



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

Case reference : **LON/00AG/LSC/2014/0666**

Property : **4 Regent House, 72 – 76 Eversholt Street London NW1 1BY**

Applicant : **Nekton Investments Ltd**

Representative : **Ringley Legal**

Respondent : **Hayan Sadaat (1)
Yuosuf Ali Khan (2)
Adil Ali Khan (3)
Fida Ali Khan (4)**

Representative : **Wilson Barca LLP**

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

Tribunal members : **Judge Carr
Mr K.M. Cartwright FRICS
Mrs Turner (for initial hearing only)**

Date and venue of hearing : **5th and 6th May 2015
Alfred Place, London WC1E 7LR**

Date of decision : **8 September 2015**

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the Respondents pay their share of the £20,000 that they conceded was payable in connection with the major works carried out in 2006 less the amounts they have already paid in connection with the claim against them.
- (2) The tribunal determines that £250 is payable by the Respondents in connection with the major works carried out in 2010/2011.
- (3) The tribunal makes the determinations as set out under the various headings in this Decision
- (4) The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985.
- (5) Since the tribunal has no jurisdiction over county court costs and fees, this matter should now be referred back to the County Court in Central London.

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 Applicant in respect of the service charge years 2003 and 2011.
2. Proceedings were originally issued in the Northampton County Court under claim no. 2YL72069 and then transferred to Central London County Court. The claim was then transferred to this tribunal, by order of District Judge Jackson on 15th October 2013.
3. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

4. The Applicant was represented by Ringley Legal at the hearing and the Respondents were represented by Wilson Barca Solicitors.
5. Prior to the hearing, by a letter dated 22nd April 2015, the Applicant applied for an order barring the Respondents from adducing any evidence at the hearing pursuant to Rule 9 of the Tribunal Procedures (First Tier Tribunal) (Property Chamber) Rules 2013 (the 2013 rules) and for its indemnity costs pursuant to Rule 13 of the 2013 rules. The Tribunal gave notice of the applications and issued further directions in relation to the applications on 24th April 2015. The Tribunal ordered that the applications be heard prior to the hearing of the substantive

application. It also made clear that even if the applications were successful the Tribunal would need to be satisfied that the service charge costs were reasonable in amount and that service charges are payable in respect of them.

6. At the hearing the Respondents' representative accepted that they had been late and/or had failed to comply with directions. The explanation given was that the Respondents were in Pakistan and it had been difficult to give proper instructions to their solicitor. Also the Applicant had served papers relating to the dispute to the disputed property which was tenanted and the tenant had not forwarded the papers to the Respondent.
7. The Tribunal determined not to make an order debaring the Respondents from defending the application.

The background

8. The property which is the subject of this application is Flat 4, a two bedroom flat with basement storage in a block dating from the 1930s of eight two bedroom flats, seven of which are currently owned by the landlord. The Tribunal notes that the Applicant has been attempting to purchase Flat 4.
9. The ground and lower floor of the block is commercial comprising shops and offices. The commercial properties are let on full repairing and insuring leases.
10. Two of the flats were added to the block during 2008/9.
11. Ringley managed the property from 2001. In 2004 the freeholder took over the management of the property. The freeholder does not charge for its services.
12. 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.
13. The Applicant 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 issues

14. At the original directions hearing the Tribunal identified the relevant issues for determination as follows:
 - (i) The payability and/or reasonableness of service charges totalling £18,774.13 for service charge years 2001 – 2011 and in particular:
 - (ii) Whether the landlord has complied with the consultation requirements under section 20 of the 1985 Act in connection with major works carried out
 - (iii) Whether works are within the landlord's obligations under the lease – in particular whether the windows and the replacement of electric installations
 - (iv) The reasonableness of management fees
 - (v) Whether service charge demands have been made in accordance with terms of the lease
 - (vi) The position of reserve fund
 - (vii) Whether the costs are payable by reason of section 20B of the 1985 Act
 - (viii) The appropriateness of the apportionment of the service charges
 - (ix) Whether the costs of the works are reasonable, in particular in relation to the nature of the works, the contract price and the supervision and management fee
 - (x) Whether an order under section 20 C of the Landlord and Tenant Act 1985 should be made
15. The Applicant provided a large but unpaginated bundle for the hearing. However the bundle did not address the issues identified by the Tribunal at the directions hearing and there were no clear statements or Schedule of claims provided by either of the parties.
16. The Tribunal determined to adjourn the hearing and issued further directions enabling the issues to be clarified and particularised by the parties. The Tribunal determined to reconvene to reach a decision on

the application on the basis of evidence heard on the 5th and 6th of May 2015 and the subsequent documentation provided.

17. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the issues identified as still in dispute in the Schedule submitted by the parties as follows.
18. The Tribunal notes that even following the adjournment the documentation provided was unclear and that the Applicant provided no final submissions. It has therefore faced great difficulties in reaching its decision.

Service charges due under LVT decision July 2002 and related legal costs

19. The Applicant is claiming £12,396 which is the sum determined as payable by the LVT in a decision dated July 2002. It is also claiming legal fees which are assumed to be in connection with the LVT proceedings. The Applicant has no documentation to substantiate the claim, but asks the Tribunal to take the length of time since the costs were incurred into account.
20. The Respondent argues that the decision does not relate to Flat 4 and that the Respondents did not own Flat 4 at that time and were not a party to the proceedings. The Respondent states that the legal costs are not admitted and not claimable as statute barred. They point out that the part of the LVT decision relating to costs is omitted from the decision.

The tribunal's decision

21. The tribunal determines that no money is payable by the Respondents in connection with the LVT determination of 2002.

Reasons for the tribunal's decision

22. The Tribunal notes that the Respondents became the owners of the leasehold interest on 4th January 2002. The decision of the LVT dated relates to service charges relevant to a period prior to that date. The Tribunal also notes that the decision does not relate to Flat 4. Therefore there is no basis for the Applicant's claim.

Management fees

23. The Applicant is claiming £3,539 in management fees for the period up to 2003 when Ringley was managing the property. There are no

invoices available to support the claim, but the Applicant argues that these are reasonable charges for managing the property and that the Tribunal should take into account the length of time since the costs were incurred.

24. The Respondents argue that the length of time since the costs were incurred is an argument against the Applicant, and claim that the monies were not demanded and are statute barred.

The tribunal's decision

25. The tribunal determines that the amount claimed is not payable.

Reasons for the tribunal's decision

26. The Respondents only became owners of the property in January 2002. There are no particulars of the charges and no invoices to support them. The Applicant has not discharged its responsibility to demonstrate that the monies are payable.

Major Works 2006

27. The Applicant states that works were carried out that were properly consulted on although not all of the documentation is available. The documentation includes the section 20 notices, demands, a report dated August 2000 and Ringley's specifications in connection with the works together with some invoices.
28. The Applicant points out that there is no argument from the Respondent that the work was over-priced or not done properly.
29. The Respondent does not accept that the work was not overpriced. They point to the estimate of K & A Supplies which included an estimate for scaffolding of £7,000 when in fact the Applicant paid £10,000 to Trident Scaffolding UK Ltd.
30. The Respondent is prepared to pay £20,000 towards the major works.

The tribunal's decision

31. The tribunal determines that the amount payable in respect of the major works is the Respondents' share of £20,000.

Reasons for the tribunal's decision

32. There is little documentation to substantiate the Applicant's claim. It has not discharged its responsibility to demonstrate that the full amount demanded is payable. The Tribunal accepts that the Respondents' offer is reasonable in the circumstances.

Management Fees

33. The Applicant is claiming £3605 management fees for a three year management period from 2003 – 2006. It argues that the management agreement entitles the management company to make these charges which are not unreasonable for the management services carried out. There are no invoices available due to the period of time since the costs were incurred.
34. The Respondent highlights the fact that no invoices are available and argues that the claims are statute barred.

The tribunal's decision

35. The tribunal determines that the amount claimed in respect of management fees is not payable.

Reasons for the tribunal's decision

36. The Tribunal understood that Ringley only managed the property until 2004. Further there are no invoices, no service charge demands and nothing provided to substantiate the Applicant's claim.

Survey Fees

37. The Applicant argues that some of the surveyors charges relate to inspections for fire safety and other matters and some relate to the specifications and the s.20 notices.
38. The Respondent argues that there is no evidence of invoices or the amount incurred and argues that the amount is not payable as it is statute barred.

The tribunal's decision

39. The tribunal determines that nothing is payable in respect of surveyor's charges.

Reasons for the tribunal's decision

40. The Applicant has failed to discharge the burden upon it to demonstrate that the sum demanded is reasonable and payable.

Legal Costs

41. The Applicant is claiming £2107 in legal costs which it claims are recoverable under clause 32 para 14 of the lease. It asks the Tribunal to take into account the length of time since the costs were incurred.
42. The Respondent responds by pointing out (i) that the tenant's ledger was not considered in detail, and merely shows that legal fees were charged to the tenants (ii) no invoices or other documentary evidence has been produced and (iii) that the monies are not payable as they are statute barred.

The tribunal's decision

43. The tribunal determines that no monies are payable by the Respondents in connection with the legal fees.

Reasons for the tribunal's decision

44. The Applicant has failed to discharge the burden upon to demonstrate that the monies demanded are payable.

Major Works 2010/11

45. The Applicant is claiming £85, 786 for major works. These works were carried out by the landlord at his own costs and it is admitted that no s.20 consultation took place. The Applicant considers that the tenant should pay a fair proportion of these costs, ie one tenth..
46. The Respondent points out that no application to dispense with te consultation requirements has been made and therefore the Apploicant is limited to costs of £250.

The tribunal's decision

47. The tribunal determines that the amount payable in respect of major works carried out in 2010/2011 is £250.

Reasons for the tribunal's decision

48. The Applicant has conceded that it failed to carry out the necessary consultation and has made no application for dispensation from the statutory requirements.

The Reserve Fund

49. The Applicant admits that the terms of the lease have not been complied with in connection with the Reserve Fund but argues that the Respondent has suffered no loss in contributing to the Reserve Fund.
50. The Respondent argues that the Applicant is attempting to escape its responsibility to consult by claiming monies spent on major works from the Reserve Fund.

The tribunal's decision

51. The tribunal determines that nothing is payable by the Respondents in connection with the Reserve Fund.

Reasons for the tribunal's decision

52. The Tribunal accepts the Respondent's argument that the claim for monies due to the Reserve fund is a means of avoiding the consultation requirements in connection with the major works.
53. In addition the Applicant has failed to comply with the terms of the lease in connection with its claim.

Monies already paid by the Respondent

54. The Respondent argues that payments already made should be deducted from whatever sum that the Tribunal determines is payable by the Respondent. The sums are £1,800.00 paid pursuant to the Order dated 24/10/2013, £1,970.00 paid by the Respondent in 2003, and £2,467.00 paid by the Respondent in 2006
55. The Applicant did not respond to this argument.
56. The Tribunal therefore determines that these sums have been paid and are to be deducted from the sums that the Tribunal determines are payable by the Respondents.

Application under s.20C and refund of fees

57. At the directions hearing, the Respondent applied for an order under section 20C of the 1985 Act. Taking into account the determinations above, the tribunal determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the Applicant/ Respondent may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge.

The next steps

58. The tribunal has no jurisdiction over ground rent or county court costs. This matter should now be returned to the County Court at Central London.

Name: Judge Carr

Date: 8th September 2015

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).