



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

Case Reference : LON/00AH/LSC/2014/0026

Property : 223 Brighton Road, Purley CR8 4HF

Applicants : Neil and Dawn Douglas (Flat 1)
Louise Croissant (Flat 2)

Representative : Neil Douglas

Respondent : Lalita Anand

Representative : Mr K Kumar

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

Tribunal Member : P M J Casey MRICS

**Date and venue of
Hearing** : 2 April 2013
10 Alfred Place, London WC1E 7LR

Date of Decision : 25 April 2014

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the sum of £761.68 is payable by both the leaseholders of Flat 1 and the leaseholder of Flat 2 in respect of the service charges relating to insurance costs and managing agent's fees for the year ending 31 December 2013.
- (2) The tribunal makes the determinations as set out under the various headings in this Decision.

The application

1. The Applicants seek 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 Applicants in respect of the service charge year ending 31 December 2013.
2. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

3. Mr Neil Douglas, one of the Applicants appeared in person on behalf of himself and his wife as the leaseholders of Flat 1 and also on behalf of the leaseholder of Flat 2 at the hearing and the Respondent was represented by Mr K Kumar.
4. Immediately prior to the hearing Mr Douglas handed in further documents, namely copies of the application, the lease and the Directions as his hearing bundle. He was accompanied by his young son as, he said, his wife was indisposed and they had been unable to make alternative child care arrangements. Mr Kumar objected most strongly to the presence of the child, who looked no more than three years old, at the hearing and wanted a postponement if the child was going to remain in the room. This was refused but it was arranged for a member of staff to sit with the child at the back of the room and if any disruption occurred the hearing would be adjourned for Mr Douglas to restore calm. In the event the child behaved perfectly throughout the hearing.
5. Directions for the progression of the application had been issued to the parties on 22 January 2014. Following this the parties had availed themselves of the tribunal's mediation service but failed to agree the issues in dispute. The directions for the hearing were not however complied with. No fault lies with the Respondent however as the Applicants never served a statement of case to which a response could be made. Nevertheless because the issues were few in number, were

clearly set out in the application and the directions and because the parties had attempted mediation the tribunal was of the opinion that neither party would suffer any prejudice by the application being heard and determined on the day.

The background

6. The property which is the subject of this application is one of a pair of semi-detached houses converted into six self-contained flats. Number 223 contains flats 1-3.
7. 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.
8. The Applicants hold long leases of Flats 1 and 2 at the property which require 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.
9. Around Christmas 2013, Mr Douglas could not recall the precise date, the Applicants completed the purchase of the freehold interest in number 223 only as nominee purchasers under the provisions of Chapter 1 of the Leasehold Reform Housing and Urban Development Act 1993. Mr Kumar showed the tribunal copies of the S13 Initial Notice dated 17 October 2012 and the Reversioner's S21 Counter Notice dated 24 December 2012. As part of the price payable on completion of the purchase the Applicants paid the sum of £7,308.73 in respect of what the Completion Statement included with the application, described as "Lease payment arrears". A breakdown of this sum was given on the statement as follows:
 - "i) Flat 2 – previous arrears of £2,269.76 (details provided separately) plus excess year 31 December 2012 of £350.71 plus ground rent for year ending 31 December 2013 of £100 equating to £2,720.47
 - ii) Flat 1 – Service Charge year ending 31 December 2012 £817.81 plus ground rent year ending 31 December 2012 £100 which totals £917.81
 - iii) Charges for current year
 - a) 50% of building insurance for 223-225 Brighton Road year ending 31 December 2013, £3,071.89 divided by 2 equating to £1,535.95

- b) Managing Agents fee for year ending 31 December 2013 £1,500 divided by two equating to £750
- c) Ms E Gibbons professional fee regarding breaches of covenant in relation to Flat 2 - £1,200
- d) Stuart Edwards (Surveyor fee concerning inspection of Flat 2 concerning breaches - £184.50”

Mr Douglas said the references to Flat 2 should have been to Flat 1 and vice versa.

The issues

- 10. At the start of the hearing the relevant issues for determination had been identified as follows:
 - (i) Whether or not any of the sums set out in paragraph 9 were service charges which fell within the tribunal's jurisdiction, and
 - (ii) If they were what sum was reasonably payable.
- 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's decision

- 12. The tribunal determines that save for the amounts shown in respect of ground rents and the fees involved with the alleged breach of covenant all the other sums set out in paragraph 9 are service charges which fall within the tribunal's jurisdiction under S27(A) of the Act. The sums shown as arrears for the year ending 31 December 2012 are not disputed by the Applicants though the excess charge of £350.71 in respect of Flat 2 (sic) for that year was disputed in the application. However, Mr Douglas in failing to comply with directions, did not particularise his case in respect of that sum nor did he pursue it at the hearing. The only items for determination by the tribunal are therefore the insurance costs and managing agent's fees for the year ending 31 December 2013.

Reasons for the tribunal's decision

- 13. The Applicants' case in respect of the insurance and the managing agent's fees was that they were clearly service charges and as such only one sixth of the total amounts incurred in respect of 223/225 Brighton Road was chargeable to each of flats 1 and 2 under the provisions of the

leases on which each was held. Instead the Applicants had been required to pay between them 50% of the cost of those items. Mr Douglas said they were happy to pay their lease percentages for the full year even though the purchase was completed shortly before the end of the service charge year. He did not argue that the cost of either item was excessive nor that the services were not to a reasonable standard.

14. For the Respondent Mr Kumar argued that once the reversioner's S21 Counter Notice admitting the Applicants had the right to collectively enfranchise had been served they became the owners of number 223 in equity if not in title. As such they were asked to pay half the cost of insuring and managing the whole building not as leaseholders under the terms of their leases but as the nominee purchaser and owner of their half of the building. These sums were not in respect of service charges and therefore the tribunal had no jurisdiction.
15. Mr Kumar is plainly wrong. Unlike the provisions of the Leasehold Reform Act 1967 whereby service of a Notice of Tenants Claim constitutes a statutory contract the service of a S13 notice under the 1993 Act has no contractual effect. A binding contract cannot be entered into until the validity of the claim is admitted or determined by the court and the terms of acquisition have been agreed or determined by the tribunal. Prior to such a contract, or if no contract the conveyance the nominee purchaser may withdraw from the purchase. Procedural failures may lead to the nominee purchase being deemed to have withdrawn and subject to certain restrictions the freeholder can dispose of his interest. S32(2) of the 1993 Act gives the vendor a lien on certain sums to be payable as part of the purchase price on completion. These include sums due from tenants under their leases in respect of service charges which the disputed sums clearly are. There is no dispute that the leases of Flats 1 and 2 provide for payment of one sixth of the amounts expended by the landlord under the service charge provisions of those leases.
16. Thus the vendor's lien on completion could only be for one sixth of the insurance costs and one sixth of the managing agent's fees to be paid by each of the leaseholders of Flats 1 and 2 ie £511.68 and £250. Any sums paid in excess of these amounts are repayable to the Applicants.

Application under s.20C and refund of fees

17. No application was made under S20C and the Applicants did not seek a refund of fees though they can make a further application if they wish. Mr Kumar said he would be making an application for the respondents "wasted costs" which he is of course free to do.

Name: P M J Casey MRICS

Date: 25 April 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 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.

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).