



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

Case Reference : **LON/00BC/LSC/2014/0031**

Property : **2 Acorn Court, 6 Oaks Lane, Ilford,
Essex, IG2 7PL**

Applicant : **Oaks Lane (Ilford) Management Co
Ltd**

Representative : **None**

Respondents : **Mrs P Grant & Mrs J Conner**

Representative : **None**

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

Tribunal Members : **Mr L Rahman (Barrister)
Mrs Flynn MA MRICS**

**Date and venue of
Hearing** : **31.3.14
10 Alfred Place, London WC1E 7LR**

Date of Decision : **23.4.14**

DECISION

Decisions of the Tribunal

- (1) The Tribunal determines the amount payable by the Respondents for any management fee is capped at £100.00 for any accounting period (service charge year).
- (2) This matter should now be referred back to the Romford 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 Respondents.
2. Proceedings were originally issued in the Northampton County Court under claim no. 3YS58454. The claim was transferred to the Romford County Court and then in turn transferred to this tribunal, by order of District Judge Wright on 14.1.14.
3. There was a Pre Trial Review on 30.1.14. The Tribunal determined that if none of the parties requested an oral hearing then it would be appropriate for the application to be dealt with without a hearing. None of the parties requested an oral hearing so the matter was listed to be dealt with on paper.
4. The relevant legal provisions are set out in the Appendix to this decision.

The issue

5. The Applicant stated in its claim form, filed at the County Court, that it had decided in March 2013 to increase the monthly maintenance charge by £15.00 per calendar month to £95.00, from June 2013. Fourteen out of the fifteen shareholders agreed to the increase. The Respondents refused to pay the additional sum, which is a breach of the terms of the lease. The arrears at the date of the start of proceedings at the County Court were £75.00 (equivalent to 5 months payment) and an additional penalty charge for late payment of £25.00.
6. The Respondents stated in their defence, filed at the County Court, that the increase in the monthly charge per flat of £15.00 was due to the Applicants decision to appoint a new firm to manage the property. The Respondents state the Applicant failed to follow the consultation process as set out under s.20 of the 1985 Act, therefore a maximum of £100.00 per annum is payable by the Respondents, not £180.00. The

Respondents stated that as shareholders they wanted the correct procedures to be followed to ensure the correct firm was appointed to manage the property. They had asked what procedures had been followed but their letters had been ignored. The Respondents state if the correct procedures have been followed, the Respondents are willing to pay the additional charge.

7. The Tribunal identified at the pre trial review the issue raised by the Respondents was whether the consultation requirements under s.20 of the 1985 Act had been complied with. The Applicant was directed to send any legal submissions in support of the challenge to the service charges claimed and any arguments as to the consultation requirements under the 1985 Act.
8. In response to the Tribunals direction the Applicant submitted an "Applicants statement" . It states at paragraph 2 *"Mr Marcus had a long telephone conversation with the Respondent Mrs Grant about the increase in the service charge and why he felt the need to hand it over to managing agents in front of a witness. During the conversation Mrs Grant never once made any remarks to refute the change and indeed was cooperative and friendly. Given that Mr Marcus and his fellow director as far back as 2007 were indeed looking towards change of management and had spoken to other prospective managing agents including Baker Estates, we had assumed it had been discussed with the lessees prior to Bakers being instructed to write to the lessees on 17.4.13. appendix F"*.
9. The Respondents state in their response that after receiving the Directors letter dated 28.3.13, they wrote to the Director requesting formal presentations be made to Baker Estates and at least one other specialist firm so that the shareholders could make an informed decision. The Respondents state this was refused and they were told the shareholders would not be interested. The Respondents state they wrote again on 29.9.13 and 10.10.13 asking what procedures had been followed before the managing agents, Baker Estates, were appointed, but did not receive any reply.

The Tribunals decision

10. Despite the defence filed by the Respondents at the County Court and the directions given at the pre trial review by this Tribunal, the Applicant has failed to show either that the contract with the new managing agent was not a "qualifying long term agreement" or that the relevant consultation requirements had been complied with.
11. The Applicant has not provided any evidence to show that the contract with the new managing agent was not for a period of over 12 months, in other words, that it was not a "qualifying long term agreement" such that any consultation was necessary under s.20 of the 1985 Act.

12. The Applicant has not provided any evidence that the necessary consultation requirements were complied with. Informal discussions and assumptions, as explained in the "Applicants statement", do not satisfy the strict and clear requirements under s.20 of the 1985 Act.
13. Given the failure by the Applicant to properly consult on the matter and in the absence of any application for dispensation, the amount payable by the Respondents for any management fee is capped at £100.00 for any accounting period (service charge year).
14. Neither party raised any other issues concerning the service charges claimed.
15. Given there was a dispute over the amount that was payable by the Respondents, which has been resolved in their favour, the Respondents do not have to pay the £25.00 late charge.

The next steps

16. This matter should now be returned to the Romford County Court.

Name: Mr L Rahman

Date: 23.4.14

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

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.]

SCHEDULE 1CONSULTATION REQUIREMENTS FOR QUALIFYING LONG TERM AGREEMENTS OTHER THAN THOSE FOR WHICH PUBLIC NOTICE IS REQUIRED

Notice of intention

1. (1) The landlord shall give notice in writing of intention to enter into the agreement—

(a)to each tenant; and

(b)where a recognised tenants' association(1) represents some or all of the tenants, to the association.

(2) The notice shall—

(a)describe, in general terms, the relevant matters or specify the place and hours at which a description of the relevant matters may be inspected;

(b)state the landlord's reasons for considering it necessary to enter into the agreement;

(c)where the relevant matters consist of or include qualifying works, state the landlord's reasons for considering it necessary to carry out those works;

(d)invite the making, in writing, of observations in relation to the proposed agreement; and

(e)specify—

(i)the address to which such observations may be sent;

(ii)that they must be delivered within the relevant period; and

(iii)the date on which the relevant period ends.

(3) The notice shall also invite each tenant and the association (if any) to propose, within the relevant period, the name of a person from whom the landlord should try to obtain an estimate in respect of the relevant matters.

Inspection of description of relevant matters

2. (1) Where a notice under paragraph 1 specifies a place and hours for inspection—

(a)the place and hours so specified must be reasonable; and

(b) a description of the relevant matters must be available for inspection, free of charge, at that place and during those hours.

(2) If facilities to enable copies to be taken are not made available at the times at which the description may be inspected, the landlord shall provide to any tenant, on request and free of charge, a copy of the description.

Duty to have regard to observations in relation to proposed agreement

3. Where, within the relevant period, observations are made in relation to the proposed agreement by any tenant or recognised tenants' association, the landlord shall have regard to those observations.

Estimates

4. (1) Where, within the relevant period, a single nomination is made by a recognised tenants' association (whether or not a nomination is made by any tenant), the landlord shall try to obtain an estimate from the nominated person.

(2) Where, within the relevant period, a single nomination is made by only one of the tenants (whether or not a nomination is made by a recognised tenants' association), the landlord shall try to obtain an estimate from the nominated person.

(3) Where, within the relevant period, a single nomination is made by more than one tenant (whether or not a nomination is made by a recognised tenants' association), the landlord shall try to obtain an estimate—

(a) from the person who received the most nominations; or

(b) if there is no such person, but two (or more) persons received the same number of nominations, being a number in excess of the nominations received by any other person, from one of those two (or more) persons; or

(c) in any other case, from any nominated person.

(4) Where, within the relevant period, more than one nomination is made by any tenant and more than one nomination is made by a recognised tenants' association, the landlord shall try to obtain an estimate—

(a) from at least one person nominated by a tenant; and

(b) from at least one person nominated by the association, other than a person from whom an estimate is sought as mentioned in paragraph (a).

Preparation of landlord's proposals

5. (1) The landlord shall prepare, in accordance with the following provisions of this paragraph, at least two proposals in respect of the relevant matters.

(2) At least one of the proposals must propose that goods or services are provided, or works are carried out (as the case may be), by a person wholly unconnected with the landlord.

(3) Where an estimate has been obtained from a nominated person, the landlord must prepare a proposal based on that estimate.

(4) Each proposal shall contain a statement of the relevant matters.

(5) Each proposal shall contain a statement, as regards each party to the proposed agreement other than the landlord—

(a) of the party's name and address; and

(b) of any connection (apart from the proposed agreement) between the party and the landlord.

(6) For the purposes of sub-paragraphs (2) and (5)(b), it shall be assumed that there is a connection between a party (as the case may be) and the landlord—

(a) where the landlord is a company, if the party is, or is to be, a director or manager of the company or is a close relative of any such director or manager;

(b) where the landlord is a company, and the party is a partner in a partnership, if any partner in that partnership is, or is to be, a director or manager of the company or is a close relative of any such director or manager;

(c) where both the landlord and the party are companies, if any director or manager of one company is, or is to be, a director or manager of the other company;

(d) where the party is a company, if the landlord is a director or manager of the company or is a close relative of any such director or manager; or

(e) where the party is a company and the landlord is a partner in a partnership, if any partner in that partnership is a director or manager of the company or is a close relative of any such director or manager.

(7) Where, as regards each tenant's unit of occupation and the relevant matters, it is reasonably practicable for the landlord to estimate the relevant contribution attributable to the relevant matters to which the proposed agreement relates, each proposal shall contain a statement of that estimated contribution.

(8) Where—

(a) it is not reasonably practicable for the landlord to make the estimate mentioned in sub-paragraph (7); and

(b) it is reasonably practicable for the landlord to estimate, as regards the building or other premises to which the proposed agreement relates, the total amount of the landlord's expenditure under the proposed agreement,

each proposal shall contain a statement of that estimated expenditure.

(9) Where—

(a) it is not reasonably practicable for the landlord to make the estimate mentioned in sub-paragraph (7) or (8)(b); and

(b) it is reasonably practicable for the landlord to ascertain the current unit cost or hourly or daily rate applicable to the relevant matters,

each proposal shall contain a statement of that cost or rate.

(10) Where the relevant matters comprise or include the proposed appointment by the landlord of an agent to discharge any of the landlord's obligations to the tenants which relate to the management by the landlord of premises to which the agreement relates, each proposal shall contain a statement—

(a) that the person whose appointment is proposed—

(i) is or, as the case may be, is not, a member of a professional body or trade association; and

(ii) subscribes or, as the case may be, does not subscribe, to any code of practice or voluntary accreditation scheme relevant to the functions of managing agents; and

(b) if the person is a member of a professional body or trade association, of the name of the body or association.

(11) Each proposal shall contain a statement as to the provisions (if any) for variation of any amount specified in, or to be determined under, the proposed agreement.

(12) Each proposal shall contain a statement of the intended duration of the proposed agreement.

(13) Where observations are made to which (in accordance with paragraph 3) the landlord is required to have regard, each proposal shall contain a statement summarising the observations and setting out the landlord's response to them.

Notification of landlord's proposals

6. (1) The landlord shall give notice in writing of proposals prepared under paragraph 5—

(a) to each tenant; and

(b) where a recognised tenants' association represents some or all of the tenants, to the association.

(2) The notice shall—

(a) be accompanied by a copy of each proposal or specify the place and hours at which the proposals may be inspected;

(b) invite the making, in writing, of observations in relation to the proposals; and

(c) specify—

(i) the address to which such observations may be sent;

(ii) that they must be delivered within the relevant period; and

(iii) the date on which the relevant period ends.

(3) Paragraph 2 shall apply to proposals made available for inspection under this paragraph as it applies to a description of the relevant matters made available for inspection under that paragraph.

Duty to have regard to observations in relation to proposals

7. Where, within the relevant period, observations are made in relation to the landlord's proposals by any tenant or recognised tenants' association, the landlord shall have regard to those observations.

Duty on entering into agreement

8. (1) Subject to sub-paragraph (2), where the landlord enters into an agreement relating to relevant matters, the landlord shall, within 21 days of entering into the agreement, by notice in writing to each tenant and the recognised tenants' association (if any)—

(a) state the reasons for making that agreement or specify the place and hours at which a statement of those reasons may be inspected; and

(b) where observations are made to which (in accordance with paragraph 7) the landlord is required to have regard, summarise the observations and respond to them or specify the place and hours at which that summary and response may be inspected.

(2) The requirements of sub-paragraph (1) do not apply where the person with whom the agreement is made is a nominated person or submitted the lowest estimate.

(3) Paragraph 2 shall apply to a statement, summary and response made available for inspection under this paragraph as it applies to a description of the relevant matters made available for inspection under that paragraph.

(1)

See section 29(1) of the Landlord and Tenant Act 1985, which was amended by the Landlord and Tenant Act 1987 (c. 31), Schedule 2, paragraph 10.