



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

**Case Reference** : **LON/00BK/LSC/2014/0590**

**Property** : **43 Burnham Court Moscow Road  
London W2 4SW**

**Applicant** : **Nasreen Rehman Faruqi, Mariam  
Fazal Faruqi and Nasheed Qamar  
Faruqi**

**Representatives** : **Nasreen Rehman Faruqi in person**

**Respondent** : **Burnham Court Limited**

**Representative** : **Mr Justin Bates of Counsel**

**Type of Application** : **Reasonableness of and liability for  
service charges and administration  
charges under the Landlord and  
Tenant Act 1985 (Section  
27A)/Commonhold and Leasehold  
Reform Act 2002 (Schedule 11)**

**Tribunal Members** : **Prof Robert M. Abbey (solicitor)  
Mrs Jacqueline Hawkins (Lay  
Member)  
Mr Duncan Jagger (MRICS)**

**Date and venue of  
Hearing** : **20th April 2015 and 8<sup>th</sup> June 2015  
at 10 Alfred Place, London WC1E  
7LR**

**Date of Decision** : **23rd June 2015**

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**DECISION**

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## **Decisions of the tribunal**

1. On the day of the hearing the parties were able to reach agreement regarding the monies due for service charges and therefore the tribunal determines that there was payable by the applicant to the respondent as set out below:

### **Service charges**

- The service charges due amount to £12,011.88 and represent the charges due on the 24 June 2014 and being in advance for the period to 24 December 2014
2. The question of costs, a refund of the application fee and an application under section 20c were also dealt with by the tribunal, the details of which are set out below.

## **The background**

1. The relevant legal provisions are set out in the Appendix to this decision.
2. The property which is the subject of this application is one of several leasehold flats laid out over several storeys within a block of flats or maisonettes. The respondent occupies flat 43 by reason of a lease dated 29 November 2011 and made between the respondent of the first part as lessor and the applicant of the second part as lessees. Each lessee is liable for a due proportion of the total service charge expenditure incurred by the landlord.
3. This was the hearing of an application made by the applicant to determine issues in relation to service charges and a section 20c application. 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.
4. The applicant holds a long lease of the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge.
5. Initially the landlord claimed arrears of £37,245.67. However, at the first hearing the respondent advised the tribunal that their calculations were wrong and that there were five mistaken entries that had been included in the total. After taking these corrections into account the amount claimed was reduced to £12,011.88.

### **Application under s.20C, fees refund and Rule 13 costs**

6. When considering these applications the tribunal members were mindful of the fact that the initial demand for service charges was, on the admission of the respondent, clearly inaccurate. The sum by which the claim was reduced was in fact £25,233.79 leaving less than half of this sum claimed and agreed for payment.
7. An application was made for the repayment of the tribunal proceedings application fee in the sum of £440.00. At the second hearing Counsel for the respondent confirmed that this was not opposed by the respondent and therefore the tribunal orders the refund of £440.00 to the applicant being the amount of such application fee.
8. An application was made by the Respondent for costs under Rule 13 of the tribunal rules in respect of the costs of the applications/hearing. Having heard and considered the submissions from the parties and taking into account the determinations set out above, the tribunal does not make an order for costs.
9. The tribunal's powers to order a party to pay costs may only be exercised where a party has acted "unreasonably". Taking into account the guidance in that regard given by HH Judge Huskinson in *Halliard Property Company Limited v Belmont Hall & Elm Court RTM, City and Country Properties Limited v Brickman LRX/130/2007, LRA/85/2008*, (where he followed the definition of unreasonableness in *Ridehalgh v Horsefield* [1994] Ch 205 CA), the tribunal was not satisfied that there had been unreasonable conduct so as to prompt an order for costs. In *Ridehalgh* it was said that "'Unreasonable" also means what it has been understood to mean in this context for at least half a century. The expression aptly describes conduct which is vexatious, designed to harass the other side rather than advance the resolution of the case, and it makes no difference that the conduct is the product of excessive zeal and not improper motive. But conduct cannot be described as unreasonable simply because it leads in the event to an unsuccessful result or because other more cautious legal representatives would have acted differently. The acid test is whether the conduct permits of a reasonable explanation. If so, the course adopted may be regarded as optimistic and as reflecting on a practitioner's judgment, but it is not unreasonable." Consequently, in the light of the conduct of the respondent there is no order for costs.
10. There was a second application as to whether costs under section 20C would be considered by the tribunal. Having heard the submissions from the parties and taking into account the determinations set out above the Tribunal determines that it is just and equitable in the circumstances to make an order under section 20C of the 1985 Act. The tenant did make an application for an order that all of the costs incurred by the landlord in connection with these proceedings before

the tribunal 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 and the tribunal makes such an order.

**Name:** Judge Professor Robert  
M. Abbey

**Date:** 23.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 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**

#### **Administration charges**

##### Part 1 Reasonableness of administration charges

##### Meaning of “administration charge”

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.

##### Reasonableness of administration charges

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

3(1) Any party to a lease of a dwelling may apply to a leasehold valuation tribunal for an order varying the lease in such manner as is specified in the application on the grounds that—

- (a) any administration charge specified in the lease is unreasonable, or
- (b) any formula specified in the lease in accordance with which any administration charge is calculated is unreasonable.

(2) If the grounds on which the application was made are established to the satisfaction of the tribunal, it may make an order varying the lease in such manner as is specified in the order.

(3) The variation specified in the order may be—

(a) the variation specified in the application, or

(b) such other variation as the tribunal thinks fit.

(4) The tribunal may, instead of making an order varying the lease in such manner as is specified in the order, make an order directing the parties to the lease to vary it in such manner as is so specified.

(5) The tribunal may by order direct that a memorandum of any variation of a lease effected by virtue of this paragraph be endorsed on such documents as are specified in the order.

(6) Any such variation of a lease shall be binding not only on the parties to the lease for the time being but also on other persons (including any predecessors in title), whether or not they were parties to the proceedings in which the order was made.

#### Notice in connection with demands for administration charges

4(1) A demand for the payment of an administration charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to administration charges.

(2) The appropriate national authority 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 an administration charge which has been demanded from him if sub-paragraph (1) is not complied with in relation to the demand.

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

#### Liability to pay administration charges

5(1) An application may be made to a leasehold valuation 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 a leasehold valuation 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 subparagraph (1).