10779

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00BE/LSC/2015/0073**
Property	:	**Garden and First Floor Flats, 99 Kennington Park Road, London SE11 4JJ**
Applicant	:	**Zvi Benveniste**
Representative	:	**Lizzie Walpole, Circle Residential Management Limited**
Respondent	:	**Paul Taylor (Garden flat)** **Six Uniake (First Floor Flat)**
Representative	:	**None**
Type of application	:	**For the determination of the reasonableness of and the liability to pay interim service charges**
Tribunal members	:	**Judge Hargreaves** **K. Cartwright FRICS**
Date and venue of hearing	:	**10 Alfred Place, London WC1E 7LR**
Date of decision	:	**1st June 2015**

DECISION

Decisions of the tribunal

(1) The tribunal determines that the sum of £4162.08 is payable by Paul Taylor in respect of the interim service charge for 2014 and the sum of £1864.27 by Six Uniake for the said period, for the reasons set out below.

(2) The tribunal determines that the Respondents shall pay the Applicant £250 within 28 days of this Decision, in respect of the reimbursement of the tribunal fees paid by the Applicant. For the avoidance of doubt this liability is joint and several.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") [and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act")] as to the amount of interim service charges payable by the Respondents in respect of the service charge year 2014.

2. The relevant legal provisions are set out in the Appendix to this decision and in the Applicant's statement of case and supporting documents. All page references are to the Applicant's bundle as submitted to the tribunal.

The determination

3. On 5th March 2015 Judge Rahman issued case management directions: see p183 for the directions and the background to this case. He determined that the case was suitable for a paper determination; the parties were given the opportunity to apply for an oral hearing but neither side have applied for one.

4. In fact, the Respondents did not attend the case management conference and neither have they complied with any of the directions made by Judge Rahman. This is far from ideal. It leaves the tribunal having to proceed on the basis that the Respondents are (on the face of it) objecting to the interim service charges claimed but without any idea of what the legal or factual defence to those charges might be.

5. It appears that the Applicant has complied with paragraph 9 of the directions (p72-3).

6. The tribunal notes that the Applicant made a similar application against Mr Taylor in 2014 in respect of an interim service charge in the sum of £960 for 2013, and was successful (decision dated 14th

December 2014). Again Mr Taylor provided no evidence. That decision relates to that application and the tribunal considers that the Applicant's statement that *"The primary issues of the liability to pay the interim service charge have been determined by the tribunal ..."* by virtue of that decision is arguably exaggerated. That decision related to that year only.

The background

7. The property which is the subject of this application is a four storey terraced house converted into four flats. The Respondents hold long leases of the ground and first floor flats (see p17-30) which require 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 leases (which are more or less identical) include clause 1 (liability to pay ground rent and insurance and a contribution to the maintenance fund), clause 2(i)(b) (liability to pay on demand the landlord's costs incurred in carrying out its Fifth Schedule obligations), clause 3(v) (liability for interim charges). The landlord's repairing covenants are contained in clause 4. The Fifth Schedule is comparatively brief (p28). The Applicant states that the other tenants have paid the invoices.

8. Clause 3(v) (p23) provides *"Within one month after receipt of written notification from the Lessor of the sum due from the Lessee under this sub-clause pay to the Lessor a sum equal to the proportion attributable by the Lessor to the demised premises as aforesaid of the amount by which the Lessor shall estimate that the cost of repairs and maintenance and other payments and expenses incurred or to be incurred pursuant to the Lessor's covenant contained in clause 4 hereof during the succeeding six months from the date of the estimate shall exceed the balance at the date of the estimate of the Maintenance Fund hereinafter referred to."*

9. There are two points to note about this provision. First, it appears to be common ground that there is no maintenance fund. Secondly we note that the point about service charges estimated and to be paid in advance is that they are a genuine pre-estimate of costs to be incurred during the six months succeeding the estimate. It is therefore likely, as a matter of construction of the clause, that the works which are the subject of the service charge claims in this case, will be carried out so that final charges for the year 2014 can be readily calculated and corresponding adjustments made.

10. The Applicant's practice (it is said) has been to issue interim service charge demands in accordance with the payment dates for the clause 1 charges ie in advance on 1st January and 1st June each year. But that practice has to be read subject to the provisions of clause 3(v) which contains no specific time limits. It is also noted that the actual demands relied upon by the Applicant in this case were not actually made on

either of those dates: see (1) p57 and then p31 (Taylor) and (2) p60 and p32 (Uniacke). We also note that the threat to issue proceedings for non-payment within 7 days is inconsistent with the time for payment in clause 3(v). However, by the time the application was made, the parties were in default of the one month time limit.

The issues

11. The interim service charges are no doubt disputed because the Applicant is going to carry out external and internal works of redecoration and repair. S20 consultation notices were however served in respect of the works in November 2011 and then again in August 2012 (see p74 onwards). Mr Taylor objected in September 2012 but has never provided alternative estimates as he suggested he would. The Applicant issued further notices in July 2013 (eg p122) but has not made good its threat to take the matter of reasonableness to the tribunal, preferring to adopt the current procedure as a means of obtaining a satisfactory outcome to the current stalemate.

12. The Applicant frankly states in its statement of claim at paragraph 14 that the claim relates to anticipated expenditure. The test is therefore, as the Applicant contends, whether the Applicant's demand comes within *s19(2) LTA 1985 ie "no greater amount than is reasonable is so payable"*. The Applicant's statement of case set out many provisions and arguments which are in themselves not particularly helpful. But they demonstrate overall, with the evidence attached to the statement of case, that the interim service charge demands are reasonable, taking particular note of the estimates obtained and exhibited (even if they are now arguably out of date). And the tribunal has to take into account the fact that the Respondents have not replied to this pleading despite directions and opportunity and a comprehensive set of documentation laid out for them.

13. In the circumstances, bearing in mind that this is an interim demand and that the Respondents will have a further opportunity to challenge reasonableness if appropriate, together with the facts that (i) the Applicant has presented its case and documentation sufficiently comprehensively for the tribunal to take a view on paper, particularly (ii) in the light of the Respondents' failure to challenge it, the tribunal upholds the amounts sought by the Applicant.

14. In the absence of any challenge by the Respondents, it is appropriate to order them to reimburse the Applicant the application fee of £250.

Name: Judge Hargreaves
K. Cartwright JP FRICS

Date: 1st 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 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.

(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, paragraph 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.

Schedule 11, paragraph 2

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

Schedule 11, paragraph 5

(1) An application may be made to the appropriate 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 the appropriate 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 sub-paragraph (1).