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

**Case Reference** : **LON/00AY/LSC/2013/0319**

**Property** : **28 Ilsey Court, London SW8 3LP**

**Applicant** : **London Borough of Lambeth**

**Representative** : **Judge & Priestly LLP**

**Respondent** : **Shemi Leira**

**Representative** : **None**

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

**Tribunal Members** : **Judge O'Sullivan  
Mr T Johnson FRICS**

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

**Date of Decision** : **15 August 2013**

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**DECISION**

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### **Decisions of the tribunal**

- (1) The tribunal determines that the sum of £1018.50 is payable by the Respondent in respect of the service charges for the years 2011/12 and 2012/13.
- (2) The tribunal determines that the Respondent shall pay the Applicant £185 within 28 days of this Decision, in respect of the reimbursement of the tribunal fees paid by the Applicant.
- (3) The tribunal makes no order under the 2002 Act in relation to costs.
- (4) Since the tribunal has no jurisdiction over interest, county court costs and fees, this matter should now be referred back to the Wandsworth County Court.

### **The application**

1. The Applicant seeks 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 applicant in respect of the service charge years 2011/12 and 2012/13.
2. Service charges for previous years were determined by the tribunal in case reference LON/OOAY/LSC/2011/0502 on 20 December 2011.
3. Proceedings were originally issued in the Wandsworth County Court under claim no. 2Xz76476. The claim was transferred to the tribunal, by order of District Judge Rowley.
4. The relevant legal provisions are set out in the Appendix to this decision.
5. The amount claimed in the County Court was £1141.15.
6. Directions dated 4 June 2013 were given at a pre trial review which was not attended by the Respondent. The Directions provided for a paper determination. However the Respondent requested a hearing which took place on Wednesday 14 August 2013 at 1.30pm. The directions also provided that by 5 July 2013 the Respondent was to serve a statement of case on the Applicant setting out in full the grounds upon which the service charges are disputed. No statement of case has been filed by the Respondent.

## **The background**

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 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.

## **The hearing**

9. The Applicant was represented by Ms Clift of Counsel at the hearing who was accompanied by Mr Robinson, Service Charge Co-Ordinator for Lambeth Living Ltd, and the Respondent appeared in person.
10. The period before the tribunal is for the period 2011/12 and 2012/13. They are estimated charges in both cases although a final account has now been produced in respect of 2011/12 and a balancing charge made. This was not however before the tribunal.
11. The amount sought in the proceedings was calculated as follows. As at 13 September 2012 when the Respondent's account was referred for recovery the balance stood at £1,575.16. This was adjusted to take into account that the service charges for the second half of 2012/13 had not yet fallen due so the sum of £434.01 was deducted (representing the sum of £72.34 x 6). This made a figure sought of £1141.15. However this has since been further reduced to £1018.50 by a credit being applied of £122.65 to reflect the fact that a payment received from the mortgage company had been applied in the sum of £1507.71 instead of the proper sum of £1630.36 in respect of the service charges found reasonable in the previous tribunal decision. Accordingly the amount sought in the proceedings is £1,018.50.
12. The Applicant filed a statement in case dealing with the issues raised in the defence filed in the county court. The Respondent did not serve a statement of case.
13. The tribunal began by asking the Respondent why he had failed to serve a statement of case. The directions had provided for him to do so by 5 July 2013. The Respondent refused to accept that he had failed to do so and relied on an email sent to the tribunal case worker dated 5 August 2013 which attached a string of various emails. This had not been copied to the Applicant and had not been placed before the tribunal in any bundle. The tribunal did not consider that the Respondent had served a statement of case as directed and that the various emails could not properly be said to have set out his dispute in relation to the

charges clearly. However the tribunal confirms that it did read these emails as part of its consideration and the Respondent was given every opportunity to fully present his case before the tribunal.

14. For the sake of completeness the tribunal would mention that after the hearing on 14 August 2013 at 17.03 the Respondent sent in a further email again attaching a string of emails which he asked to be taken into account by the tribunal. The tribunal cannot take into account evidence received from the parties after the case has concluded and thus these emails did not form part of the tribunal's consideration.
15. The Tribunal considered the issues raised in the defence as set out below and heard submissions from the parties. 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 estimated charges for 2011/12 and 2012/13**

16. The estimated charges for 2011/12 were £707.72 and for the first half of 2012/13 were £434.01.
17. The Respondent was referred to the demands for both service charge years and was asked to identify which if any he considered unreasonable. He confirmed that he had no argument with the charges themselves and accepted them as reasonable in principle. His argument was that he had in fact paid some of these charges and that proper account had not been taken of these payments.
18. The tribunal considered the Respondent's statement of account. It became clear that the Respondent had confused payments made by his mortgage company in respect of the previous proceedings with the current service charges before the tribunal. The current proceedings had covered the service charge years 2008/09, 2009/10 and 2010/11 and had resulted in £1,630.36 being found reasonable. To this had been added £250 in respect of tribunal costs and a further £250 in respect of legal costs in respect of a section 146 notice. A total of approximately £2,100 had been paid by the mortgage company and a credit for some £1507.71 was shown in the account with the tribunal hearing that the sum of £500 in respect of the costs had been accounted for elsewhere. Despite considering the previous tribunal's decision which clearly identified the service charges before it and the statement of account the Respondent remained unconvinced and continued to assert that sums in respect of the service charge years 2011/12 and 2012/13 should have been settled by this payment.
19. The Respondent also alleged that he had made several payments which had not been taken into account. In the statement of account before the

tribunal some 3 separate payments in the sum of £100 had been made in February to March 2012. These had clearly been applied to his account. Any payments made recently did not show on the account before the tribunal which related to the period up to the issue of proceedings.

20. In his defence in the county court the Respondent had also raised other issues which he did not pursue at the hearing. However for the sake of completeness the tribunal sets out those matters and the Applicant's response to them;

➤ **The Applicant is alleged to have claimed for more than they should have by over £800**

- a) The Applicant accepts that the proceedings seek to recover more than is due from the Respondent as it is said that the balance did not account for sums recovered in previous proceedings.
- b) Sums found to be due from the Respondent in the previous proceedings were recovered from the Respondent's mortgage lender on 16 April 2012. However by error the sum of £1507.71 was heard to have been received rather than the correct sum of £1630.36, a credit was applied on 26 November 2012 of £122.65.
- c) A revised breakdown has now been prepared which shows the sum due of £1018.50.

➤ **The Respondent has been overcharged since 2002**

The Applicant says there has been no overcharge and that any sums pre dating 2008 should have been dealt with as and when they arose.

➤ **The Respondent has been intimidated and victimized by the Applicant**

The Applicant denies this allegation and denies acting in any unreasonable manner in seeking recovery of the debt.

➤ **That it is a clear breach of normal custom and practice for the Applicant to request full payment early in the respective financial year**

- a) The Applicant relies on clause 2.2 of the Lease and the Fifth Schedule of the Lease which provides that the Service Charge estimates remain payable as and when they become due. Clause 5 of the Fifth Schedule provides that:

“the Tenant shall if required by the Council with every payment of rent reserved hereunder pay to the Council such sum in advance on account of the Service Charge as the Council shall specify at its reasonably exercised discretion to be fair and reasonable interim payment”.

- b) The Applicant says that the terms of the Lease take precedence over any terms implied by customary practice alleged by the Respondent and is therefore entitled to recover the charges in full.

### **The Tribunal's decision**

21. The tribunal finds that the sum of £1,018.50 is both reasonable and payable by the Respondent in respect of the service charge years before the tribunal, 2011/12 and 2012/13.

### **Reasons for the tribunal's decision**

22. The tribunal considered the statements of estimates for 2011/12 and 2012/13. The figures listed in those documents appear acceptable as a genuine and reasonable estimate for service charges compared to previous years actual charges and taking into account annual uplifts.
23. The tribunal was satisfied that the sums are due and payable. It was not convinced by the Respondent's arguments that the sums before the tribunal in the current proceedings were in fact paid by his mortgage company pursuant to the decision made by the previous tribunal. The statement of account clearly shows the amount received by the Applicant and the tribunal is satisfied with the explanation it heard in relation to the costs and how they had been applied. The tribunal is satisfied that the statement of account properly reflects the sums due.
24. Likewise the tribunal was not convinced that any payments had been made by the Respondent which were not shown on the account for the relevant period, the tribunal had before it only an extract of the account for the relevant period (although of course payments made at a later date would be shown at the relevant date of payment) and the Respondent produced no evidence of any further payments made.

### **Applications for costs**

25. At the end of the hearing, the Applicant made an application for a refund of the fees that it had paid in respect of the application and

hearing<sup>1</sup>. The grounds for this application were that the Applicant had been compelled to bring these proceedings and that no particularised case had been made by the Respondent. The tribunal considers that the costs of the application and the hearing should be borne by the Applicant and orders that the sum of £185 be paid within 28 days.

26. The Applicant applied for an order for costs from the Respondent in the sum of £500 in respect of its legal costs under paragraph 10 Schedule 12 to the Commonhold and Leasehold Reform Act 2002. The grounds for the application are that the Respondent has acted unreasonably in bringing these proceedings with no tenable defence. The tribunal reached the view that the conduct of the Respondent was not such as to require an order under this section and accordingly no order was made.

### **The next steps**

27. The tribunal has no jurisdiction over county court costs or interest. This matter should now be returned to the Wandsworth County Court.

**Name:** S O'Sullivan, Tribunal  
Judge

**Date:** 15 August 2013

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<sup>1</sup> The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 SI 2013 No 1169

## **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).