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

**Case reference** : **LON/00BG/LSC/2014?0232**

**Property** : **Flat 10, 35 Sherwood Gardens,  
London E14 9GA**

**Applicant** : **St Edmunds Management Ltd**

**Representative** : **JB Leitch Solicitors**

**Respondent** : **Mrs Meena Jumari Madahar**

**Representative** :

**Type of application** : **For the determination of a  
preliminary issue**

**Tribunal members** : **Dr Helen Carr**

**Date and venue of  
hearing** : **8<sup>th</sup> July 2014  
10 Alfred Place, London WC1E 7LR**

**Date of decision** : **8<sup>th</sup> July 2014**

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**DECISION**

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### **Decisions of the tribunal**

- (1) The tribunal determines that it has no jurisdiction in relation to the dispute between the parties. ]
- (2) This matter should now be referred back to the Colchester 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 Respondent in respect of the service charge years .
2. Proceedings were originally issued in the County Court at Northampton under claim no. A7X19927. The claim was transferred to the County Court at Colchester and then in turn transferred to this tribunal, by order of District Judge Molle on 15<sup>th</sup> April 2014.
3. The order transferring proceedings to this tribunal required the tribunal to adjudicate on the issues within its jurisdiction.
4. By an application dated 1<sup>st</sup> May 2014 the Applicant applied to the County Court to have the order of District Judge Molle set aside on the basis that the tribunal does not have jurisdiction to determine its claim. That application appears to have been left in abeyance.
5. At the Case Management Conference held at the tribunal on 20<sup>th</sup> May 2014 Mr Newman of Counsel contended on behalf of the Applicant that the tribunal did not have jurisdiction to determine the Applicant's claim for arrears of service and/or administrative charges because the Respondent's Defence did not assert any challenge to the amounts being claimed by the Applicant. The Defence was no more than a counterclaim by way of set off for disrepair and consequential loss. Counsel submitted that the preliminary issue of jurisdiction had to be decided first of all and if it was decided in favour of the Applicant then the case could be remitted back to the County Court without further delay.
6. The tribunal determined that the preliminary issue of jurisdiction should be determined by way of paper submissions unless either party objected. No such objection having been received the tribunal is determining the preliminary issue on the basis of paper submissions only.

7. The relevant legal provisions are set out in the Appendix to this decision.

### **The determination**

8. The Applicant provided the tribunal with a statement of case dated 29<sup>th</sup> May 2014.
9. In the statement of case the Applicant argues that the tribunal does not have jurisdiction to determine the Applicant's claim for arrears of service and/or administration charges because the Respondent's Defence does not assert any challenge to the amounts being claimed by the Applicant.
10. The Applicant points out that it issued proceedings against the Respondent in the County Court for recovery of arrears of service charges and administration charges in respect of the property. The Respondent entered a Defence and Counterclaim alleging disrepair to the property as a result of a leak, which she argued resulted in a loss of prospective rental income.
11. The Respondent did not plead any defence as to the reasonableness of the service charges or dispute that the service charges were payable. In effect, the Applicant argues the defence is limited to an equitable set off in relation to loss of potential rental income.
12. The Applicant submits that the tribunal's jurisdiction is limited to the matters set out at s.27A of the Landlord and Tenant Act 1985. Section 27A gives jurisdiction to the tribunal to determine whether a service charge is payable and if it is, as to the person by whom it is payable, the person to whom it is payable, the amount which is payable, the date at or by which it is payable and the manner in which it is payable. The Applicant argues that as the Respondent has not pleaded any Defence to the service charges the Respondent is taken to have admitted them.
13. Therefore there is no dispute that falls within the tribunal's jurisdiction to be determined.
14. The Applicant relies on two decisions of the Upper Tribunal namely Birmingham City Council v Keddle [2012] UKUT 323 (LC) and Crosspite Limited v Sachdev [2012] UKUT 321 (LC).
15. The tribunal received no statement in response from the Respondent in this application. The tribunal notes that the defence to the county court proceedings submitted by the Respondent is limited a set off and counterclaim as described by the Applicant.

16. The Applicant/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 tribunal's decision**

17. The tribunal determines that it has no jurisdiction to determine the matters raised by the county court proceedings.

**Reasons for the tribunal's decision**

18. The tribunal accepts the arguments of the Applicant that there is no matter outstanding between the parties that falls within s.27A of the Landlord and Tenant Act 1985.

**Service charge item & amount claimed**

- 19.

**The next steps [OPTIONAL]**

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20. This matter should now be returned to the County Court sitting at Colchester.

**Name:** Helen Carr

**Date:** 8<sup>th</sup> July 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).