



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

Case Reference : LON/00BG/LSC/2015/0188

Property : 54 Burr Close, South Quay Plaza, London E1W 1ND

Applicant : South Quay Plaza Estates (Freehold) Limited (landlord)

Representative : Mr M. West of counsel (instructed by SLC, solicitors) with Mr R. Wood of Rendall & Rittner Limited (managing agents)

Respondent : Ms M. Lewinski (leaseholder) (accompanied by her friend Ms L. Socratous)

Representative : Not represented

Type of Application : Following a transfer of proceedings to the Tribunal from the Clerkenwell and Shoreditch County Court an application to determine the payability of service charges under section 27A of the Landlord and Tenant Act 1985 ('the Act')

Tribunal Members : Professor James Driscoll (Judge)
Mr Stephen Mason, BSc FRICS FCI Arb
Mrs Lucy West

Date and venue of Hearing : The tribunal heard the application on 3 September, 2015. There was no inspection of the premises.

Date of Decision : 24 September, 2015

DECISION

Summary of the decision

1. Under the terms of the lease the service charge accounting period runs from 1 April to the 31 March in the year following.
2. The tribunal determines that the costs of service and administration charges claimed for the service charge years April 2010 to March 2011, April 2012 to March 2013 and April 2013 to March 2014 were reasonably incurred within the meaning of section 19 of the Act.
3. However, as the landlord failed to prove that a notice was given under section 21B of the Act the leaseholder is entitled to withhold the charges by virtue of section 21B(2) of the Act. It is, therefore, currently the case that these charges are not payable under section 27A of the Act.
4. Service charges are not recoverable for the period April 2011 to March 2012 as the landlord conceded that a notification that costs were incurred was not given to the leaseholder in accordance with section 20B of the Act.
5. No order is made under section 20C of the Landlord and Tenant Act 1985 limiting recovery of any professional costs incurred by the landlord in these proceedings.
6. This matter is to be transferred back to the Clerkenwell and Shoreditch County Court in relation to the proceedings that were commenced there.

Introduction

7. In this matter the parties are respectively the landlords and the leaseholder of a flat in a large block of flats. The landlords have appointed the firm of Rendall & Rittner Limited as their managing agents. They brought proceedings in the Court to recover what they claimed are arrears of service and administration charges. Originally, the freehold of the block was originally owned by the London Borough of Tower Hamlets. The leaseholder was formerly a secure tenant of that authority and she purchased her flat under the statutory right to buy ('secure tenancies' and the 'right to buy' are provided for in the Housing Act 1985).
8. The leaseholder accepts that there are unpaid charges but she contends that she was not given written statements of her rights as required by section 21B of the 1985 Act and Schedule 12, paragraph 4 of the Commonhold and Leasehold Reform Act 2002. As a result she is entitled to withhold payment. She also claims that she was not notified of the pending service charges within the 18 month period as required by section 20B of the 1985 Act. She also has other complaints about the managing agents and she is pursuing a counter-claim in the County Court proceedings. The counter-claim relates in part to her losses when the communal heating broke down. It also relates to her losses she claims were as a result of the

landlords causing an outdoor shed which she says she owns to be unlocked as a result of which several expensive personal belongings were stolen. She also complains that the supply of heating and hot water has often not worked.

- 9.** The County Court proceedings have a long history and on the leaseholder filing and serving a defence and a counter-claim the Court ordered the transfer of the service and administration charges to this tribunal for a determination. In making this order the Court directed that the leaseholder's counter-claim be adjourned pending the outcome of the proceedings in this tribunal. This order was made on 30 September 2014. We noted that the county court claim has been amended to include claims of unpaid charges for later years.
- 10.** A case management conference was held by the tribunal on 9 June 2015. The leaseholder attended in person. There was no-one present on the part of the landlord. Directions were given and subsequently there was correspondence between the tribunal and the parties on the scope of these directions. As directed each party prepared statements and counter-statements.
- 11.** Those advising the landlord prepared a bundle of documents. As we told the landlord's representatives at the hearing we found that it was poorly prepared. The index was far from helpful and it was not as easy as it should have been to refer to the different documents. Moreover, it included several copies of the same documents such as the relevant lease, copies of correspondence, emails and other documents. As will be seen some crucial documents were missing from the bundle.
- 12.** At the hearing held on 3 September 2015 the landlord was represented by Mr West of counsel. His only witness was a Mr Wood who is the senior credit controller of the managing agents, a firm by the name of Rendall & Rittner Limited. He is not responsible for the management of the subject premises and he has never seen the building. The actual manager is a Ms A. Petts but she was not present at the hearing and therefore not available to give evidence or answer questions about the management of the block and the estate in which it is situated.
- 13.** Before the hearing started we received a typed statement of submissions (commonly known as a 'skeleton argument') prepared by Mr West. As we remarked to him after the hearing opened most of these written submissions related to the leaseholder's counter-claim which is pending in the county court and not within the jurisdiction of this tribunal. His written submissions were of very limited assistance
- 14.** We were told that the building consists of 10 physically linked blocks of flats. It was originally owned by the London Borough of Tower Hamlets. Almost all of the flats are held on long residential leases many of which were acquired under the statutory right to buy. In 2007 a majority of the leaseholders acquired the freehold to the building following an enfranchisement claim made under the Leasehold Reform, Housing and Urban Development Act 1993. 50 of the flats which are occupied under secure tenancies were leased back to the local authority.
- 15.** There are 299 flats in the building 50 of which are controlled by the local housing authority and occupied by their secure tenants and the remaining 249

owned under long residential leases. We were told that most of the long leaseholders participated in the enfranchisement claim during the year 2007. Any long leaseholder is entitled to be a member of the landlord company which originally acted as the nominee purchaser in the enfranchisement claim and which is now the landlord of the building, the owner of the freehold and the landlord under the long leases. The leaseholder participated in the enfranchisement claim.

16. Counsel for the landlord and Mr Wood addressed us. As Mr Wood is not familiar with the property and the estate there were obvious limitations on what he could tell us. Indeed, the tribunal expressed its disappointment that the managing agent had chosen not to send the property manager to the hearing as there were many questions from both the tribunal and the leaseholder which Mr Wood could not answer. The leaseholder addressed us and a copy of her defence and counter-claim in the county court proceedings (dated 6 February 2015) is included in the bundle. The landlord's reply was also included. We also had a copy of her statement dated 23 July 2015.

17. There is no dispute over the provisions in the leaseholder's lease. As is to be expected in a development of this size the service charge provisions, which are set out in the 8th schedule, are complex and make provision for estate charges, block charges, heating charges and reserve funds. As is common in leases granted under the right to buy the service charge accounting period coincides with the financial year.

18. At the start of the hearing the landlord's representatives told us that there was some confusion over what is being claimed for service charges. On investigating this it was agreed that the relevant service charge accounting periods are 1 April 2010 to 31 March 2011, 1 April 2011 to 31 March 2012, 1 April 2012 to 31 March 2013 and 1 April 2013 to 31 March 2014. Thus there are four disputed service charge periods in all.

19. Mr Wood revised the figures during the hearing and we were then told that for the first period the sum of £995.67 is claimed; for the second period, the sum of £1,499.19 is claimed; for the third period the sum claimed is £1,471.64 with the sum of £1,451.46 claimed in respect of the fourth period.

Reasons for our decisions

20. We heard arguments and evidence and it became apparent that the landlord faced major problems with recovery as a result of the leaseholder's claim that she had not received her rights statements for the four service charge accounting periods. As a result of this failure she says that she is entitled to withhold the charges. She also challenges recovery of the charges on the ground that the landlord has not complied with the obligations in section 20B of the 1985 Act.

21. The leaseholder expressed some concerns over the charges which she considers are too high. She also told us that for the four disputed service charge periods, she did not receive a notice under section 21B of the Act giving her a summary of her rights and obligations in relation to service charges. Nor has she been given notice of her rights and obligations in relation to administration charges

as required by schedule 11, paragraph 4 of the Commonhold and Leasehold Reform Act 2002. Although the landlord's representatives told us that the notices were given, and they are as a matter of routine given whenever a service charge is demanded, they were unable to find a copy of the section 21B notices that they claim were sent to this leaseholder. It follows that she is entitled by statute to withhold the charges until such time as she has had the necessary statutory notices.

22. The leaseholder also maintains that the landlord failed to notify her that costs had been incurred within 18 months of the demands being made. Although those representing the landlord showed us copies of documents showing that the demands were made in a timely fashion for three of the service charge accounting periods, counsel told us that on behalf of the landlord it is conceded that there was non-compliance with the section 20B requirement for the period April 2011 to March 2012.

23. Accordingly we determine that the landlord has complied with section 20B of the 1985 Act for the service charge periods April 2010 to March 2011, April 2012 to March 2013 and April 2013 to March 2014. However, as there was failure to comply with section 20B for the period April 2011 to March 2012 the tribunal determines that the sum charged for that period (£1,499.19) is not recoverable (see: section 20B of the 1985 Act).

24. As to the charges themselves the leaseholder did not appear to challenge the amounts charged. She did not add any comments in the 'Scott schedule' prepared by those advising the landlords. Ms Lewinski told us that the management charges were too high. We estimate that they amount to a charge of £194.28 per unit and (as we suggested during the hearing) in our experience it is common for managing agents to base their charges according to the number of units in the development concerned and the current charges are not out of line with such charges in the greater London area.

25. Apart from not setting out her specific challenges in either her statements or in response to the Scott schedule Ms Lewinski was unable to tell us what she would consider to be a reasonable charge for the sums claimed.

26. In the absence of specific challenges, or examples from Ms Lewinski, of how the costs incurred might have been cheaper, there is no evidence that the charges were incurred unreasonably. Nor were there any complaints that the costs could not be incurred under the service charge provisions in the lease. These factors lead us to the conclusion that the charges were reasonably incurred as required by section 19 of the Act.

27. However, those representing the landlord could not produce proof that the service charge demands made of the leaseholder for the periods April 2010 to March 2011, April 2012 to March 2013 and April 2013 to March 2014 were accompanied by a statement of her rights and obligations as required by section 21B of the 1985 Act. It follows and we determine that the charges made for these three periods are not currently recoverable as Ms Lewinski is entitled under section 21B(3) of the 1985 Act to withhold payment.

28. We repeat our conclusion set out in paragraph 23 above that the service charges incurred for the period April 2011 to March 2012 (the sum of £1,499.19) are not recoverable (see: section 20B of the 1985 Act).

29. After the hearing Ms Lewinski wrote to the tribunal with further comments and questions. As this was received after the conclusion of the hearing of the application we did not consider it appropriate to take account of them.

Costs

30. Each of the parties addressed us on the issue of any professional costs incurred by the landlord and whether we should make an order under section 20C of the 1985 Act. Even though Ms Lewinski has succeeded in some of her challenges, we did not find that the charges themselves were unreasonable. We must also take account of the fact that this is a leaseholder-owned landlord and as part of their county court claim was transferred to this tribunal they were entitled to appoint representatives to represent their interests. No order is made under section 20C limiting recovery of any professional costs incurred by the landlord. In reaching this conclusion we do not make any specific findings that there is power to make such charges in the lease. Any charges that may be included will have to be 'reasonable' (section 19 of the 1985 Act).

James Driscoll, Stephen Mason and Lucy West

24 September, 2015

Appendix

Landlord and Tenant Act 1985, section 19

Limitation of service charges: reasonableness.

(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 provision 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 20B

Limitation of service charges: time limit on making demands.

(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

Limitation of service charges: costs of proceedings.

(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 [F28, residential property tribunal] or leasehold valuation tribunal, or the [F29Upper 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;

[F30(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 [F31Upper 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.]

Section 21B

Notice to accompany demands for service charges

(1)

A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges.

(2)

The Secretary of State 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 a service charge which has been demanded from him if subsection (1) is not complied with in relation to the demand.

(4)

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

(5)

Regulations under subsection (2) may make different provision for different purposes.

(6)

Regulations under subsection (2) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.]