reimbursement. In the email the landlord's solicitors added that they did not seek to further pursue the reserve fund issue.

26. The tribunal has not received a response to this statement or the email from the leaseholder's solicitors.

The reasons for our decision

27. We have been directed to make a determination of the charges. On the service charges we conclude first of all that they are recoverable by the landlord (or if it proves to be the case that the landlord has died) by the executors or the administrators of his estate. As noted above we are satisfied that the landlord has not died and the claim for unpaid charges is being properly conducted on his behalf.

28. As to the service charges claimed the bundle contains a demand dated 8 May 2012. The total projected expenditure is the sum of £22,774.29 which is be apportioned equally between the 22 leaseholders as the sum of £1,035.20 each. The major components of this expenditure were insurance premium, a site survey, general maintenance, cleaning and communal costs and management fees (at £5,280 the second largest of the items).

29. The difficulty with the leaseholder's case is that he does not directly challenge the individual items let alone provide any evidence that any of the individual costs are unreasonable. We therefore have on the face of it no evidence that any of the charges are unreasonable or irrecoverable under the lease. Our reading of the copy invoices in the bundle (from page 83 on) shows that they relate to the correct service charge period.

30. However, the landlord has since the hearing conceded that the insurance element was incorrectly calculated and that is no longer wishes to seek to recover a proportionate of the reserve fund contribution in the estimated budget (a total of £1,100 to which the 22 leaseholders were originally asked to contribute). It follows that the claim from the

leaseholder for the sum of £1,035.20 must be adjusted to remove the reserve fund contribution demand and to adjust for his contribution to the costs of the insurance.

31. In her October 2013 statement, Ms Altaf states that the leaseholder has made no payments and that the sum due for insurance is now the sum of £151.71 and not as previously claimed.

32. To summarise the demand for the service charge for estimated costs must be adjusted to take account first, of the mistake made on the insurance element of the charges demanded and second, to remove the specific demand for a contribution to the reserve fund. These points apart we are satisfied that the estimated charges were reasonable.

33. Turning to the administration charges, again in the absence of detailed submissions by the leaseholder, it is difficult to decide on the issue of reasonableness. Nevertheless, to charge a fee of £48 for each reminder (a total of £96) with an additional fee of £90 seems to us on the basis of our own professional knowledge and experience to be high. We were told at the hearing that these are standard charges to reflect the costs to the landlord by employing managing agents for work which is outside their other duties to manage the building. Although we accept in principle that such administration charges can be made under schedule 11 to the 2002 Act they must be 'reasonable'.

34. In answer to our questions, those representing the landlord told us that these are standard charges and to not vary according to the size of the arrears. We do not think it is reasonable for a managing agent to charge the sum of £48 for what is a simple routine letter seeking recovery of charges. Although a greater sum may be justified in sending papers to their solicitors to recover unpaid charges again we think that charging a standard charge of £90 is excessive.

35. In these circumstances we determine that the charge of £30 is reasonable for the first two letters and the sum of £60 is reasonable for the third element of the administration charges. We determine, therefore, that the total administration charges that are recoverable from the leaseholder is the sum of £120 (including VAT).

36. We were not asked at the hearing or after to consider making an order for costs under section 20C of the 1985 Act.

37. This matter is now to be returned to the Bow County Court to deal with any outstanding matters. However, we recommend that once the landlord has given notice of the adjusted charges that the parties should try to agree on the outstanding payments to avoid any additional legal or other professional costs being incurred.

Name: Professor James Driscoll **Date:** 09.12.13

Appendix of the relevant legislation

Landlord and Tenant Act 1985

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
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.
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 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, 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.
But the Tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

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 leasehold valuation 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 a leasehold valuation tribunal;
(b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation 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.
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.

Schedule 11, Commonhold and Leasehold Reform Act 2002

Meaning of "administration charge"

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.
Reasonableness of administration charges
2
A variable administration charge is payable only to the extent that the amount of the charge is reasonable.
3
(1)
Any party to a lease of a dwelling may apply to a leasehold valuation tribunal for an order varying the lease in such manner as is specified in the application on the grounds that—

(a)
any administration charge specified in the lease is unreasonable, or
(b)
any formula specified in the lease in accordance with which any administration charge is calculated is unreasonable.
(2)
If the grounds on which the application was made are established to the satisfaction of the tribunal, it may make an order varying the lease in such manner as is specified in the order.
(3)
The variation specified in the order may be—
(a)
the variation specified in the application, or
(b)
such other variation as the tribunal thinks fit.
(4)
The tribunal may, instead of making an order varying the lease in such manner as is specified in the order, make an order directing the parties to the lease to vary it in such manner as is so specified.
(5)
The tribunal may by order direct that a memorandum of any variation of a lease effected by virtue of this paragraph be endorsed on such documents as are specified in the order.
(6)
Any such variation of a lease shall be binding not only on the parties to the lease for the time being but also on other persons (including any predecessors in title), whether or not they were parties to the proceedings in which the order was made.
Notice in connection with demands for administration charges
4
(1)
A demand for the payment of an administration charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to administration charges.
(2)
The appropriate national authority may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.
(3)
A tenant may withhold payment of an administration charge which has been demanded from him if sub-paragraph (1) is not complied with in relation to the demand.
(4)
Where a tenant withholds an administration charge under this paragraph, any provisions of the lease relating to non-payment or late payment of administration charges do not have effect in relation to the period for which he so withholds it.
Liability to pay administration charges
5
(1)

An application may be made to a leasehold valuation 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 a leasehold valuation 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).
Interpretation
6
(1)
This paragraph applies for the purposes of this Part of this Schedule.
(2)
"Tenant" includes a statutory tenant.
(3)

"Dwelling" and "statutory tenant" (and "landlord" in relation to a statutory tenant) have the same meanings as in the 1985 Act.

(4)

"Post-dispute arbitration agreement", in relation to any matter, means an arbitration agreement made after a dispute about the matter has arisen.

(5)

"Arbitration agreement" and "arbitral tribunal" have the same meanings as in Part 1 of the Arbitration Act 1996 (c. 23).