



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

Case reference : **LON/00AW/LSC/2015/0178**

Property : **Basement Flat, 103A, Chesterton Road, North Kensington, London, W10 6ET**

Applicant : **Steven Wall**

Representative : **In Person**

Respondent : **Catalyst Housing Ltd**

Representative : **In person**

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

Tribunal members : **Mrs Helen Bowers MRICS
(Tribunal Chairman)**

Date and venue of paper determination : **14th July 2015
10 Alfred Place, London WC1E 7LR**

Date of decision : **14th July 2015**

DECISION

- (1) The Tribunal determines that no service charges are payable for 2015/6.
- (2) 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 Applicant through any service charge.
- (3) The Tribunal notes that Respondent has offered to pay the Applicant £65 as reimbursement of the application fee. This payment should be made within 28 days Decision.
- (4) The Tribunal notes that the Respondent will make an ex gratia payment of £100 to the Applicant.
- (5) The Tribunal makes no order for the reimbursement to the Applicant of £37.63 for out of pocket expenditure.

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 interim (advance) service charges payable by the Applicant in respect of the 2015-2016 service charge year.
2. The application was dated 20th April 2015 and was received by the tribunal on 23rd April 2015. Directions were issued on 29th April 2015 and there were Further Directions on 26th May 2015. The Directions included provision that the application be dealt with on the paper track, without an oral hearing. None of the parties has objected to this or requested an oral hearing. The paper determination took place on 14th July 2015.
3. The Directions identified that the Applicant had been asked to pay a variable service charge of £3.13 per week for the 2015/6 service charge year. This sum is calculated from the sum of the following items, Health and Safety £2.22, Management Charge £0.33 and a Variable Service Management Fee of £0.58. The issues that were identified for the

Tribunal to determine was whether a variable service charge is payable by the tenant under the terms of the tenancy; if so whether those sums demanded by the landlord are reasonable and payable by the tenant; whether an order should be made under section 20C of the 1985 Act and whether an order should be made for the reimbursement of the application fee.

4. The relevant legal provisions are set out in the Appendix to this decision.

The Background

5. 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.
6. The Applicant is the tenant of 103A, Chesterton Road, North Kensington, London, W10 6ET (the Flat). The Respondent is the landlord of the Flat. The Flat is situated in a building that is described as having three further flats. There is a communal front door and stairway, and communal lighting and electricity.

The Tenancy

7. The Applicant holds an Assured Tenancy of the Flat. The tenancy was granted by Kensington Housing Trust (KHT) to Mr Steven Wall & Mrs Carol Wall (the Tenant). The tenancy commenced on 8th December 1997. The relevant provisions of the tenancy agreement are set out below:
8. Under clause 1.1 the term "Rent" is defined as the sum of the net rent, service charges, hot water and other charges set out above as varied from time to time in accordance with this Agreement. In the first instance the sums specified has a blank in respect of service charges. In clause 1.3 that deals with service charges the space left to itemise the relevant services has been crossed through in manuscript. Clause 1.5 sets out the arrangements for changes to service charges. This states:

"KHT will notify the Tenant of any alteration in the service charge. The notice shall specify the new service charge proposed and the date from which the alteration shall take effect. The notice may also add to, reduce, remove or vary services provided by KHT....."
9. Clause 2 of the tenancy agreement sets out the obligations of the landlord and in particular to the repair of the structure and exterior, for the repair of installations and repairs to the common parts.

10. Clause 3 sets out the obligations of the tenant. Clause 3. 3 requires the tenant to pay the Rent weekly and in advance.

The Issues

11. There is a letter to the Tribunal dated 19th May 2015 and copied to the Applicant, from Prince Evans Solicitors LLP, acting for the Respondent. This states that given that as Mr Wall's Flat has direct street access and has no access to the common parts, then the Respondent will not oppose the application not to pay the health and safety and other service charges.
12. The Respondent's submissions repeat this position that they will not be pursuing any service charges relating to the fire and smoke detection alarms. It is also confirmed that as no items arise, then the Respondent will not charge any management or administrative charges in relation to the services.
13. The Respondent also states that it will not be seeking any payment of its legal fees in connection with the application. As no sums are being sought, then no order is required under section 20C.
14. The application fee in this instance was £65. The Respondent has confirmed that it will reimburse this sum. Finally there is an indication that the Respondent will make an ex gratia payment of £100 to the Applicant.
15. The Applicant states that the service charge demand was incorrect did not include the required Service Charge Summary of Rights and Obligations and there were repeated request for payment. In support of this position Mr Wall produced a letter from the Respondent dated 4th March 2015. It is claimed that the Respondent has failed to follow its own complaint procedure. As a consequence Mr Wall has made a complaint to the Housing Ombudsman. He remains concerned that the Respondent may repeat this episode next year.
16. Despite the concessions made by the Respondent the Applicant is still seeking a determination from the Tribunal and in particular as to whether a variable service charge is payable by the tenant under the terms of the tenancy; to instruct the Respondent to refund the application fee and to pay a further sum of £100 as compensation and finally for the Respondent to re-issue a new rent demand showing the correct amount of rent with the required 28 days notice.
17. The Respondent suggests that in respect of these issues, no representations were made by the Applicant as to the contractual nature of the service charge provisions in the tenancy. It is submitted that the tenancy does permit the recovery of service charges. It is

further suggested that the service charge items could cover numerous items and reference is made to the NHF publication 'Service Charges A Guide for Housing Associations 4th Edition'. This publication refers to common parts and communal services and in particular to fire/smoke detection alarms maintenance and smoke dispersal equipment maintenance. In the current case there was fire/smoke equipment installed in the common parts of the building. It is acknowledged that the Applicant has no direct access to the communal areas, but had there been a fire in the main part of the building, the Flat would have the benefit of the fire protection equipment that is available.

18. The Applicant has provided a bundle in response to the landlord's bundle and this was received on 23rd June 2015. It was explained that the Respondent had failed to comply with the Directions and Further Directions in this case. Mr Wall states that the tenancy agreement makes no provision for the recovery of service charges as the space to list service charges on page three of the tenancy agreement is scored through. The Applicant has been in occupation since 1997 and there have been no changes to the property and no services or improvements provided except minor repairs and cyclical maintenance. It is submitted that the NHF publication 'Service Charges A Guide for Housing Associations 4th Edition' is only a guide. Mr Wall has provided his own smoke and heat alarms to the Flat. He disputes the cost of the works that have been carried out. It is suggested that the Respondent cannot evade the liability of the actions of its employees. Finally the Applicant makes a claim of £37.63 for out of pocket expenditure for the cost of stationary in bringing this case and seeks an order from the Tribunal for this sum to be reimbursed.

The Tribunal's Decision

19. The Tribunal records the concessions made by the Respondent, that no service charges are payable for the Health and Safety of £2.22, Management Charge £0.33 and a Variable Service Management Fee of £0.58. Accordingly, no service charges are payable by the Applicant for 2015/6. In these circumstances the Respondent should issue new rent demands that reflect this situation. The Tribunal also records that the Respondent will reimburse the application fee of £65. And although not part of the Tribunal's jurisdiction it is recorded that the Respondent is to pay the Applicant an ex gratia sum of £100.
20. The Tribunal also notes that the Respondent is not seeking any costs in relation to this application to be treated as relevant costs in any future service charge year. However, for the avoidance of any doubt, the Tribunal does make an order under section 20c, that any costs incurred, or to be incurred, by the Respondent in connection with this matter 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.

21. The other matters that remain outstanding is the question of whether a variable service charge is payable by the tenant under the terms of the tenancy and whether the Tribunal should order the reimbursement to the Applicant of £37.63 for out of pocket expenditure.
22. It is appreciated that there has been a history of no service charge collection from Applicant and the layout of the building would suggest that the Applicant has no access to the communal areas within the building. However, the tenancy agreement is the contract that sets out the terms between the landlord and tenant. It is this document that the parties need to examine to determine any service charge liability. Again the Applicant's submission in respect of clause 1.3 and that this has been struck through is noted. However, the Tribunal also notes the wording of clause 1.5. This clause seems to provide a mechanism for the landlord to "*add to, reduce, remove or vary services provided by KHT*". Given the wording of this clause, there may be future circumstances that would give rise to a service charge contribution from the tenant. However, such circumstances would be subject to the usual statutory protection.
23. The final aspect is the Applicant's claim for the reimbursement of £37.63. The Tribunal is a low cost jurisdiction and in this regard the parties are usually responsible for their own costs in bringing and defending any application. The ability of the Tribunal to order the reimbursement of any costs is limited to the application and hearing fees, which has already been conceded. The only other circumstance in which a Tribunal may make an order for costs is under Rule 13 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. There is no specific application under Rule 13 before the Tribunal. However, if such an application was before the Tribunal it is unlikely to succeed given that the test is the unreasonable behaviour by a party to proceedings and that in this case the Respondent made an early concession in these proceedings not to pursue the service charge demand, to reimburse the application fee, not to seek any costs in relation to this case as future service charge costs and the ex gratia payment.



Name: Helen Bowers

Date: 14th July 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.

The Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013

13.— Orders for costs, reimbursement of fees and interest on costs

- (1) The Tribunal may make an order in respect of costs only—
- (a) under section 29(4) of the 2007 Act (wasted costs) and the costs incurred in applying for such costs;
 - (b) if a person has acted unreasonably in bringing, defending or conducting proceedings in—
 - (i) an agricultural land and drainage case,
 - (ii) a residential property case, or
 - (iii) a leasehold case; or
 - (c) in a land registration case.
- (2) The Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor.
- (3) The Tribunal may make an order under this rule on an application or on its own initiative.
- (4) A person making an application for an order for costs—
- (a) must, unless the application is made orally at a hearing, send or deliver an application to the Tribunal and to the person against whom the order is sought to be made; and
 - (b) may send or deliver together with the application a schedule of the costs claimed in sufficient detail to allow summary assessment of such costs by the Tribunal.
- (5) An application for an order for costs may be made at any time during the proceedings but must be made within 28 days after the date on which the Tribunal sends—
- (a) a decision notice recording the decision which finally disposes of all issues in the proceedings; or
 - (b) notice of consent to a withdrawal under rule 22 (withdrawal) which ends the proceedings.
- (6) The Tribunal may not make an order for costs against a person (the “paying person”) without first giving that person an opportunity to make representations.
- (7) The amount of costs to be paid under an order under this rule may be determined by—
- (a) summary assessment by the Tribunal;
 - (b) agreement of a specified sum by the paying person and the person entitled to receive the costs (the “receiving person”);
 - (c) detailed assessment of the whole or a specified part of the costs (including

the costs of the assessment) incurred by the receiving person by the Tribunal or, if it so directs, on an application to a county court; and such assessment is to be on the standard basis or, if specified in the costs order, on the indemnity basis.

(8) The Civil Procedure Rules 1998, section 74 (interest on judgment debts, etc) of the County Courts Act 1984 and the County Court (Interest on Judgment Debts) Order 1991 shall apply, with necessary modifications, to a detailed assessment carried out under paragraph (7)(c) as if the proceedings in the Tribunal had been proceedings in a court to which the Civil Procedure Rules 1998 apply.

(9) The Tribunal may order an amount to be paid on account before the costs or expenses are assessed.