



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

**Case Reference** : LON/00BG/LSC/2013/0655

**Property** : Flat 6, 32-42 Hackney Road,  
London E2 7PA

**Applicant** : Kedai Limited

**Representative** : G R Miles & Co., Solicitors

**Respondent** : Mr Jonathan Saxton

**Representative** : None

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

**Tribunal Members** : Judge Dickie  
Mr S Mason, FRICS

**Date and venue of  
Hearing** : 23 May 2014, 10 Alfred Place,  
London WC1E 7LR

**Date of Decision** : 23 May 2014

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**DECISION**

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**Decisions of the tribunal**

- (1) The tribunal determines that the sum claimed of £555.23 is payable by the Respondent.
- (2) Since the tribunal has no jurisdiction over ground rent, county court costs and fees, this matter should now be referred back to the County Court sitting at the County Court Money Claims Centre, PO Box 527, Salford, M5 0BY

## **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 Respondent, being the outstanding balance of the Respondent's service charge account on 14 November 2012 and the cumulative total of arrears of service charges charged since 25 March 2007.
2. Proceedings were originally issued in the Northampton County Court under claim no.3YJ54750. The claim was transferred to this tribunal, by order of District Judge District Judge Hamlin made on 18 September 2013. The tribunal has no jurisdiction in relation to ground rent also claimed in the County Court proceedings.
3. The relevant legal provisions are set out in the Appendix to this decision.

## **The hearing**

4. The Applicant was represented by Mr G Miles, solicitor at the hearing and the Respondent did not appear. The matter was heard at the same time as similar proceedings in respect of Flat 7 in the same building (LON/00BG/LSC/2013/0646), and the leaseholders of that flat, Mr J Seex and Ms P Seex, appeared in person at the hearing. However, the tribunal had not received from Mr Saxton any authorisation that they should act as his representatives. The proceedings in relation to Flat 7 were settled by the parties at the hearing.

## **The background**

5. The property which is the subject of this application is a self contained flat in a purpose built block. 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.
6. 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 tribunal has had regard to the terms of the lease produced in evidence, but which were not in dispute.
7. In 2009 the tenants acquired the statutory Right to Manage. This dispute related to service charges said to be owing prior to the date of acquisition (understood to be in March 2009).

## **The issues and the tribunal's determination**

8. The Respondent had not complied with directions to serve a statement of case. Accordingly, the only information before the tribunal as to the Respondent's dispute was the Defence filed in the County Court, in which he challenged the landlord's consistent failure to provide service charge accounts when requested, or to account for money collected for a sinking fund. Mr and Ms Seex also made criticism of the managing agents' communication and accounting, which the tribunal has taken into account in considering Mr Saxton's case.
9. Mr Miles explained that the dispute over the sinking fund related to a period prior to the appointment of new managing agents Sterling Estates Management. Those agents succeeded Wood Management, who had collected £1400 in respect sinking fund contributions. Sterling had encountered difficulties in obtaining accounts and information from Wood Management, part of a larger ground which had gone into liquidation.
10. Mr Miles said that finally accounts for the year ending 24 March 2006 had been obtained from the liquidator. Mr Seex agreed with Mr Miles' explanation that no demands for sinking fund contributions had been made once Sterling had taken over management. These accounts were produced in previous tribunal proceedings brought in relation to Flat 3 (LON/00BG/LSC/2012/0417). They had latterly been produced in these proceedings, and Mr and Ms Seex raised concerns about expenditure on repairs of approximately £3800 which exhausted the reserve fund. However, Mr Saxton has raised no specific challenges to expenditure. In his Defence he complained about an increase in estimated service charges, but such estimates are no longer relevant once superseded by the actual service charges, and no particulars of a challenge were put forward. The accounts were prepared by chartered accountants who considered them to be sufficiently supported by accounts, receipts or other documentation produced to them.
11. Mr Saxton's service charge contribution is 7.2%. Therefore, the disputed sinking fund payments amount to £100.80. This item was the only particularised dispute in his Defence in challenging the "lost" sinking fund. Having seen the accounts, the tribunal is satisfied that the moneys were not lost, but were expended. In view of the sum involved, the limited issues raised in the Defence, and Mr Saxton's lack of participation in these proceedings, the tribunal does not consider it necessary or proportionate that the landlord should produce further evidence in support of the expenditure in question. On the evidence produced, and in light of the limited disputes raised by the Respondent, the tribunal finds on the balance of probabilities that the amount of £555.23 claimed in these proceedings is payable as a service charge from the Respondent.

**The next steps**

12. The tribunal has no jurisdiction over ground rent or county court costs. This tribunal orders that the matter be transferred back to the County Court sitting at the County Court Money Claims Centre, PO Box 527, Salford, M5 0BY pursuant to the tribunal's power under Rule 6(3)(n) of the Tribunal Procedure (First Tier Tribunal)(Property Chamber) Rules 2013.

**Name:** F Dickie

**Date:** 23 May 2014

## **Appendix of relevant legislation**

### **Landlord and Tenant Act 1985**

#### **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 a leasehold valuation 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 a leasehold valuation 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.