



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

**Case Reference** : LON/00AQ/LSC/2013/0785

**Property** : Flat A, 251-257 Burnt Oak  
Broadway, Middlesex HA8 5ED

**Applicant** : Samantha Hoskins

**Representatives** : In person

**Respondents** : (1) Vinomar Investments Limited  
(2) Roseworth Limited

**Representative** : Mr H Peracha, Director  
Mr Walker, managing agent

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

**Tribunal Members** : Judge W Hansen (chairman)  
Judge P Korn  
Mr H Geddes

**Date and venue of  
Hearing** : 13<sup>th</sup> March 2014 at 10 Alfred Place,  
London WC1E 7LR

**Date of Decision** : 18<sup>th</sup> April 2014

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**DECISION**

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### **Decisions of the Tribunal**

- (1) The Tribunal determines that the Applicant is liable to pay as part of her service charge the sum of £14.04 per year (14.0375% of £100.00) in respect of management charges for the period from 2003-2014 inclusive.
- (2) The Tribunal determines that the Applicant is liable to pay the following sums in respect of insurance: £35.10 per year (14.0375% of £250) for the 5 years from 2003-2008, £59.65 (14.0375% of £424.94) for 2009, £35.10 for 2010 (14.0375% of £250), £85.30 (14.0375% of £607.65) for 2011, £88.36 (14.0375% of £629.41) for 2012 and £95.47 (14.0375% of £680.09) for 2013.
- (3) The Tribunal determines that the Applicant is liable to pay £3.50 (14.0375% of £25.00) in respect of communal cleaning services for the year 2005 but no other sums in respect of cleaning charges.
- (4) The Tribunal determines that the Applicant is not liable to pay any sums by way of contribution to communal electricity charges.
- (5) The Tribunal notes that the Applicant has already made service charge payments in excess of the amounts that the Tribunal has determined to be payable and that the parties will therefore need to agree a balancing adjustment to reflect this.
- (6) The Tribunal makes an Order under section 20C of the Landlord and Tenant Act 1985 that the Respondents shall not be entitled to add the costs incurred in connection with these proceedings to the service charge.
- (7) The Tribunal makes an Order under paragraph 13(2) of the 2013 Tribunal Procedure Rules for the reimbursement to the Applicant by

the Second Respondent of her application fee of £125.00 and her hearing fee of £190.00

- (8) The Tribunal makes an Order under paragraph 13(1)(b)(ii) that the Second Respondent do pay to the Applicant the sum of £55.00 in respect of her costs of preparing the bundles.

### **The Application**

1. By virtue of an application dated 14<sup>th</sup> November 2013 the Tribunal is required to make a determination pursuant to section 27A of the Landlord and Tenant Act 1985 (“**the 1985 Act**”) as to the reasonableness and payability of certain service charges charged to the Respondent.
2. The application relates to the reasonableness and payability of the following service charge items for the years 2003 to 2014 inclusive:

*Building insurance premiums*

*Communal cleaning charges*

*Communal electricity charges*

*Management charges*

3. The Applicant’s lease (“**the Lease**”) is dated 4<sup>th</sup> July 2003 and is between Vinomar Investments Limited (1) and the Applicant (2). The respondent to the application was originally named as Ultra Estates Limited but by an order dated 29<sup>th</sup> January 2014 the current Respondents were substituted for Ultra Estates Limited. The Second Respondent is the current owner of the freehold interest in the Property

(and the building of which it forms part), having acquired its interest from the First Respondent on 23<sup>rd</sup> November 2006.

4. The relevant legal provisions of the 1985 Act are set out in the Appendix to this decision.

#### **Summary of Applicant's case**

5. The Applicant challenges the service charges demanded from her from the start of the Lease on the basis that the costs have not actually been incurred and even if they have, the charges have not been levied in accordance with the terms of the Lease and are therefore not payable and/or are unreasonable in any event.
6. The particular items that are the subject of challenge for each year relate to the costs of insurance, communal cleaning, communal electricity and management charges.
7. The Applicant challenges whether the Property (or building of which it forms part) was actually insured, and even if it was, what a reasonable cost for such insurance would have been. In relation to the other items, she challenges whether the Lease permits the Second Respondent to charge for these items at all, and even if it does, whether the charges were actually incurred, are reasonable in amount and have been levied in accordance with the terms of the Lease.
8. The Applicant has produced, she says, all the service charge demands still in her possession that were served on her contemporaneously as attachments to her statement of case dated 10<sup>th</sup> February 2014. She says that she has repeatedly asked for a breakdown and further supporting documentation in relation to the charges levied but has not received any satisfactory response.
9. She does not accept that the service charge demands annexed to the Respondents' statement of case dated 22<sup>nd</sup> January 2014 were served

on her on the dates that they bear. She says she first saw them when they were attached to the Respondents' statement of case.

### Respondents' Case

10. The position of the Respondents is that "*all formal demands for the years 2003-2013*" which are annexed to the Respondents' statement of case, "*can be relied upon to reflect the accurate position*" and that the Managing Agents "*have not received any challenges to either reasonableness of liability for the Service Charge prior to 2013*". They contend that "*the Managing Agents can reasonably believe that all demands were effectively served historically and that the Applicant did not have reason to question the quantum of service charge until minded to dispose of her lease*".
11. The Respondents have produced documentation which appears to show that the Building was insured for the years 2011, 2012 and 2013 and that the premiums paid were £607.65, £629.41 and £680.09 (see Annex A to statement of case). There is also documentary evidence which appears to show that a premium of £424.94 was paid for the period 2008-2009. At the hearing they stated that at no time has the Building been uninsured.
12. They have also produced documentation which they say relates to works to the guttering and drains (Annex B). Finally, they have produced documentation which purports to show the landlord being charged for a landlord's supply of electricity to the 1<sup>st</sup> floor of the building in the sum of £259.89 in respect of the period 08 March 2013 to 05 September 2013 (Annex C). They use this to support their claim in respect of communal electricity charges.

13. At the hearing they stated that minimal funds had been available to carry out the services because service charge payments were being withheld. They accepted that cleaning had not always been carried out. They said that electricity charges were extrapolated from the first 3 months of each year. As regards the standard of management, they said that the managing agents had spent time responding to the Applicant's complaints and dealing with other issues. The managing agents conceded, though, that they did not have any relevant qualifications and did not own a copy of the RICS Code. The managing agents also conceded that they had had difficulties obtaining information from the Respondents.

#### The Lease

14. The Applicant is the original lessee under the Lease, which is for a term of 99 years from 25<sup>th</sup> March 2003. The Property comprises a two-bedroom flat in a building consisting of four flats and two shop units.
15. By Clause 1 the Lease provided for an annual rent to be paid by the Lessee and *"by way of further or additional rent ... a sum ... equal to 14.0375% of the amount which the Lessor may expend in effecting or maintaining the insurance of the Building in accordance with Clause 4(2) hereof"*.
16. By Clause 3(2) the Lessee covenanted to *"pay the interim charge and service charge at the time and in the manner provided in the Seventh Schedule..."*
17. By Clause 4(2) the Lessor covenanted to *"arrange a comprehensive buildings insurance policy in respect of the Building ... and whenever required produce to the Tenant the policy or policies of insurance and the receipt for the last premium..."*
18. By Clause 1(1) of the Seventh Schedule *"the total service cost"* was defined as meaning *"the aggregate amount in each year ... reasonably*

*and properly expended by the Lessor in carrying out its obligations under Clauses 4(2)(3)(4) and (5) and in respect of matters referred to in Clauses 2 and 3 of the Fifth Schedule...”*

19. The “*service charge*” was defined in Clause 1(2) of the Seventh Schedule as meaning 14.0375% of the total service cost.
20. By Clause 4(4) the Lessor covenanted keep the Building and its common parts in substantial repair and condition. By Clause 4(5) the Lessor covenanted to decorate the exterior as often as reasonably required.
21. Clause 2 of the Fifth Schedule refers to “*All rates taxes and outgoings payable by the Lessor in respect of the roads paths and forecourt of the Building*”. Clause 3 of the Fifth Schedule refers to “*The cost of management of the Building which costs shall include the costs of the Managing Agents appointed by the Lessor to manage the Building*”.

#### The Applicant’s Case in Detail

22. According to the Applicant, she received her first service charge demand in or about December 2003 from the then managing agents Ultra Estates Limited. She has not retained a copy but there is a letter from the Applicant to the managing agents dated 6<sup>th</sup> January 2004 in which she says: “*I am in receipt of your invoice for ground rent and service charge for Flat A ... Please can you supply me with a breakdown of exactly what is included in the service charge*”. The agents replied by letter dated 7<sup>th</sup> January 2004 explaining that “*The invoice ... for the service charges is for the maintenance upkeep and wear and tear of the communal area. This includes cleaning, lights and general wear and tear of these areas...*” They did not however produce any breakdown. It appears to be common ground that the Applicant paid a sum of £400.00 in or about February 2004. It is common ground that part of this payment was in respect of ground rent which had been charged at the rate of £150.00 (notwithstanding that

the Lease provides for an initial ground rent of only £100.00). It is unclear from the documentation and was unclear from the Applicant's evidence whether the balance of £250.00 was in respect of a half-yearly charge of £125.00 in respect of service charge and a half-yearly charge of £125.00 in respect of insurance rent or whether it was solely in respect of service charge. Having regard to the terms of the Applicant's letter dated 6<sup>th</sup> January 2004, the Tribunal considers that the latter is the more likely.

23. The Applicant says she has subsequently repeatedly asked for breakdowns of the sums claimed but has never received a complete or comprehensive response from either Respondent. The only substantive response that she did receive was under cover of a letter from Ultra Estates dated 19<sup>th</sup> August 2005 which included a budget analysis which purported to justify an annual service charge of £287.50 per flat on the basis that it represented 25% of total maintenance costs of £1,150 made up of £600 cleaning costs, £150 electricity costs, £200 sundries and £200 management charges (i.e. £50.00 per flat).
24. Following the first demand received in December 2003, the Applicant says that she then received service charge demands sent by Ultra Estates dated 27<sup>th</sup> November 2004 (£649.99), 18<sup>th</sup> November 2006 (£1,100), 4<sup>th</sup> July 2007 (£1,600) and 9<sup>th</sup> July 2008 (£600) and made a further payment of £550.00 in February 2005 since when she has refused to make any further payment of service charge in the absence of any proper breakdown of and justification for the various sums claimed. The format of these demands was to demand sums in respect of ground rent (£100.00), insurance (£250.00) and service charge (£250.00) for each year, although the demand dated 18<sup>th</sup> November 2006 covered the years 2005 and 2006.
25. The payment of £550.00 in February 2005 was made up as follows. The Property had suffered from water damage and the damage was (so the Applicant understood) the subject of a claim by the landlords on their



insurance. A company called Waterdamage UK attended and carried out repairs at a cost of £975 + VAT. The invoice dated 27<sup>th</sup> November 2004 (which was the last invoice received prior to events in February 2005) had been for £649.99. However, the Applicant had twice been invoiced for ground rent at the rate of £150.00 (when it should have been £100.00) and was therefore due a credit of £100.00. This sum was therefore taken off the invoice leaving a balance of £549.99. A cheque for £50.00 was sent to the managing agents and a payment of £500.00 was made to Waterdamage UK and in this way the invoice of 27<sup>th</sup> November 2004 was effectively discharged. The Applicant made a further payment of ground rent of £100.00 in June 2007, bringing the total of her payments to £1,150 of which £300.00 was towards ground rent and the balance of £850.00 towards service charge and/or insurance rent.

26. BLR Property Management took over the management of the Building in 2008, or so the Applicant understood, and she has produced a statement from 2008 and two invoices from 2009 which show that the ground rent, service charge and insurance rent were being demanded by BLR at the same rate as previously for 2007 and 2008.
27. According to the Applicant, the next demand/invoice, chronologically, came from Ultra Estates (UK) Limited and was dated 3<sup>rd</sup> July 2009. This includes claims for service charge at the same rate as before, £250.00 per annum, for 2008 and 2009 and insurance rent, again as previously at the rate of £250.00 per annum, for 2009 and 2010.
28. According to the Applicant, BLR then reappeared and invoiced her for service charges and insurance at the same rate as before: see BLR invoices dated 15<sup>th</sup> March 2010. However, that seems to have been the extent of their reappearance because the next invoice, dated 1<sup>st</sup> July 2011, came once more from Ultra Estates (UK) Limited and included demands for insurance rent at the rate of £250.00 per annum for 2007, 2008, 2009, 2010 and 2011.

29. On 4<sup>th</sup> November 2013 Ultra Estates (UK) Limited demanded from the Applicant £900.00 by way of ground rent and £2,250 in respect of insurance from 2005 to 2013 at the rate of £250.00 per annum. There was also included a claim for the Applicant's share (14.0375%) of the costs of certain works to the Property which are not the subject of any dispute.
30. Throughout the whole of the relevant period the Applicant says she has repeatedly demanded proper evidence that the Property has indeed been insured and a proper breakdown of the sums claimed by way of service charge and she has produced a variety of letters from herself and solicitors (MC Leete and Charles Russell) which appear to confirm this: see e.g. her fax dated 24<sup>th</sup> January 2005, MC Leete's letter of 3<sup>rd</sup> February 2005, her letter dated 22<sup>nd</sup> March 2005, MC Leete's letters dated 6<sup>th</sup> June 2005, 15<sup>th</sup> August 2005 and 13<sup>th</sup> September 2005, her letters/faxes dated 17<sup>th</sup> November 2006, 22<sup>nd</sup> January 2007, 23<sup>rd</sup> January 2007, 6<sup>th</sup> October 2008, 8<sup>th</sup> December 2008 and Charles Russell's letter dated 7<sup>th</sup> June 2007. In these letters the Applicant or those that represent her have repeatedly asked for a breakdown of and justification for the amount of service charge demanded and evidence of the existence and cost of insurance, whilst also pointing out that the landlords have consistently failed to charge for the same at the rate and in the manner provided for in the Lease, i.e. at the rate of 14.0375%.

### **Tribunal's analysis and determinations**

31. As a general point, the Tribunal considers the Applicant's evidence to be much stronger than that of the Respondents. In particular, the Tribunal is satisfied that the service charge demands annexed to the Respondents' statement of case were not served on the Applicant on the dates they bear but have been produced recently in a belated attempt at compliance with the terms of the Lease. Insofar as those demands are for larger sums than were originally claimed, the Tribunal would not be minded to allow those additional amounts to be claimed (see e.g.

*Paddington Walk Management Ltd v. Peabody Trust* [2009] 2 EGLR 123) but we need not resolve that issue because the result of our determination for each year is that the Respondents are not, in any event, entitled to recover sums in excess of those originally demanded and are in fact limited to much smaller sums for the reasons hereinafter set out.

### *Insurance*

32. We accept on the balance of probabilities that the Building has been insured each year. It is clear from the documentary evidence that the Building was insured in 2008-2009 (see Policy Schedule) and has been insured for the last 3 years (see Annex A to the Respondents' statement of case). The Tribunal also notes the correspondence from 2005 (see e.g. letters dated 7<sup>th</sup> June 2005 and 15<sup>th</sup> August 2005) which referred to the Property being insured under a block policy with Alliance and Cornhill and from which it is apparent that a policy schedule was produced. Whilst the Tribunal is troubled by the Respondents' failure to comply with the terms of the Lease and produce, when requested, a copy of the policy and the receipt for the last premium, we are satisfied that the Building of which the Property forms part has been insured by the Respondents in accordance with the requirements of the Lease.
33. The Tribunal also accepts that the cost of insurance was £424.94 for 2009, £607.65 for 2011, £629.41 for 2012 and £680.09 for 2014. All these figures are supported by the documentation, and on the basis of the available evidence the Tribunal accepts that these sums are reasonable. However, for those years where there is no supporting documentation or other persuasive evidence from the Respondents (i.e. 2003-2008 and 2010), the Tribunal determines the cost of insurance should be treated as being £250.00 per annum. This was the annual sum originally demanded by the Respondents and given the history and the repeated requests by the Applicant and her representatives for evidence relating to insurance and the costs thereof, the Tribunal is not

prepared to accept the figures *now* proffered by the Respondents' in their revised service charge demands, particularly given our finding that these demands were not made on the dates they bear. From its experience the Tribunal knows that premiums fluctuate considerably and do not always go up. The Tribunal considers that the reasonable costs of insurance for those years where there is no documentary proof would be £250.00. We cannot assume that because it was £424 in 2008-2009 that it would have been that amount or more in the following year.

34. This figure accords with the sums that were being demanded by the Respondents on an annual basis prior to their raising the revised demands which the Tribunal has determined were not raised on the dates that they bear.

#### *Communal cleaning charges*

35. The Tribunal is prepared to accept that the cost of cleaning is, in principle, recoverable under the service charge provisions in the Lease. However, there is no proper evidence to prove that costs have been incurred on cleaning the common parts, still less to show regular or systematic cleaning over the whole of the relevant period. The Applicant said she had never seen a cleaner and the Tribunal accepts her evidence. We were not persuaded by Mr Peracha's evidence that the Respondents engaged a cleaner called Noel for 1 or 2 hrs per week. There is some evidence that some cleaning took place in 2005: see MC Leete's letter dated 13<sup>th</sup> September 2005. However, by January 2006 the Applicant was once again complaining that the hallways were "*filthy*". In the circumstances the Tribunal is not satisfied on the evidence that there has been any regular cleaning of the communal parts save for a brief period in 2005, which we assess as having lasted 6 months. The Respondents have claimed that the Applicant is liable to pay £7.01 for cleaning in 2005 (14.0375% of £50.00). Based on our finding that the cleaning only lasted for 6 months, and that no other

claim in respect of cleaning is proved, the Tribunal determines that the Applicant is liable to pay £3.50 towards communal cleaning charges for 2005 but is not liable to pay anything for cleaning in respect of any other year.

#### *Communal electricity charges*

36. The Tribunal does not accept that the cost of communal electricity charges is recoverable under the service charge provisions in the Lease. In any event, we are not satisfied on the basis of the confused and unsatisfactory evidence given by the Respondents that there was a separate supply or, even if there was, that it was paid for by the landlord. Mr Peracha accepted that he had never read any meter and did not even know whether there was a separate meter for the alleged communal supply. No meaningful evidence has been produced to substantiate the Respondents' position and the Tribunal rejects it in its entirety.

#### *Management Charges*

37. The Tribunal accepts that management charges are recoverable in principle under the terms of the Lease. However, the only "management" there appears to have been consisted of the Respondents' or their agents' unsatisfactory replies to the Applicant's well-founded complaints. Mr Peracha said he had visited the Property once a week since the middle of 2013. There is no evidence of any visits or inspections before then. The agents did not possess a copy of the RICS Code and had no professional qualifications, as was frankly admitted by Mr Walker. We are prepared to accept that there would have been some management involved in placing the insurance but that apart we struggle to see any evidence of meaningful management on the part of the Respondents or their agents. We note from the revised service charge demands that the Respondents are now claiming at varying rates beginning with £150.00 in 2003 and rising to £250.00 in

2013. There is no evidence to suggest that there should be differential charges for the different years. Nor is there any reason why the management charge should be treated differently from the other elements of the service charge. The Tribunal notes from the budget analysis referred to in paragraph 23 above that the total annual management charge was originally said to be £200.00, to which a percentage of 25% was applied. Based on the minimal management, the Tribunal determines that a reasonable annual charge would be £100.00 and the Applicant's proportion (14.0375%) of that would be £14.04 per annum.

### **Cost Applications**

38. The Applicant applied for an order under section 20C of the 1985 Act that the Respondents should not be entitled to add the costs incurred in connection with these proceedings to the service charge. The Applicant has succeeded on the vast majority of issues. The Applicant has also acted reasonably throughout. By contrast the Respondents and their agents have, we find, been obstructive and unreasonable in a number of respects as outlined above. In the circumstances, the tribunal considers it just and equitable to make a section 20C order. Therefore the Respondents cannot add the costs incurred by them in connection with these proceedings to the service charge.
39. The Applicant made an application for reimbursement by the Respondents of the application and hearing fees under paragraph 13(2) of the 2013 Tribunal Procedure Rules. For substantially the same reasons as are set out above, the tribunal makes an order for the reimbursement by the Second Respondent of the application and hearing fees paid by the Applicant in the total sum of £315.00 (£125.00 + £190.00).
40. Insofar as the Applicant was advancing other claims to costs in connection with solicitors' fees, we decline to make any order as the

Applicant has not instructed solicitors in connection with this application. Those costs relate to Charles Russell's involvement in 2007. However, the Tribunal is prepared to order that the Second Respondent do pay the Applicant's costs of £55.00 incurred in preparing the bundles on the basis that the Respondents have acted unreasonably in conducting the proceedings, in particular by reason of their reliance on documents (the revised service charge demands) which they claimed were contemporaneous but which the Tribunal considers were not.

**Name:** Judge W Hansen

**Date:** 18<sup>th</sup> 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.