



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

Case Reference : **LON/00BK/LSC/2014/0109**

Property : **Flat 147A Wellesley Court, Maida Vale, London W9 1RG**

Applicant : **Greenwood Reversions Limited**

Representative : **Mr S Unsdorfer,
Parkgate-Aspen Limited
Property Management**

Respondent : **Mr Shahram Kamyab**

Representative : **In person**

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

Tribunal Members : **Judge Pittaway
Mr M Cartwright**

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

Date of Decision : **12 June 2014**

DECISION

Decision of the tribunal

For the reasons given below the tribunal determines that 0.5450% is the correct percentage of the total service charge to be charged to the Property.

The application

1. Proceedings were originally issued in the Northampton County Court under claim no.3QT87714 for unpaid service charges and fees. The claim was transferred to the Central London County Court and then in turn transferred to this tribunal, by order of District Judge Mathias on 20 December 2013 for the issues as to the service charge to be determined.
2. An oral case management conference was held on 20 March 2014 where the issue identified by the Respondent for determination by the Tribunal was the correct proportion of the total service charge for the block of flats of which the Property forms part that the Respondent should pay.
3. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

4. The Applicant appeared was represented by Mr Unsdorfer of Parkgate Aspen at the hearing and the Respondent appeared in person.
5. During the Hearing the Applicant referred to the Lands Tribunal decision in *Schilling v Canary Riverside Development Properties Limited*. As the case had not been included in the bundles for the Hearing and the Respondent had not been given a copy before the hearing began the tribunal offered the respondent the opportunity of considering the case which the respondent declined, as he is not legally qualified. In the circumstances the tribunal have not taken this decision into account in reaching this determination.

The background and evidence

6. The Property which is the subject of this application is a small flat in a block of approximately 155 flats (the "**Block**"), described as being ground floor in the Land Registry entries, and lower ground floor in the lease of 8 January 1988 (the "**Lease**") under which it is held by the respondent. There was some discussion between the parties as to which floor it is situated on. At some point in the past a lavatory had been added to the demise. There was no evidence of the respondent's title to

this area before the Tribunal but the applicant did not dispute that it was now included in the Property.

7. Neither party requested an inspection and the tribunal did not consider that one was necessary.
8. The Lease requires the landlord to provide various services including the supply of hot water to the Property and the radiators in the Property. It was common ground between the parties that the Property does not have hot water or heating supplied by the landlord and an appropriate adjustment is made to the service charge demanded of the tenant to reflect this.
9. The proportion of the total cost to the landlord of providing the services payable by the tenant is the "Service Proportion", defined in the Lease as

"the proportion which the rateable value of the flat bears to the aggregate rateable values of the flats comprised in the Block as at 31st March in each year."

10. At the hearing the respondent confirmed that the issue was not whether service charge was payable, or the reasonableness of the costs that had been incurred by the landlord. Further the respondent did not deny that an apportionment 0.5450% of the service costs was the correct apportionment attributable to the Property if the apportionment was based on rateable values.
11. The respondent however submitted that an apportionment on the basis of rateable values was an incorrect basis of apportionment because it resulted in a disproportionately high percentage of the total service charge being payable by the Property, by reason of its size, location and amenities enjoyed. He further submitted that the actual rateable value for the Property was wrong by reason of the size of the Property; and that the wording in the lease referred to the rateable value at 31st March in each year. Rateable value is no longer calculated for residential property. His preferred basis of apportionment would be on a size/room number basis.
12. Mr Unsdorfer queried whether the tribunal had jurisdiction to determine the issue as what the respondent was seeking was a variation of his lease under section 35 of the Landlord and Tenant Act 1987. He stated that the rateable value basis of apportionment was the required basis of apportionment in the lease of the Property and the other flats in the Block. He stated that that it was the basis of apportionment of service charge accepted by all the other flats in the Block and that no other flat had queried the basis of apportionment. The respondent did not challenge these statements. He submitted that the tribunal should not

consider varying the basis of apportionment in a manner which affected the other flats in the block without joining them all as parties to the hearing.

13. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made the following determinations.

The tribunal's decision and reasons.

14. The county court having referred the matter to the tribunal, and by reason of the wording of section 27A(1)(c) the tribunal consider that they do have jurisdiction to make a determination.
15. On the basis of the evidence before the tribunal (in particular the terms of the Lease and that no other flat owner had challenged the basis of apportionment) an apportionment of service charge based on the last known rateable values for each of the flats in the Block is the correct, and a reasonable, basis of apportionment.
16. As the tribunal do not propose to vary the proportion of service charge attributable to the Property they did not need to consider the need to join any other party to the application.
17. No evidence was provided to the tribunal that there had ever been any attempt previously to challenge the rateable value of the Property. The tribunal are not unsympathetic to the respondent's claim that the rateable value attributed to his Property is too high but they have no jurisdiction to alter rateable values.
18. The tribunal has no jurisdiction over ground rent or county court costs and fees, nor is it for it to determine what payments may or may not have been made by the Respondent to the Applicant and this matter should now be referred back to the Central London County Court.

Name: Judge Pittaway Date: 12 June 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.