

11667



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

Case Reference : **LON/00AH/LSC/2016/0156**

Property : **1-6 Izzard Court 104 Livingstone
Road Thornton Heath Surrey CR7
8JU**

Applicant : **Blue Property Investment UK
Limited**

Representatives : **Blue Property Management UK
Limited**

Respondent : **Mary Boyle (flat1), Mr I C
Cummings (2), Mr M J McClymont
(3), Reginaldo Xavier Viega (4),
Marline Properties(5) and Miss C E
S D'Acres(6)**

Representative : **In person**

Type of Application : **For the determination of the
liability to pay in advance service
charges (s.27A Landlord and
Tenant Act 1985)**

Tribunal Members : **Prof Robert M. Abbey (Solicitor)**

**Date and venue of
Decision** : **27 July 2016 at 10 Alfred Place,
London WC1E 7LR**

Date of Decision : **27 July 2016**

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the service charges for the property are not payable in advance.
- (2) The tribunal further determines that the costs incurred by the landlord in connection with these 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 tenants

The application

1. The applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 (“the 1985 Act”) as to whether the amount of service charge payable by the respondent in respect of service charges payable for services provided at Flats 1-6 Izzard Court 104 Livingstone Road Thornton Heath Surrey CR7 8JU, (the property) can be demanded in advance. In summary the applicant seeks a determination from the tribunal that “the payment from the leaseholders is due before or on the date the works are to be instructed”.
2. The relevant legal provisions are set out in the Appendix to this decision.

The papert based decision

3. The tribunal decided that in view of the limited nature of the application that the decision could be taken on paper and without the cost of an oral hearing. Written submissions were requested of the parties.
4. The tribunal had before it several letters, submissions and copy deeds and documents from the parties to the dispute.

The background and the issues

5. The property which is the subject of this application comprises six flats in a purpose built block owned and maintained by the lessor and its management company.
6. 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.

7. The respondents hold long leases of each of the flats in the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a service charge.
8. The issue the applicant raised covers whether a major service charge, in this case roofing works, can be claimed in advance. The lessor says that the lease provides for advance payments and the lessees say that this is not so.
9. The applicant does not seek the tribunal's determination of the reasonableness of charges for the roofing works but simply asks if the monies payable by the six lessees can be demanded in advance of the works being commenced or if they can be demanded when the builder is instructed to commence the roofing works. The lessees have raised the issue of reasonableness but the tribunal can only consider the application before it and will therefore confine itself to the issue of payments in advance.

Decision

10. The leases of the flats were granted in the 1970's. The leases contain the following provisions, (the words in bold are highlighted by the tribunal)

“(ii) (a) Pay and contribute in manner hereafter provided a proportion of all expenses (including management charges) **incurred by the lessor** in complying with its covenants in relation to the Building as set out in the Fourth Schedule....

(b) as soon as practicable **after the complete or partial execution** of any works carried out by or at the direction of the lessor under its covenants in relation to the building above referred to the lessor shall serve on the lessee a notice in writing duly certified by the lessor of the amount of the lessee's aforesaid liability for the said works and the lessee shall forthwith pay the sum so certified....

THE FOURTH SCHEDULE above referred to

1. To **maintain repair and renew** (a) the external parts of the building (including the main walls **roof** foundations chimney stacks gutters and rain water pipes of the building including the garages)....”

11. On careful consideration of the relevant wording in the lease the tribunal is of the view that the lessor is of course perfectly entitled to carry out roofing repairs and renewals. However, the contentious point to be considered is whether the service charge for the roofing works can be claimed in advance. As can be seen in the above extract, the lease

requires tenants to pay the service charge as and when it is incurred by the landlord. In essence this means that the payment from the tenants can only be required once the lessor has become liable to pay the roofing costs. This being so it appears to the tribunal that this wording disallows any payments in advance, (unless of course the lessor might unusually pay for the works before they are carried out).

12. However, the tribunal is also mindful of clause (b) which says that the landlord can if he provides a written certificate demand then the lessees must pay subsequent to the certificated demand. Indeed the lessor may make such a certificated demand after the complete or partial execution of any works carried out under the lease service charge provisions. Accordingly if the lessor starts the roofing works he can at the start of the works issue a certificate and demand payment. While a demand in advance is not possible, or indeed when the builders are instructed to proceed, provided there is partial execution and a certificated demand the lessor can at that point seek payment.
13. With regard to the s20C of the Act application by Mr Viegas of Flat 4, the tribunal further determines that the costs incurred by the landlord in connection with these 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 tenants. Having read the submissions from the parties and taking into account the determination set out above the tribunal determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act that the costs incurred by the Applicant in connection with these proceedings should not be taken into account in determining the amount of any service charge payable by the tenant.

Name: Judge Professor Robert
M. Abbey

Date: 27 July 2016

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.

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

- (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

2013 No. 1169 (L. 8)

Orders for costs, reimbursement of fees and interest on costs

- 13.**—(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.