



**First-Tier Tribunal
Property Chamber
(Residential Property)**

Case Reference : **LON/OOAJ/LSC/2015/0028**

Property : **47 Wilsmere Drive, Northolt,
Middlesex UB5 4JA**

Applicants : **London Borough of Ealing (land-
lords)**

Representative : **Mr P Castagnetti (legal depart-
ment, London Borough of Ealing)**

Respondents : **Mr B Farrelly and Mrs C Farrelly
(joint leaseholders)**

Representative : **None**

Type of Application : **Following a transfer of proceed-
ings from the Brentford County
Court an application for the de-
termination of the payability of
service charges under section 27A
of the Landlord and Tenant Act
1985.**

Tribunal Member : **Professor James Driscoll (Judge)**

Date of Hearing : **The tribunal considered the appli-
cation on the basis of the papers
filed on 9 April 2015**

Date of Decision : **9 April 2015**

DECISION

The Decision summarised

1. The tribunal determines that the landlord's claim for service charges for major works in sum of £3,972 is recoverable in full from the leaseholders.

Introduction

2. This application started with a claim brought in the county court seeking a judgement for arrears of service charges. It is made by the applicants who are the landlords under a lease of the subject premises which is jointly held by the respondents. The property is a flat which forms part of a block owned by the landlords.
3. In the county court claim the sum of £3,972.95 is claimed. Interest and costs are also claimed. A defence was filed. An order was made by the Brentford County Court on 30 July 2014 transferring the claim to this tribunal.
4. A case management conference was held at the tribunal on 6 February 2015. The landlords were represented by Mr Castagnetti and Mr Harris of their legal department. The leaseholders sent their apologies as they were unable to attend.
5. The parties agreed that a determination of the payability of the charges could be made by a consideration of the papers and without an oral hearing.
6. A bundle of documents was prepared by the landlords and the leaseholders also sent documents to be considered though after the date given in the directions. However, in an email sent by Mr Castagnetti on 7 April 2015 the landlords stated that they had no objection to the tribunal considering these documents even though they were sent late.

The determination

7. I considered the application without an oral hearing on 9 April 2015 and I did so by reading and analysing the documents in the bundle and the additional documents sent by the leaseholders (which were service charge demands and statements).
8. Following the transfer to this tribunal I am to determine whether service charges totalling the sum of £3,972 are payable by the leaseholders.
9. I start by summarising the basic facts which are agreed by the parties.
10. In a letter the leaseholders sent to the Court dated 20 May 2014 they stated that they purchased the property as 'buy to let' on 12 October 2006 and they have since let it to Ealing Homes Housing Association at a monthly rent of £820 which later was reduced to £740 per month. They complain of errors in the service charge demands.
11. In a reply to this (given in June 2014) the landlords pointed out that under the lease they own (a copy of which is included in the bundle starting on page 41) the leaseholders covenant to pay service charges (clause 5 of the lease).
12. They also refer to a notice of intention to carry out works and claim that they are required to carry out works as part of their obligation under the lease.
13. The landlords elaborated on their case in a statement dated 6 March 2015 signed by Mr Robinson of their legal department.
14. Mr Robinson states that the costs claimed are in connection with a major works programme which was completed in August 2010. He exhibits a schedule of these works and a certificate of 'practical completion' (annexes 2 and 3 to his statement). In annex 4 he exhibits the statutory consultation whilst annex 5 contains the final invoice. This states that under the lease the leaseholders are to pay 4.17% of the landlord's costs in repairing and maintaining the block and also a management charge.
15. This statement also claims that the statutory consultation process was undertaken under schedule 3 of the Service Charges (Consultation Requirements) (England) Regulations 2003 and that the leaseholders did not make any representations in the course of this consultation. Mr Robinson adds that 'No disputes were ever raised by the

Respondents until after the Claim had been issued on 22 April 2014 (paragraph 18 on page 35 of the bundle).

16. He also states that a notice was given under section 20B of the Act dated 15 December 2010 advising that costs had been incurred and that a final invoice was sent dated 25 November 2011 which included a statement of the leaseholder's statutory rights given under section 21B of the Act.
17. The leaseholders have not questioned this version of events. In a letter to the tribunal dated 20 February 2015 they claim that the costs are excessive, that they have not correctly been sought and that in the past there have been several administrative errors. In their letter addressed to the landlords dated 4 April 2015 they complain that it is unfair for a new leaseholder to pay for 'historic neglect' that led to the works. However, they did not elaborate on the historic neglect.
18. The leaseholders also state that they have always paid charges for three other properties they own as investments and they exhibit documents relating to the charges they have paid for those properties.
19. Having carefully read and considered the available papers I have little doubt that the leaseholders have failed to make any reasonable challenges to the service charges in dispute. They do not deny that they are required to contribute to the landlord's reasonable costs under the covenants in their leases. As investment leaseholders of three other properties owned by social landlords it is reasonable to conclude that they have a working knowledge of residential leases and the general requirement for leaseholders to contribute through service charges to the landlord's expenditure in maintaining the block.
20. Nor do they deny that there was a statutory consultation. They appear to accept that they did not make any representations during this procedure which started in 2005 and was completed in 2006 at the time they acquired the property. Although they do not live in the property (which they rent out) it is extremely unlikely that they were unaware that major works were being carried out.
21. I determine that the landlord's costs of £3,972 are recoverable in full from the leaseholders.
22. This application having been determined the matter will now be returned to the Court for a final decision to include the claim for interest and costs.

James Driscoll
9 April 2015

Appendix of the relevant legislation

Landlord and Tenant Act 1985

Section 18

- (1) In the following provisions of this Act "service charge" means an amount payable by a Tenant of a dwelling as part of or in addition to the rent -
- (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the Landlord's costs of management, and
 - (b) the whole or part of which varies or may vary according to the relevant costs.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the Landlord, or a superior Landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose -
- (a) "costs" includes overheads, and
- 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.
- Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

- (1) An application may be made to a Leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to -
- (a) the person by whom it is payable,
 - (b) the person to whom it is payable,
 - (c) the amount which is payable,
 - (d) the date at or by which it is payable, and
 - (e) the manner in which it is payable.

- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to a Leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
- (a) the person by whom it would be payable,
 - (b) the person to whom it would be payable,
 - (c) the amount which would be payable,
 - (d) the date at or by which it would be payable, and
 - (e) the manner in which it would be payable.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which -
- (a) has been agreed or admitted by the Tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the Tenant is a party,
 - (c) has been the subject of determination by a court, or
 - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- But the Tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

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 leasehold valuation 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 a leasehold valuation tribunal;

- (b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation 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.
- 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.