



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

Case reference : **LON/00AF/LSC/2014/0221**

Property : **14 Spencer Court, Hartington Close
Farnborough, Orpington, Kent BR6
7TP**

Applicant : **Hartington Gate Residents
Company Limited**

Representative : **Ms J Lamb- legal consultant
Mr P Smith Property Manager**

Respondent : **Miss Carole Twydell**

Representative : **The Respondent did not appear
and was not represented**

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

Tribunal members : **Ms M W Daley LLB (hons)
Mr M Taylor FRICS
Mrs J Hawkins Msc**

**Date and venue of
hearing** : **22 September 2014 at 10 Alfred
Place, London WC1E 7LR**

Date of decision : **22 September 2014**

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the sum of £2,036.70 is payable by the Respondent in respect of the service charges for the years ending 2011, 2012 and 2013.
- (2) Administration charges in the sum of £120.00 are payable
- (3) The tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985.
- (4) Since the tribunal has no jurisdiction over county court costs and fees, this matter should now be referred back to the County Court.

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 Applicant in respect of the service charge years 2011, 2012 and 2013.
2. Proceedings were originally issued in the County Court under claim no. 3x179131. The claim was transferred to this tribunal, by order dated April 2014.
3. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

4. The Applicant was represented by Ms Lamb (legal consultant) and Mr Smith (property manager) of Peverel Property Management (the managing agents for the premises). The Respondent did not attend the hearing.
5. On 10 September 2014 the Tribunal wrote to the Respondent following correspondence from both the parties in the letter the Tribunal stated:-

The Tribunal issued a warning on 22 August 2014 that the Respondent would be barred from taking part in the proceedings unless she complied with the Directions. The letter on 27 August does not give any reasons why she has not complied and again the request for a meeting is an insufficient reason... Having issued the warning, the Tribunal is not persuaded by the Respondent's arguments, and

therefore confirms that, at the hearing on 22 September, she is barred from taking any further part in the proceedings and the Tribunal will determine the matter on the basis of the Applicants papers..."

6. The Tribunal indicated that the approach that would be adopted is that the Tribunal would consider the service charges on the basis of whether they were reasonable and payable under the terms of the lease, and in this regard the Tribunal would be assisted by the audited service charge accounts and or any invoices in support of the charges which would be considered by the Tribunal

The Background

7. The property which is the subject of this application is a flat within a development known as Hartington Gate, which is an estate comprising a mixture of flats and houses built in approximately 1994.
8. The Respondent's premises are situated in Spencer Court, the freehold of the premises is owned by the leaseholders. Spencer Court, together with other properties within the development, are managed by Peverel Property Management.
9. 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 and will be referred to below, where appropriate.
10. The service charges are apportioned by reference to three overall heads of charges Schedule one which includes all service charges with reference to the estate, Schedule two which deals with the external block cost, and Schedule three which is for the internal block cost.
11. The Respondent contributes to the cost in the following percentages 2.13 percent of the schedule 1 costs, 2.86 of the schedule 2 costs and 3.13 of the schedule 3 costs.
12. The costs are apportioned to the various schedules, for example where management and insurance are attributed to the estate costs they are apportioned under schedule 1.

The issues

- (i) The Issues were set out in the directions, in the Directions dated 15 May 2014, the Tribunal noted that the Respondent's challenge, as far as it was identified from her county court defence, and from her submissions at the case management hearing, was:- (i)the amount claimed under the heading of

General repairs for each of the years in issue, also identified as an issue was (ii) the amount of any variable administration charge payable by the Respondent, (iii) whether the Tribunal should make an order under section 20C of the Landlord and Tenant Act 1985 and (iv) whether the Tribunal should make an order for the Tribunal hearing fee to be reimbursed.

13. At the hearing the Tribunal referred to the audited service charge account for 2011, this account was prepared by Hayhursts Chartered Accountants. The statement of accounts noted as follows: “...*We have examined the service charge statement set out on the Income and Expenditure Account and Notes to the Accounts pages... together with the books and records maintained by the managing agents OM Property Management Limited in so far as they relate to Hartington Gate.*”
14. The Accounts were then certified for each of the years in question.
15. The Tribunal heard from Mr Smith the property manager, who went through the accounts answering questions on the various heads of charge. In particular he was asked why Company & Secretarial fees were charged, and to provide information to satisfy the Tribunal that the Company Secretarial fees in the sum of £600.00 claimed under schedule one were payable in accordance with the lease.
16. The Tribunal examined the various heads of cost for the year 2011, and noted that although the management costs were split into estate and block cost the total payable by the Respondent was approximately £280.00.
17. In respect of the repairs for the period, the Tribunal were provided with the cost of repairs which were set out in the service charge accounts, together with a print out of repairs for each of the years and the relevant invoices.
18. The Tribunal considered the print outs for the years 2012 and 2013.
19. The Tribunal were informed by Mr Smith that the issues at the property related to the dumping of rubbish and larger items at the premises, repairs to lighting which arose from time to time, removal of signage, and minor repairs to the roof. Mr Smith noted that the main complaint from the Respondent was in relation to the front entrance door, and whilst it was accepted that there were some repairs to the door in 2013, Mr Smith had spoken with various leaseholders at the premises, both formally at residents meetings and informally, and save for the

complaints of the Respondent, there were no other complaints concerning the functioning of the main entrance door.

20. The Tribunal noted that the service charge accounts for 2012, detailed costs payable to Cirrus Careline in the sum of £176.26. Mr Smith explained that this was an out of hours emergency service, which dealt with emergency work, twenty four hours a day, for each day of the year, this was supported by the property managers being on call for any queries that the emergency service might have.
21. Mr Smith noted that should the majority of leaseholders object to this service then the service could be terminated.
22. The Tribunal noted that for the year ending 2012, the cost for an Aerial System was £1719.64. On enquiry Mr Smith noted that the cost incurred were in connection with the digital switch over. This cost was payable by reference to Part 1 1(b) of the seventh schedule.
23. The Tribunal asked about the Admin charges, these were set out in the statement of case in the following sums £60.00 added to the Respondent's account on 23 August 2013 and £60.00 on 26 September 2013. In respect of the cost of £459.00 which was identified at the case management conference, this was for legal cost. The recoveries of these legal costs were not in issue, before the Tribunal as these were cost, for which recovery would be sought in the County Court.
24. The Tribunal considered all of the service charge cost for each of the years in question, (notwithstanding that only the Repair cost were in issue). Having heard evidence and submissions from the parties, and having considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

The tribunal's decision

25. The tribunal determines that the cost of the service charges for 2011, 2012 and 2013 were reasonable and payable in the sum of £2,036.70 set out in the Case Management Conference and £120.00 for admin charges.

Reasons for the tribunal's decision

26. The Tribunal considered all of the charges in particular the repairs, in so doing the Tribunal applied its knowledge and experience of such charges and considered the detailed invoices where the Tribunal considered this was necessary, in order to seek clarification of the charges.

27. The Tribunal noted the Applicant's general comments in the Statement of Case and noted the Applicant's submission that:- "*... The Respondent has failed to engage in any meaningful way with the matter before the Tribunal, despite being given ample opportunity to do so...*" The Applicant asserted that Respondent had a burden of proving that an item of expenditure was not reasonable incurred
28. The Tribunal consider, that the position is best set out in the case of *Havering-v- MacDonald* [2012] UKUT 154 "*Once a tenant establishes a prima facie case by identifying the item of expenditure complained of and the general nature (but not the evidence) of the case it will be for the landlord to establish the reasonableness of the charge.*"
29. The Tribunal noted that prior to being debarred on 10 September 2014; the Respondent had not established a prima facie case. Notwithstanding this, the Tribunal considered the charges, and noted that by reference to the supporting documents the charges were reasonable and payable
30. The Tribunal noted that no complaint was raised concerning the admin charges, and determine that this sum is reasonable and payable.

Application under s.20C and refund of fees

31. The Tribunal noted that no submissions were made in respect of the recovery of fees, the tribunal does not order the Respondent to refund any fees paid by the Applicant [within 28 days of the date of this decision].
32. The Tribunal determined that in the circumstances of the Respondent being debarred it was not appropriate to make an order under Section 20C of the Landlord and Tenant Act 1985.
33. **The next steps**
34. The tribunal has no jurisdiction over county court costs. This matter should now be returned to the County Court.

Name: Judge Daley

Date: 22 September 2014

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.

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).