

10700



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

**Case reference** : **LON/00AH/LSC/2014/0532**

**Property** : **Ground Floor Flat, 66 Holmesdale Road, London SE25 6JF**

**Applicant** : **Cormorant Limited**

**Representative** : **Mr A Wijeyaratne of counsel**

**Respondent** : **Mr N McLune**

**Representative** : **In person**

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

**Tribunal members** : **Mr S Brilliant  
Mr M Mathews FRICS  
Mrs R Turner JP**

**Date and venue of hearing** : **5 March 2015  
10 Alfred Place, London WC1E 7LR**

**Date of decision** : **18 March 2015**

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**DECISION**

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## **Decisions of the tribunal**

- (1) The tribunal determines that the following sums are payable by the Respondent in respect of the service charges for the following years:

25 March 2007 - 24 March 2008	£687.25
25 March 2008 - 24 December 2008	£1,040.90
25 December 2009 - 24 December 2010	£1,094.47
25 December 2010 - 24 December 2011	£813.92
25 December 2011 - 24 December 2012	£623.51
25 December 2012 – 24 December 2013	£705.84
25 December 2013 - 24 December 2014	£705.84 (interim)

- (2) So far as it may be necessary, the tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge.
- (3) Since the tribunal has no jurisdiction over County Court costs and fees, this matter should now be referred back to the County Court at Croydon.

## **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 from 25 March 2007 - 24 March 2008 to 25 December 2013 - 24 December 2014. In 2008 the year end changed from 24 March to 24 December so that there was a truncated year from 25 March 2008 – 24 December 2008.
2. Proceedings were originally issued in the County Court Money Claims Centre at Northampton under claim no. A02YP847. The claim was transferred to the County Court at Croydon and then in turn transferred to this tribunal, by order of District Judge Bishop on 21 October 2014.
3. The relevant legal provisions are set out in the Appendix to this

decision.

### **The hearing**

4. The Applicant was represented by Mr A Wijeyaratne of counsel at the hearing and the Respondent appeared in person. Mr Wijeyaratne called Mr Christopher Case, an employee of Hampton Wick Estates Ltd, the Applicant's managing agents ("the managing agents").
5. Prior to the hearing the Respondent had sent to the tribunal a letter dated 6 February 2015 to which were attached a copy of a letter to the managing agents dated 24 February 2014 and an email to the managing agents dated 23 February 2014. These had not been included in the bundle as the managing agents said they had not received copies.

### **The background**

6. The property which is the subject of this application ("the flat") is a ground floor flat in a terrace house ("the building") converted into two flats. Originally the building had formed part of a public house which was converted into three separate houses in the 1990's.
7. 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.
8. The Respondent holds a long lease of the flat dated 30 April 2001 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 will be referred to below, where appropriate.
9. In 2007 the tribunal considered the recovery of service charges for the flat in the service charge years 25 March 2004 - 24 March 2005, 25 March 2005 - 24 March 2006 and 25 March 2006 - 24 March 2007 (LON/00AH/LSC/2007/0239). The managing agents were also responsible for managing the building during this period.
10. In those proceedings the Applicant also alleged arrears prior to 25 March 2004 of £562.66. The tribunal said there was no evidence in support of this claim and that the claim was not being pursued. Regrettably this same sum is again being pursued in the present County Court proceeding as part of the global arrears of £5,093.96 (which are not broken down or particularised) referred to in the schedule attached to the particulars of claim. It is also the first item in schedule CC2 to the statement of Mr Case in these proceedings.
11. At the hearing it was confirmed on behalf of the Applicant that this sum

of £562.66 is not recoverable and a claim for it should no longer be pursued in the County Court.

12. In 2007 the tribunal reduced the amounts of service charge claimed as follows. For the year ending 24 March 2005 the claim was reduced from £1,688.77 to £475.00. For the year ending 24 March 2006 the claim was reduced from £1,218.88 to £475.00. For the year ending 24 March 2007 the claim was reduced from £1,038.99 to £574.88.
13. Regrettably, in the present County Court proceedings no credit has been given for these reductions made by the tribunal in the global arrears of £5,093.96 referred to above. Nor has such credit been given in the routine demands for arrears sent to the Respondent since that earlier hearing. However, credit has now been given in the schedule CC2 to the statement of Mr Case.

### **The issues**

14. The issues before us concern the reasonableness of the service charges arising for the year commencing 25 March 2007 and all subsequent years. However the inclusion of the earlier unwarranted claims in the County Court proceedings referred to above was a major reason why the Respondent defended the proceedings and sought a transfer to the tribunal.
15. The service charges we are concerned with fall into three categories:
  - (1) Insurance premiums.
  - (2) Management charges.
  - (3) Repairs and surveyors' fees (or reserves for that purpose).

### **The lease**

16. The Applicant is under an obligation to insure the building and to obtain insurance valuations of the building from time to time. The Applicant is under an obligation to repair the roof, outside and main structure of the building and to decorate the outside of the building. The Applicant is under an obligation to keep accounts of the service costs and render service charge statements. There are other obligations but these are the relevant ones. In providing these services, the Applicant is entitled to engage the services of the managing agents.
17. The Applicant can recover by way of a service charge 50% of the amount it spends in carrying out its obligations under the lease.

18. The machinery for collecting the service charge is as follows. An interim service charge instalment is payable. This is set at £250 until the first final service charge statement is given and thereafter is the amount in the latest final service charge statement.
19. The interim service charge instalment is due on the same day as the ground rent, which is 25 December in each year.
20. The lease contemplates that subsequent to the service of the interim service charge instalment in each year a final service charge statement will be sent and a balancing exercise carried out so that the appropriate demand can then be made or appropriate credit given.
21. The lease also contemplated that a final service charge statement would be prepared for each period ending on a certain day. Unfortunately, by an omission that day is not identified in the lease.
22. In practice the final service charge statement was originally based on a year ending on 24 March, but since 2008 it is based on a year ending on 24 December. In practice the interim service charge instalment has been served on various dates and not on 25 December.
23. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows. We will first consider the three generic issues referred to in paragraph 15 above, and then turn to each of the relevant service charge years.

### **Insurance**

24. At the hearing in 2007 the Respondent's representative was able to produce a number of quotations which were found to be compelling evidence that the insurance premiums which had been substantially increased since 2004 were unreasonably incurred. The tribunal found that a reasonable figure for insuring the building was £700.00, equating to £350.00 per flat.
25. In the year ending 24 March 2008 the insurance premium for the building paid by the Applicant was £1,515.81. It is clear that for this year the Applicant had ignored the findings of the tribunal. Mr Wijeyaratne realistically accepted that the full amount could not be recovered and we find that a reasonable sum for the year would be £720.00 for the building, equating to £360.00 per flat.
26. The position in the subsequent years is different. Indeed, by the end of the hearing we did not understand the Applicant to be suggesting that the amounts charged for the subsequent years were other than reasonable. The Applicant has twice changed brokers and insurers, and

for each of the years ending 24 December 2008 and 24 December 2009 the cost was less than £700.00 for the building. We consider that the premiums charged are reasonable, even where they exceed £700.00 per annum, as there has been a considerable uplift in the value of the property insured.

27. In some years the amount claimed by way of service charge for the insurance premium slightly exceeded the amount shown on the relevant certificate. Mr Case believes that the difference concerns a modest fee for arranging the insurance but he was vague about this and unable to produce any documentary evidence. Whilst we find that in respect of the year ending 24 December 2008 and all subsequent years the cost was reasonable, we shall only allow the cost shown in the certificate where that is lower than that shown in the final service charge statement.

### **Management charges**

28. We propose to take as our starting point the finding by the tribunal in 2007 that a fee of £250.00 per annum was a reasonable unit charge for a professional management service in respect of the flat. The tribunal then went on to reduce the amount recoverable by 50% because Mr Case had been unable to offer any compelling evidence that his firm had managed the flat to a satisfactory standard.
29. At the hearing the Respondent made a number of complaints about the service provided by the managing agents.
30. In 2009 the flat was flooded from upstairs. Loss adjusters, Cunningham Lindsey, were appointed by the insurers who corresponded directly with the Respondent. The loss adjusters asked the Respondent to provide a second estimate for the necessary reinstatement works. The Respondent is adamant that he sent a second estimate to the managing agents and had relied upon them to pass it to the loss adjusters. Mr Case denied having received the second estimate.
31. We have referred in paragraph 5 above to a letter the Respondent says he sent to the managing agents dated 24 February 2014 and to an email he says he sent to the managing agents dated 23 February 2014. Mr Case denied that managing agents received them.
32. In these communications the Respondent asked the managing agents to provide him with a proper break down of a demand for £9,472.43 sent to him on 4 February 2014. This demand included a balance brought forward of £9,729.44. The Respondent also complained that he was not notified of an inspection being carried out by a surveyor in connection with proposed works.

33. The Respondent also complained that the managing agents had not asked Sterling Builders Ltd to inspect the flat in connection with proposed roof works in December 2014, whereas other tenants had been asked to give access.
34. We share the Respondent's concerns about the management of the building. We find, on the balance of probabilities, that the letter dated 24 February 2014 and the email dated 23 February 2014 were received by the managing agents. Although the Respondent has been delivering documents to the wrong door at the managing agents' building, it is significant that he has made payments by the same means of delivery and they have been received, and there is no reason to suppose that the email was not received.
35. The Respondent was amply entitled to ask for a breakdown of the demand for £9,472.43 because this figure included the erroneous claim for arrears of £5,093.96 referred to in paragraphs 10 – 13 above.
36. We also find that the Respondent did send a second estimate to the managing agents in 2009, and whilst the insurers had instructed loss adjusters and it might have been more sensible for the Respondent to have dealt directly with them, nevertheless the managing agents should have taken a more co-operative stance.
37. Although the machinery for the collection of the service charges in the lease is not perfect, the managing agents have made no effort to make demands in accordance with a consistent timetable and have throughout claimed both in their demands and in the County Court proceedings more than that to which the Applicant was entitled.
38. At the inspection in 2007, the tribunal found the flat to be in very poor condition with evidence of significant dampness and movement in several areas. Part of the ceiling in the rear room had collapsed and water was continuing to permeate. We note that that no works were carried out at to the exterior prior to 2011 and certain roof work is only about to begin now.
39. To reflect these criticisms of the management we consider that a 20% reduction of the management charge should be made, and that a reasonable management charge for the building should be £396.00 for the years 25 March 2007 - 24 March 2008, 25 March 2008 - 24 December 2008 (subject to apportionment as mentioned below) and 25 December 2009 - 24 December 2010, and £420.00 for the subsequent years.

**Repairs and surveyors' fees (or reserves for that purpose)**

40. The Respondent did not challenge the reasonableness of the cost of the

repairs carried out by the Applicant or of the surveyors' fees. We are satisfied that these costs are reasonable and were reasonably incurred.

#### **25 March 2007 - 24 March 2008**

41. The amount claimed for the building for this year is £2,269.31, comprising £1,515.81 for insurance, £495.00 for management charges and £258.50 for surveyors' fees. The amount claimed for each flat is £1,134.66 made up of an interim service charge instalment of £250.00 and a balance of £884.66 in the final service charge statement.
42. As to insurance, we have stated above that £720.00 is recoverable for this year.
43. As to management charges, we have stated above that 80% of the fee claimed is recoverable, amounting to £396.00
44. There is no challenge to the surveyors' fees of £258.50.
45. Accordingly, the total allowed for the building for this year is £1,374.50 and the amount payable in respect of the flat is £687.25.

#### **25 March 2008 - 24 December 2008**

46. The amount claimed for the building for this year is £2,287.93, comprising £542.93 for insurance, £495.00 for management charges and £1,250.00 reserve for external decoration. The amount claimed for each flat is £1,143.97 made up of an interim service charge instalment of £250.00 and a balance of £893.97 in the final service charge statement.
47. As to insurance, we will allow £534.79 which is the figure on the Norwich Union schedule. We note, however, that because of the change in the year end this is a truncated year. We have no information as to whether the Applicant received any rebate in respect of insurance as a result of the change in the year end. If there is any need for adjustment the Applicant should ensure that this is done when the proceedings return to the County Court.
48. As to management charges, we have stated above that 80% of the fee claimed is recoverable, amounting to £396.00. However, since that is the annual fee and this year was reduced to 9 months, we will allow £297.00 pro rata.
49. There is no challenge to the reserve of £1,250.00.
50. Accordingly, the total allowed for the building for this year is £2,081.79

and the amount payable in respect of the flat is £1,040.90.

**25 December 2008 - 24 December 2009**

51. The amount claimed for the building for this year is £2,287.93, comprising £611.74 for insurance, £495.00 for management charges and £1,181.19 reserve for external decoration. The amount claimed for each flat is £1,143.97 made up of an interim service charge instalment of £1,143.97 and a zero balance in the final service charge statement.
52. As to insurance, the premium of £611.74 is recoverable.
53. As to management charges, we have stated above that 80% of the fee claimed is recoverable, amounting to £396.00
54. There is no challenge to the reserve of £1,181.19.
55. Accordingly, the total allowed for the building for this year is £2,188.93 and the amount payable in respect of the flat is £1,094.47.

**25 December 2009 - 24 December 2010**

56. The amount claimed for the building for this year is £2,287.94, comprising £746.92 for insurance, £525.00 for management charges and £1,016.02 for reserve for external decoration. The amount claimed for each flat is £1,143.97 made up of an interim service charge instalment of £1,143.97 and a zero balance in the final service charge statement.
57. As to insurance, the premium of £746.92 is recoverable.
58. As to management charges, we have stated above that 80% of the fee claimed is recoverable, amounting to £420.00
59. There is no challenge to the reserve of £1,016.02.
60. Accordingly, the total allowed for the building for this year is £2,182.94 and the amount payable in respect of the flat is £1,091.47.

**25 December 2010 - 24 December 2011**

61. The amount claimed for the building for this year is £1,766.18, comprising £821.66 for insurance, £525.00 for management charges, £2,000.00 for external decoration and £419.52 surveyors' fees. Credit is given for £2,000.00 being a transfer from the reserve. The amount claimed for each flat is £883.09 made up of an interim service charge

instalment of £1,143.97 and a credit balance of £260.88 in the final service charge statement.

62. As to insurance, we will allow £788.32 which is the figure on the Aviva schedule.
63. As to management charges, we have stated above that 80% of the fee claimed is recoverable, amounting to £420.00
64. There is no challenge to the external decoration costs of £2,000.00 or the surveyors' fees of £419.52.
65. Accordingly, the total allowed for the building for this year is £3,627.84 and, after deducting £2,000.00 transferred from the reserve, the amount payable in respect of the flat is £813.92.

#### **25 December 2011 - 24 December 2012**

66. The amount claimed for the building for this year is said to be £1,724.54, comprising £827.73 for insurance, £525.00 for management charges, £1,200.00 for external decoration and £246.50 for repairs. Credit is given for £1,447.21 being a transfer from the reserve, this sum being the balance then remaining in the reserve. The amount claimed for each flat is £862.27 made up of an interim service charge instalment of £883.09 and a credit balance of £20.82 in the final service charge statement. However, there is an arithmetical error in the final service charge account in that the net expenditure amounts to £1,352.02 and not £1,724.54.
67. As to insurance, the premium of £827.73 is recoverable.
68. As to management charges, we have stated above that 80% of the fee claimed is recoverable, amounting to £420.00
69. There is no challenge to the external decoration costs of £1,200.00 or the repair costs of £246.50.
70. Accordingly, the total allowed for the building for this year is £2,694.23, and, after deducting £1,447.21 transferred from the reserve, the amount payable in respect of the flat is £623.51.

#### **25 December 2012 - 24 December 2013**

71. The amount claimed for the building for this year is £1,516.68, comprising £871.68 for insurance, £525.00 for management charges and £120.00 for repairs. The amount claimed for each flat is £758.34 made up of an interim service charge instalment of £883.09 and a

credit balance of £124.75 in the final service charge statement.

72. As to insurance, the premium of £871.68 is recoverable.
73. As to management charges, we have stated above that 80% of the fee claimed is recoverable, amounting to £420.00
74. There is no challenge to the repair costs of £120.00.
75. Accordingly, the total allowed for the building for this year is £1,411.68 and the amount payable in respect of the flat is £705.84.

#### **25 December 2013 - 24 December 2014**

76. The amount claimed by way of interim service charge instalment for the building for this year is £1,516.68. The amount claimed for each flat is £758.34
77. Since the lease provides for the interim service charge instalment to equal the service charge on the latest final service charge statement and we have determined that to be £705.84 for the year 25 December 2012 – 24 December 2013, we determine £705.84 to be the reasonable amount payable by way of interim service charge instalment for this year.

#### **Application under s.20C**

78. At the hearing, the Respondent applied for an order under section 20C of the 1985 Act. Although the lease would not appear to entitle the Applicant to pass the costs through the service charge, for the avoidance of doubt, the tribunal nonetheless determines, as it did last time, 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 may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge. As explained the figures for arrears in the County Court proceedings were flawed and is only as a result of the matter coming before the tribunal that the Respondent has been able to understand the case against him.

#### **The next steps**

79. The tribunal has no jurisdiction over ground rent or County Court costs. This matter should now be returned to the County Court at Croydon.

**Name:** Simon Brilliant

**Date:** 18 March 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.