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

**Case Reference** : LON/OOAH/LSC/2013/0314

**Property** : 80A Selhurst New Road, London  
SE25 5PU

**Applicant** : Mr W. Pitters (landlord)

**Representative** : In person

**Respondent** : Mr A. Shobonyo (leaseholder)

**Representative** : Mr M. Lee (of counsel) with Mr K.  
Atolagbe

**Type of Application** : Determination of service charges  
and administration charges

**Tribunal Members** : Professor James Driscoll, solicitor,  
(Tribunal Judge) and Mr Stephen  
Mason BSc FRICS FCI Arb

**Date and venue of  
Hearing** : The hearing was held on 24 July  
2013 at 10 Alfred Place, London  
WC1E 7LR

**Date of Decision** : 24 July 2013

## DECISION

### **The Decisions summarised.**

1. These applications have been considered by this tribunal following a transfer of proceedings by order of the Croydon County Court. The parties agreed that the claim for administration charges for the service charge years 2007/8, 2008/9 and 2009/10 should not have been included in the claim form completed by the landlord's solicitors Stoffel & Co as these formed part of the determination made by this tribunal in 2011.
2. For the service charge year 2010 - 2011 the costs of the insurance were reasonably incurred and payable in full. However, the maintenance costs claimed are not recoverable from the leaseholder.
3. For the service charge year 2011 - 2012 the costs of the insurance were reasonably incurred and recoverable in full. However, the maintenance costs claimed are not recoverable from the leaseholder.
4. For the service charge years 2010 - 2012 the administration charges made by the landlord are not recoverable from the leaseholder.
5. A copy of the relevant statutory provisions is contained in the appendix to this decision.

### **Background to the application**

6. This is an application for the determination of service and administration charges. The first application is made under the Landlord and Tenant Act 1985; the second (it appears) under schedule 11, Commonhold and Leasehold Reform Act 2002. The applicant is the landlord of the premises which consists of four flats two of which are held on long leases (the basement flat and the ground floor flat), a third of which is occupied by a regulated tenant (that is the first floor flat) and the fourth of which is currently empty (the second floor flat). The respondent to these applications is the leaseholder of the basement flat. He has exercised a power of attorney appointing Mr K. Atolagbe to act as his attorney. We will refer to the parties as the 'landlord' and the 'leaseholder'.
7. In 2011 this tribunal made determinations of service and administration charges for the service charge years 2007 - 8, 2008 - 9 and 2009 -10 (under the reference LON/OOAH/LSC/2011/0472). The service charge year runs from June to June in the year following.

## **The County Court proceedings**

8. Proceedings were instituted by the landlord seeking the recovery of service charges, ground rents and certain administration charges in the Croydon County Court. In these proceedings the landlord sought recovery of the charges which were determined by 2011 proceedings, a determination of service charges for the periods 2010 - 11 and 2011 - 12 and unpaid ground rents.
9. As the leaseholder challenged the 2010 and 2011 claims and the administration charge claims, the court ordered the transfer of that part of the claim to this tribunal. The Court retained jurisdiction of the claim for the charges that have already been determined and for the unpaid ground rent.
10. Following a pre-trial review on 30 May 2013 directions were given.

## **The hearing**

11. We heard these claims on 24 July 2013 when the landlord appeared unrepresented (though he has had solicitor's advice in the past) and the leaseholder was represented by Mr Lee of counsel and his attorney Mr Atolagbe was also present.
12. The landlord told us that he purchased the building in 1993 as a converted block of four flats. Two the flats are held on long leases. There is a regulated tenant who currently pays a capped fair rent of £125 per week. The other flat is not rented. There are four garages to the rear of the building which the landlord uses for storage. He does not rent them out. Neither of the leaseholders has any rights over the garages.
13. We proceeded to consider the submissions and the evidence on the 2010-11 and 2011 - 12 periods.
14. For the first period Mr Lee told us that his client accepts that the landlord can recover the costs of the repairs to the roof. However, he continues to challenge the claim of £1,300 for maintenance to the building and the sum of £533.80 for the costs of insuring the building. (The leaseholder has to contribute a quarter of these costs as a service charge).
15. The landlord told us that the maintenance costs relate to his management of the premises. The work includes gardening and dealing with the drains and the guttering. He charges for his work at £10 per hour which he justifies as far cheaper than employing contractors to do the work. The total figure for these costs includes the costs of buying certain materials. He has no receipts for the materials which he purchased 'second hand'. Most of the work consisted of gardening. He keeps his own record of the

dates and time of the work though no copies of this log were included in the bundle of documents.

16. On behalf of the leaseholder we were told that Mr Atolagbe, who visits the property regularly, has never seen any such works having taken place. Mr Atolagbe told us that the flat is rented out on assured shorthold tenancies and he is in regular contact with the subtenant. (A rent of £1,000 is received under this subletting). He also produced photographs of the exterior of the building which shows that the 'garden' areas are concreted. These photographs were taken by him in May 2013 and they show lots of weeds and general rubbish on these areas. They also show that the 'garden areas' are, in fact, concreted.
17. As to the insurance, Mr Lee submits that the leaseholder is not convinced that full insurance cover has been made. He questions whether the insurance company is aware of the fact that the building consists of flats. He does not challenge the actual costs of the insurance.
18. The landlord then produced a document showing that the building is insured as a block of flats.
19. For the second service charge period (2011 - 12), the leaseholder has the same challenges to the maintenance costs (£700) and the insurance costs (£533.80). The landlord told us that his maintenance costs are for gardening works and other works to the premises for which he charges a flat rate of £10 per hour.
20. We then heard argument on the administration costs. We examined the particulars of claim and noted that this element of the landlord's costs was one of the matters determined by a tribunal in the 2011 decision referred to above. The landlord accepted this so a mistake appears to have been made in the particulars of claim prepared and filed with the court by his solicitors as a result of which no determination of these charges for the periods 2006 - 2009 is needed.
21. The landlord told us that he makes these charges (£135 per annum and now £140 per annum) for the time he spends dealing with the leaseholder for which he charges at the rate of £10 per hour.

## **Reasons for our decisions**

22. In principle the landlord can charge for time dealing with his responsibilities for the building instead of employing contractors to do the work. However, the landlord also benefits from such economies as only two of the four flats are held on long leases as a result of which the landlord will always bear 50% of the total costs. The difficulty is the landlord had limited evidence to support this claim. We do not think that the landlord can recover sums representing his work in this case as there is insufficient evidence that any works were carried out. He was unable to provide a detailed claim showing the dates of the work, what work was carried out and the time those works took.

23. We conclude and determine that the maintenance costs claimed are not recoverable. For the future it may be best if the landlord engages a contractor to undertake the works that he claims that he does and keeps the receipts for any payments he makes for this work.
24. We do not share Mr Lee's concerns over the costs of the insurance. The available documentary evidence shows that the building is insured as a block of flats. The costs of this insurance is recoverable as a service charge.
25. As to the 'administration' charges, the landlord was unable to point to any clause in the lease that warrant such charges. We are surprised that a flat rate has been charged rather than a charge based on the actual time spent. The landlord told us that he charges £10 per hour for this work. Mr Lee suggests that these are not administration charges as defined in schedule 11 of the Commonhold and Leasehold Reform Act 2002. We do not agree as they relate to dealing with leaseholder default. If the landlord decides to deal with leaseholder default by employing a solicitor or other agent it is possible that such costs could in principle be recoverable. As administration charges the landlord should also give a notice to the leaseholder as required by paragraph of schedule 11 to the 2002 Act.
26. To conclude there is nothing in the lease which allows the landlord to charge for the time spent dealing with a leaseholder (though there is power to appoint managing agents and in specific cases to appoint solicitors and other professionals).
27. In light of these determinations (which are summarised in paragraphs 1 to 3 above) this matter is transferred back to the Croydon County Court.

**James Driscoll**  
**24 July 2013**

## **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).