



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

**Case reference** : **LON/00AH/LSC/2015/0170**

**Property** : **Flat 1 Ground Floor & Flat 3 Second Floor, 247 Holmesdale Road, London SE25 6PR**

**Applicant** : **Resolute Property Management Limited**

**Representative** : **Ms A Rybak**

**Respondents** : **Mr A Conteh, Ms A Iheacho and Mr S Avery**

**Representative** : **Mr S Avery (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 T Sennett  
Mr L Packer**

**Date and venue of hearing** : **17 August 2015  
10 Alfred Place, London WC1E 7LR**

**Date of decision** : **24 August 2015**

## **Decision of the tribunal**

The tribunal determines that each Respondent is to pay his or her respective share of the following sums in respect of the service charges for the following years:

01 January 2012 - 31 December 2012	£262.46
01 January 2013 – 31 December 2013	£1,369.12
01 January 2014 - 31 December 2014	£1,002.00
01 January 2015 - 31 December 2015	£1,542.00 (interim)

## **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 Respondents in respect of the service charge years ending 31 December 2012, 31 December 2013, 31 December 2014 and 31 December 2015.
2. The relevant legal provisions are set out in the Appendix to this decision.

## **The hearing**

3. At the beginning of the hearing Ms A Iheacho, the lessee of the first floor flat, was added as a Respondent pursuant to rule 10(1) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.
4. The Applicant was represented by Ms A Rybak, a financial controller employed by Michael Richards & Co, the Applicant’s managing agents (“the managing agents”). Mr S Avery appeared in person on behalf of himself and the other two tenants, Mr A Conteh and Ms A Iheacho.
5. At the beginning of the hearing it became apparent that some documents relating to insurance were not included in the bundle and these were added to it. We were told by Mr Avery that the tribunal has recently upheld a right to manage application by the Respondents. This does not affect the task we have in these proceedings but should ensure that in the future the type of dispute arising in these proceedings should no longer occur.

## **The background**

6. The properties which are the subject of this application (“the flats”) are respectively the ground, first and second floor flats in a terrace house (“the building”) converted into three flats. There is a small front garden, a communal front door with an intercom facility, and a small ground floor lobby leading to the ground floor flat, which includes the rear garden. There is a staircase leading to the upper two flats. The stairs are lit by two bulbs controlled by push button timer switches.
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 Respondents hold long leases of their respective flats. We have been shown Mr Avery’s lease dated 23 October 1985 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.

### **The issues**

9. The issues before us concern the reasonableness of the service charges arising for the year commencing 01 January 2012 and all subsequent years.
10. The service charges we are concerned with fall into five categories, although not every category arises in every year:
  - (1) Management charges.
  - (2) Insurance premiums.
  - (3) Electricity charges for the common parts.
  - (4) Maintenance charges.
  - (5) The cost of a Health and Safety survey of the property.

### **The lease**

11. The Applicant is under an obligation to insure and keep insured the building. The Applicant is under an obligation to maintain and keep in good and substantial repair and condition, amongst other things, the main structure of the building and the common parts. 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.

12. In providing these services, the Applicant is entitled to engage the services of the managing agents and to employ surveyors or such other professional persons as may be necessary or desirable for the proper maintenance, safety and administration of the building.
13. The Applicant can recover by way of a service charge the amount it spends in carrying out its obligations under the lease. Each Respondent pays a share of the costs based on the size of his or her flat.
14. The machinery for collecting the service charge is as follows. An interim service charge is payable by equal instalments in advance on 24 June and 25 December in each year. In practice at the beginning of each year the managing agents send out a statement of anticipated service charge expenditure. Half is demanded on 1 January and the other half is demanded on 1 July.
15. The lease contemplates that 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. In practice a statement of service costs for the year ending 31 December supported by a schedule of the costs is sent out in the following spring or early summer.

### **Management charges**

16. The lease allows the costs of employing the managing agents to be recovered by way of the service charge. The services provided by the managing agents consist of paying to the utility company the bill for the supply of electricity to the common parts, doing the accounts and providing to the Respondents the statements of anticipated service charge expenditure, statements of service costs and schedules of the costs referred to above.
17. The managing agents do not arrange the insurance policies but simply inform the Respondents of how much the cost of insurance will be each year. Nor do they become involved in any claims. The insurance policies are obtained by the Applicant itself through its brokers. The managing agents do not inspect the building itself but use contractors. There is no annual inspection organised but contractors are called out on a job by job basis. A Health and Safety survey of the property by Watson Wild & Baker Ltd was arranged by the managing agents in 2013.
18. Ms Rybak submitted that the market rate for a management fee in London is around £250.00 plus VAT per unit, and that the fees being charged (£125.00 per unit plus VAT, rising to £130.00 plus VAT per unit for the year ending 31 December 2015) were accordingly very reasonable.

19. Ms Rybak said that the managing agents were hindered in what they could do because the Respondents refused to provide a key to the communal front door.
20. Mr Avery, who himself is a professional commercial managing agent, was critical of the management. He said that the building was largely self-managed by the Respondents as the managing agents took too long in responding to maintenance problems and he could arrange the work at a far cheaper price. The Respondents changed the light bulbs, undertook minor repairs and cleared the gutters which were accessed from the ground floor flat.
21. Mr Avery said that there had been five different managers for the building in the last two years and each time there was a change the newly appointed manager was unable to enter the email box of his or her predecessor. Mr Avery himself had undertaken the asbestos report.
22. Indeed, Ms Rybak herself had only recently taken over the file for these proceedings. She was not the person who prepared the Applicant's witness statement (which was itself a poorly executed cut and paste job which twice referred to the wrong building). She did her best to present the Applicant's case in a dignified and coherent way but her personal knowledge of many of the issues was non-existent.
23. Mr Avery denied that the managing agents had ever been excluded from the building. The ground and first floor flats are now let out on assured shorthold tenancies. The ground floor flat has been let out for all the years in issue and the first floor flat has been let out this year. He works long hours and is therefore unable to let people in.
24. The tribunal notes that the common parts are not demised. The Applicant, through the managing agents, is perfectly entitled to change the front door lock, retain a key and gain entry if it really wanted to, provided keys are supplied to the Respondents.
25. Ms Rybak was not really in a position to challenge Mr Avery's evidence about the nature of the service provided by the managing agents, and in any event we are satisfied that it is accurate.
26. We conclude that the level of the management services is about as basic as it could be. We consider that a reasonable fee would be £50.00 plus VAT per unit for each of the years with which we are concerned.

### **Electricity**

27. The cost of the supply of electricity to the common parts is recoverable by way of the service charge. The two light bulbs on the stairs and the front door intercom are the only services for which electricity is

supplied. The utility company is EDF.

28. Mr Avery drew our attention to the fact that because so little electricity is used the cost of the standing charge is disproportionate. For example, the bill dated 7 September 2011 is for £79.78. But the electricity consumed amounted to 13p. Mr Avery submitted that the Applicant should shop around and find a supplier who would be prepared to reduce the standing charge. A supplier would welcome a professional landlord with a substantial portfolio. He suggested that if this were to be done the cost would be around £70.00 per year for the building as opposed to the slightly higher charges claimed.
29. We are unable to accept this submission. The managing agents have produced each of the bills relied upon and are simply claiming the cost incurred back from the Respondents. We accept that the managing agents have paid the bills even though they are still addressed to a previous landlord. We are not persuaded any supplier would reduce its standing charge even if there is a portfolio on offer. The evidence is that the portfolio comprises small buildings with different utility suppliers. In our view the managing agent has no negotiating strength with the suppliers on this issue. The bills must be paid in full.

#### **Maintenance charges**

30. In the year ending 31 December 2013 there is a specific charge for £100.00 invoiced on 2 February 2013 by Mr Laslo Ficzus for a call out to check gutters, the front door lock, the lighting, and the water tank. No problems were reported.
31. Mr Avery says that there is no evidence that the work was done. We do not accept that this is a fraudulent document. On the balance of probabilities, and despite our observations above, we find that on this occasion the work was done. It is the only instance of work being done. Since the management fee does not include a routine inspection, this fee is justified and considered reasonable. It is recoverable in full.
32. There is no longer a maintenance charge claim for the year ending 31 December 2014.
33. In respect of the year ending 31 December 2015 there is in the budget an estimated charge for £500.00 in respect of repairs and maintenance.
34. Clause 5(5)(g) of the lease allows the Applicant to set aside such sums of money as it reasonably requires to meet such future costs as it shall reasonably expect to incur of replacing maintaining and renewing those items which the Applicant has covenanted to replace maintain and renew (our emphasis).

35. At the hearing Ms Rybak stated that this sum had been included because the Applicant wished to instal a fire alarm system which had been recommended by Watson Wild & Baker Ltd. Mr Avery took a nice point that such work would not fall within the words underlined in paragraph 34 above.
36. We do not need to decide whether or not he is right. The lease allows an advance demand in respect of potential replacement, maintenance and renewal costs. The statement of anticipated service charge expenditure simply refers to the costs of repairs and maintenance and does not, and is not required to, identify precisely what the money will be spent on. It is a contingency. In our judgment it is payable and is reasonable in amount for a building of this size.

### **Health and Safety survey of the property**

37. In 2013 the managing agents commissioned a Health and Safety survey of the building from Watson Wild & Baker Ltd. The report cost £225.00 plus VAT, a total of £270.00.
38. Mr Avery accepts that it is reasonable for the Applicant to commission such a report but says that it was not necessary because the Applicant had a little earlier (two or three years ago) commissioned a similar report from a different company and nothing had changed in the building which required a further report.
39. Mr Avery also said that the cost was excessive and that it should not have cost more than £90.00.
40. Ms Rybak accepted that there had been an earlier report, which had cost £400.00. She said that the Applicant was under a statutory duty to carry out the report.
41. We note that whilst Mr Avery had knowledge of the earlier report he did not produce it so there is no real evidence before us of when the earlier report was made. It may have been before any part of the building was sub-let. On balance we consider that it was reasonable for the report to have been commissioned. We regard Mr Avery's suggestion that someone would come out to do this skilled work for £90.00 as quite unrealistic. The amount claimed is reasonable.

### **Insurance**

42. Ms Rybak accepted that the managing agents played no part in arranging the building insurance. It was arranged by the Applicant through its broker Coppergate Insurance Services Ltd ("Coppergate").

43. Coppergate insured the building with Aviva Insurance Ltd ("Aviva").
44. No claim is being made for the cost of insurance in respect of the year ending 31 December 2012 as a result of earlier litigation.
45. The premium for the year ending 31 December 2013 was £1,648.39.
46. Mr Avery produced to the tribunal two quotations he had obtained from other insurers. These were added to the bundle. There is an issue as to whether these had been previously produced to the managing agents. Ms Rybak did not ask for an adjournment and she had an opportunity to take any instructions she wanted to on the telephone, had she wished to, when she obtained other insurance documents from her office whilst the tribunal adjourned for documents to be added to the bundle.
47. The first quotation produced by Mr Avery was from UK Insurance Ltd trading as NIG. This was dated 15 July 2013. The premium was £722.04.
48. The second quotation produced by Mr Avery was from Sterling Insurance Group Ltd. This was also dated 15 July 2013. The premium was £579.59.
49. The premium for the year ending 31 December 2014 for cover arranged on 11 December 2013 was £1,858.56. The building was insured for £406,698.00 at that time.
50. On 13 December 2103 a valuation for insurance purposes was carried out on the building and it was revalued at £446,410.26. As a result the premium was increased by £6.18. For reasons which have not been explained the amount being claimed for insurance in the schedule prepared for these proceedings by the Applicant for the year ending 31 December 2014 is not £1,858.56 and £6.18, but a lower figure of £1,812.39.
51. The premium for the year ending 31 December 2015 was £1,900.00. Despite the revaluation the building is insured for £411,038.00.
52. We are critical of the manner in which the Applicant has presented its case in respect of the insurance. In effect it has led no evidence as Ms Rybak is in no position to assist us. It knew well in advance of the challenge being made by the Respondents.
53. We have had no assistance as to how Coppergate operates or who owns it. There is no evidence that it has ever shopped around to find insurers other than Aviva. Ms Rybak was unable to dispute the comparables



relied upon by Mr Avery.

54. We find, on the basis of our expert knowledge, that the higher of the quotations obtained by Mr Avery, £722.00, would be a reasonable amount for the premium for the years ending 31 December 2013 and 31 December 2014. We will increase that rateably to £742.00 for the year ending 31 December 2015 as the building should for this year be insured for £446,410.26 in the light of the updated insurance valuation.
55. For the sake of completeness we reject Mr Avery's argument that section 20 of the 1985 Act applies to the insurance arrangements. There is no charge paid to Coppergate. There is no long term contract with Aviva.

#### **01 January 2012 - 31 December 2012**

56. The amount claimed for the building for this year is £532.46, comprising £450.00 for management charges (3 x £125.00 plus VAT) and £82.46 for electricity charges.
57. As to the management charges, we have stated above that £50.00 plus VAT per unit is recoverable which amounts in total to £180.00 for this year.
58. As to the electricity charges, we have stated above that they are recoverable.
59. Accordingly, the total allowed for the building for this year is **£262.46**.

#### **01 January 2013 - 31 Decemeber 2013**

60. The amount claimed for the building for this year is £2,565.51, comprising £450.00 for management charges (3 x £125.00 plus VAT), £1,648.39 for insurance, £97.12 for electricity charges, £100.00 for maintenance work, and £270.00 for the cost of the Health and Safety survey of the building from Watson Wild & Baker Ltd.
61. As to the management charges, we have stated above that £50.00 plus VAT per unit is recoverable which amounts in total to £180.00 for this year.
62. As to the insurance, we have stated above that £722.00 is recoverable for this year.
63. As to the electricity charges, we have stated above that they are recoverable.

64. As to the charge for maintenance work, we have stated above that it is recoverable.
65. As to the cost of the Health and Safety survey, we have stated above that it is recoverable.
66. Accordingly, the total allowed for the building for this year is **£1,369.12.**

**01 January 2014 - 31 December 2014**

67. The amount claimed for the building for this year is £2,362.39, comprising £450.00 for management charges (3 x £125.00 plus VAT), £1,812.39 for insurance, and £100.00 for electricity charges.
68. As to the management charges, we have stated above that £50.00 plus VAT per unit is recoverable which amounts in total to £180.00 for this year.
69. As to the insurance, we have stated above that £722.00 is recoverable for this year.
70. As to the electricity charges, we have stated above that they are recoverable.
71. Accordingly, the total allowed for the building for this year is **£1,002.00.**

**01 January 2015 - 31 December 2015 (estimate)**

72. The amount claimed for the building for this year is £2,988.00, comprising £468.00 for management charges (3 x £130.00 plus VAT), £1,900.00 for insurance, £120.00 for electricity charges, and £500.00 maintenance provision.
73. As to the management charges, we have stated above that £50.00 plus VAT per unit is recoverable which amounts in total to £180.00 for this year.
74. As to the insurance, we have stated above that £742.00 is recoverable for this year.
75. As to the electricity charges, we have stated above that they are recoverable.
76. As to the charge for maintenance work, we have stated above that it is

recoverable.

77. Accordingly, the total allowed as an estimate for the building for this year is **£1,542.00**.

**Name:** Simon Brilliant

**Date:** 24 August 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.