



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

Case Reference : LON/00BG/LSC/2014/0368

Property : Flat G, 8 Tapp Street, London E1
5RE

Applicant : Circle Residential Management
Limited

Representative : In person

Respondent : Mr Jeevan Singh

Representative : In person

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

Tribunal Members : Mr Jeremy Donegan – Tribunal
Judge
Mr Neil Martindale FRICS – Valuer
Member

**Date and venue of
Paper Determination** : 08 October 2014
10 Alfred Place, London WC1E 7LR

Date of Decision : 12 October 2014

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the following sums are payable by the Respondent, in respect of interim (advance) service charges for the year ending 31 December 2014:

25 December 2013 £355.25

24 June 2014 £355.25

- (2) The tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985 (“the 1985 Act”).

The application

1. The Applicant seeks a determination pursuant to section 27A of the Landlord and Tenant Act 1985 (“the 1985 Act”). as to the amount of interim service charges payable by the Respondent for the year ending 31 December 2014.
2. The application was dated 07 July 2014 and was received by the tribunal on 10 July 2014.
3. Directions were issued following a case management conference on 05 August 2014. These included provision that the application be dealt with on the paper track, without an oral hearing. Neither of the parties has objected to this or requested an oral hearing. The paper determination took place on 08 October 2014.
4. The relevant legal provisions are set out in the Appendix to this decision.
5. The tribunal were supplied with the following documents:
 - the Applicant’s statement of case and bundle of supporting documents, dated 15 August 2014;
 - the Respondents statement of case and bundle of supporting documents dated 16 September 2014;
 - the Applicant’s response to the Respondents statement of case and bundle of additional documents, dated 01 October 2014.

The background

6. The property which is the subject of this application is 8 Tapp Street, London E1 5RE (“the Building”), which is a former public house that has been converted into 7 flats. The Respondent is the leaseholder of Flat G at the Building (“the Flat”). The freeholder of the Building is FTZ Limited. The Building is managed by the Applicant. The tribunal did not consider that an inspection of the Building or the Flat was necessary, nor would it have been proportionate to the issues in dispute.
7. The Respondent holds a long lease of the Flat. This requires the freeholder to provide services and the Respondent 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 issues

8. The tribunal identified the relevant issues for determination as follows:
 - (i) Whether the service charges are recoverable under the terms of the lease;
 - (ii) The reasonableness of the service charge budget for the year 2013/14;
 - (iii) The reasonableness of the interim service charges demanded from the Respondent on 25 December 2013 and 24 June 2014; and
 - (iv) Whether an order for reimbursement of application/hearing fees should be made.

The lease

9. The lease was granted by Manmohan Singh (“Lessor”) to Sybill Watson (“Lessee”) on 23 May 2003 for a term of 99 years from 125 years from 25 December 2002.
10. Paragraph 9 of the particulars states that the service charge percentage is 14%.
11. Clause 2(4) of the lease provides

“The accounting Period” shall mean a period commencing on the First day of January and ending on the Thirty-First day of December in any year.

12. By clause 5 (4) of the lease the Lessee covenanted to:

Pay the Interim Charge and the Service Charge at the times and in the manner provided in the Fifth Schedule hereto both such Charges to be recoverable as rent in arrears, and to pay a sum of Three Hundred and Fifty Pounds on account of Service Charge at the date hereof.

13. The Interim Charge is defined at clause (3) of the fifth schedule as follows:

“The Interim Charge” means such sum to be paid on account of the Service Charge in respect of each Accounting Period as the Lessor or their Managing Agents shall specify at their discretion to be a fair and reasonable interim payment having regard to anticipated expenditure in the next Accountancy Period and the reserves held

14. Having heard evidence and submissions from the Applicant and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

Service charge item & amount claimed

Interim service charges for the year ending 31 December 2014

15. The Applicant has produced a budget of anticipated service charge expenditure for the Building. This incorrectly refers to the service ending on 24 December 2014, whereas the Accounting Period specified in the lease from 01 January to 31 December. However this error does not invalidate the budget. The anticipated expenditure is detailed below:

Year End Accounting	£186.00
Building Repairs	£900.00
Buildings Insurance	£2,100.00
Management Fee	£1,889.00
TOTAL	£5,075.00

The Respondent's proportion is 14% and so the interim service charges sought for the Flat total £710.50, with 50% being payable on 25 December 2013 and the other 50% being payable on 24 June 2014.

16. In his statement of case the Respondent put forward a number of grounds for disputing the service charges, which are briefly summarised below:
- 16.1 there has been a lack of maintenance at the Building, with no repairs over the past 10 years;
 - 16.2 the managing agents are not competent;
 - 16.3 the leasehold valuation tribunal refused a previous application under section 27A of the 1985 Act, relating to proposed major works at the Building;
 - 16.4 the leaseholders successfully have pursued a right to manage claim and the RTM company will take over the management of the Building later in the year;
 - 16.5 the Applicant has not implemented the RICS Residential Management Code, any health and safety policy or a reserve fund for the Building;
 - 16.6 the Applicant has obtained the sum of £10,149.31 from the Respondent's mortgagee, for service charges and are therefore holding a substantial sum on account;
 - 16.7 the service charge demands were incorrectly served at 115 Fencepiece Road, Hainault rather than his correspondence address of c/o 551 Cranbrook Road, Gants Hill, Ilford;
 - 16.8 the service charge demands are not clear and the end of year accounts do not comply with the ICAEW guidelines, as recommended in part 10 of the RICS code;
 - 16.9 there has been no consultation for the management agreement;
 - 16.10 the management fees (£225 plus VAT per flat) are excessive for the work undertaken and a reasonable fee for competent management would only be £120 per flat;
 - 16.11 the Applicant's services are not fit for purpose so their management fees should be disallowed altogether; and
 - 16.12 the buildings insurance appears to be invalid, as there is no adequate fire prevention at the Building and the sum claimed for insurance should be disallowed.

17. The Applicant's submissions were clearly set out in its statement of case and response and there is no need for the tribunal to summarise these, given its decision and the modest sum in dispute.

The tribunal's decision

18. The tribunal allows the interim service charges in full. It follows that the tribunal determines that the interim charges due from the Respondent for the year ending 31 December 2014 are:

25 December 2013	£355.25
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24 June 2014	£355.25
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19. The service charges in question are payable to the freeholder, FTZ Limited in accordance with the terms of the lease but may be collected by the Applicant as the freeholder's agent.

Reasons for the tribunal's decision

20. The tribunal are only concerned with the four items of anticipated expenditure detailed in the budget. All of these items are recoverable as service charges under the terms of the lease.
21. It appears that the Respondent has misunderstood the nature of the disputed service charges. These are advance charges based on the budget of anticipated expenditure rather than balancing charges, which are based on actual expenditure. Where a service charge is payable before the relevant costs are incurred, as is the case here, then "*..no greater amount than is reasonable is so payable*" (section 19(2) of the 1985 Act). The tribunal's job is to determine whether each of the sums claimed in the budget were greater than a reasonable amount, at the time the budget was prepared.
22. The Respondent has made a number of generalised allegations of neglect and mismanagement. These may be relevant on an application to determine end of year charges but have little application in this case. The Respondent has not produced any independent evidence to challenge the sums claimed in the budget for accountancy fees, repairs, insurance and management fees. Further there was no counterclaim for the alleged neglect of the Building.
23. The tribunal carefully considered each item of anticipated expenditure having regard to the contents of the statements of case and the various supporting documents. It concluded that all of the anticipated expenditure in the budget is reasonable. It follows that the interim

charges demanded on 25 December 2013 and 24 June 2014 are reasonable.

24. The fact that the RTM company will be taking over the management of the Building later in the year does not affect the Respondent's liability to pay the interim service charges due on 25 December 2013 and 24 June 2014. These became due prior to the right to manage acquisition date.
25. The sums claimed for anticipated accountancy fees and repairs are modest and are clearly reasonable. The form of the service charge demands is perfectly clear and it is premature for the Respondent to try and challenge the accountancy fees when the accounts will not be produced until after the year end.
26. The Respondent's only challenge to the insurance premium is that the policy might be invalidated by a lack of fire precautions at the Building. He did not challenge the amount of the premium. The Applicant has disclosed a Health, Safety and Fire Risk Assessment that was carried out in May 2012, which largely undermines the Respondent's challenge. Further there was no evidence before the tribunal to establish that the policy is invalid.
27. In relation to the management fees, if the management agreement is for a period of 12 months or more then it is a qualifying long term agreement ("QLTA") for the purposes of section 20 of the 1985 Act. There would then have been an obligation on the freeholder to consult with the leaseholders before entering into the agreement, failing which the leaseholders contributions to actual management fees would be capped at £100 per flat.
28. The tribunal were not supplied with any details of the management agreement between FTZ Limited and the Applicant. It appears that the Applicant has managed the Building for a number of the years. However it does not automatically follow that the management agreement is a QLTA. Rather the Applicant may have been instructed on a series of short term agreements of less than twelve months or on a periodic basis.
29. The tribunal does not have sufficient evidence before it to determine if the agreement is a QLTA and, if so, whether there was proper consultation. However this issue is academic, as the sum being claimed is the anticipated management fee for the current service charge year. The tribunal can only determine whether the budgeted figure is reasonable. Whether the management agreement is a QLTA is only relevant to the recoverability of the actual fee and should be dealt with separately, once the closing accounts are produced.

30. Based on the tribunal's own knowledge and experience, gained from dealing with other similar cases, most managing agents charge a fixed fee per flat for their basic services. A fee of £225 plus VAT per flat is towards the lower end of the standard range for management fees in central London. The tribunal concluded that the anticipated management fees are reasonable, notwithstanding the Respondent's complaints. Clearly the agents have and will provide services during the current financial year, such as arranging insurance and minor repairs, dealing with enquiries, paying invoices, keeping service charge records and issuing demands. The anticipated fee of £225 plus VAT per flat is reasonable for these services.
31. As to the point on service of the demands, the Respondent referred to three different addresses in his statement of case, namely the Flat, 551 Cranbrook Road and 115 Fencepiece Road. The address at Fencepiece Road was given as the Respondent's address for service in County Court proceedings between FTZ Limited and the Respondent and it was reasonable for the Applicant to serve the demands at this address. Further it appears that they also sent the statements to the Flat. At the start of the statement of case, the Respondent's gave his address as the Flat. The tribunal is satisfied that the demands were validly served and came to the Respondent's attention.
32. This decision relates solely to the interim service charges for the year ending 31 December 2014. It does not preclude the Respondent from challenging the actual service charge expenditure for this year, once closing accounts are produced (following the right to manage acquisition date). The Respondent may benefit from seeking independent legal advice following receipt of the accounts, both in relation to the sums claimed and his allegations of neglect and mismanagement.

Section 20c and refund of fees

33. In his statement of case the Respondent applied for an order under section 20C of the 1985 Act upon the basis that the Applicant has not acted reasonably. Having considered the parties submissions and taking into account the determination above, the tribunal determines it is not just and equitable in the circumstances to make such an order. The tribunal makes no determination as to whether the Applicant's costs of these proceedings are recoverable under the lease, as that would be a matter for detailed legal submissions.
34. The application has been wholly successful in that the service charges have been allowed in full. The application was entirely justified given that the Respondent failed to agree or pay the service charges before the application was issued. Further he failed to produce any independent evidence to challenge the amount of the disputed service charges.

35. There was no application for a refund of the fees that the Applicant had paid in respect of the application/hearing¹.

Name: Jeremy Donegan

Date: 12 October 2014

¹ 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 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.

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.