

10787



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

**Case Reference** : **LON/00AH/LSC/2014/0650**

**Property** : **Flat 50 Burnham Gardens Croydon  
CR0 6NP**

**Applicant** : **Burnham Gardens Residents  
Association Limited**

**Representatives** : **Aston Rose Chartered Surveyors**

**Respondent** : **Gary James Chapman**

**Representative** : **None**

**Type of Application** : **Reasonableness of and liability for  
service charges and administration  
charges under the Landlord and  
Tenant Act 1985 (Section  
27A)/Commonhold and Leasehold  
Reform Act 2002 (Schedule 11) and  
an Order that a breach of covenant  
has occurred pursuant to s. 168(4)  
of the 2002 Act**

**Tribunal Members** : **Prof Robert M. Abbey (Solicitor)  
Mr Duncan Jagger (MRICS)**

**Date of Decision** : **8<sup>th</sup> June 2015**

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**DECISION**

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9. Moreover there was a case management hearing before Judge Martynski on 29 January 2015 when it was noted that “Letters sent to the respondent by the tribunal have been returned. One of the returned envelopes in marked “no such person””. In the directions made by Judge Martynski provision was made for a decision on the papers alone without a hearing. This decision has been made on this basis.

### **Liability for the service charges claimed**

10. Having read and considered all of the documents provided, the tribunal determines the issue as follows.
11. It is clear to the tribunal that the service charge claimed is allowed by the lease of the subject property and has been formally and properly demanded. In these circumstances the tribunal is of the opinion that in the absence of any objection from the respondent that the amount of £2805.05 is properly payable by the respondent and we will so order.

### **Breach of Covenant**

12. The lease provides at covenant clauses 3 (b) and 3 (3) for the payment of service charges by the respondent to the applicant. The very fact that no payment has been made must confirm a patent breach of covenant. In these circumstances the tribunal is of the view that the respondent must therefore be in breach of these two covenants in the lease and therefore the tribunal will make an order that there is a breach of covenant for the purposes of s. 168(4) of the Commonhold and Leasehold Reform Act 2002.

### **Costs**

13. The applicant has made an application for costs pursuant to the provisions of Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 S.I. 2013 No. 1169 (L. 8). This states that –

*Rule 13.*

*(1) The Tribunal may make an order in respect of costs only—*

*....*

*(b)*

*if a person has acted unreasonably in bringing, defending or conducting proceedings in—*

*....*

*(ii)*

*a residential property case, ....*

14. It is clear to the tribunal that there has been a complete failure to respond by the respondent both to the applicant and to the tribunal itself. In these circumstances the tribunal has no alternative other than to interpret this as

unreasonable on the part of the respondent. This being so the tribunal will order the respondent to pay the applicant's costs. The tribunal has been supplied with a schedule of costs so claimed and notes this is in the sum of £2484.00 and the tribunal will order that this sum be paid by the respondent.

**Name:** Judge Professor Robert  
M. Abbey

**Date:** 08.June .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 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**

#### **Administration charges**

##### Part 1 Reasonableness of administration charges

###### Meaning of “administration charge”

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.

###### Reasonableness of administration charges

2 A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

3(1) Any party to a lease of a dwelling may apply to a leasehold valuation tribunal for an order varying the lease in such manner as is specified in the application on the grounds that—

- (a) any administration charge specified in the lease is unreasonable, or
- (b) any formula specified in the lease in accordance with which any administration charge is calculated is unreasonable.

(2) If the grounds on which the application was made are established to the satisfaction of the tribunal, it may make an order varying the lease in such manner as is specified in the order.

(3) The variation specified in the order may be—

(a) the variation specified in the application, or

(b) such other variation as the tribunal thinks fit.

(4) The tribunal may, instead of making an order varying the lease in such manner as is specified in the order, make an order directing the parties to the lease to vary it in such manner as is so specified.

(5) The tribunal may by order direct that a memorandum of any variation of a lease effected by virtue of this paragraph be endorsed on such documents as are specified in the order.

(6) Any such variation of a lease shall be binding not only on the parties to the lease for the time being but also on other persons (including any predecessors in title), whether or not they were parties to the proceedings in which the order was made.

#### Notice in connection with demands for administration charges

4(1) A demand for the payment of an administration charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to administration charges.

(2) The appropriate national authority may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.

(3) A tenant may withhold payment of an administration charge which has been demanded from him if sub-paragraph (1) is not complied with in relation to the demand.

(4) Where a tenant withholds an administration charge under this paragraph, any provisions of the lease relating to non-payment or late payment of administration charges do not have effect in relation to the period for which he so withholds it.

#### Liability to pay administration charges

5(1) An application may be made to a leasehold valuation 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 a leasehold valuation 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 subparagraph (1).

### **Commonhold and Leasehold Reform Act 2002**

#### **168 No forfeiture notice before determination of breach**

(1)A landlord under a long lease of a dwelling may not serve a notice under section 146(1) of the Law of Property Act 1925 (c. 20) (restriction on forfeiture) in respect of a breach by a tenant of a covenant or condition in the lease unless subsection (2) is satisfied.

(2)This subsection is satisfied if—

- (a)it has been finally determined on an application under subsection (4) that the breach has occurred,
- (b)the tenant has admitted the breach, or
- (c)a court in any proceedings, or an arbitral tribunal in proceedings pursuant to a post-dispute arbitration agreement, has finally determined that the breach has occurred.

(3)But a notice may not be served by virtue of subsection (2)(a) or (c) until after the end of the period of 14 days beginning with the day after that on which the final determination is made.

**(4)A landlord under a long lease of a dwelling may make an application to a leasehold valuation tribunal for a determination that a breach of a covenant or condition in the lease has occurred.**

(5)But a landlord may not make an application under subsection (4) in respect of a matter which—

- (a)has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
- (b)has been the subject of determination by a court, or
- (c)has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.