



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

Case Reference : LON/00AT/LSC/2015/0253

Property : 43 Chiswick High Road London W4
2LT

Applicant : Westleigh Properties Limited

Representatives : Mr Ben Day Marr and Heidi Slassor
Gateway Property Management
Limited

Respondent : Naim Lone (gff), Marie Anna Borak
(fff), Ms L Ramos Lopez & Mr
Capioto (tff)

Representative : Mr James Harris of Counsel for gff,
fff and tff in person

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

Tribunal Members : Prof Robert M. Abbey (Solicitor)
Mr Ian Thompson (FRICS)

**Date and venue of
Hearing** : 14 March 2016 at 10 Alfred Place,
London WC1E 7LR

Date of Decision : 29 March 2016

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the service charges for the property are payable as follows. (The amounts shown in brackets are credits made by the electricity company serving the property and these large credits are the reason we allowed the substantial sums charged for electricity in earlier years):-

2006

Cleaning	£135.00
Electricity	£18.87
Insurance	£1852.06
Repairs and renewals	£544.35
Management fees	conceded by the applicant; disallowed in full

2007

Bank charges	disallowed in full
Cleaning	£135.00
Electricity	£165.46
Insurance	£1946.99
Repairs and renewals	disallowed in full

2008

Cleaning	£180.00 as per the accounts
Electricity	£153.52
General expenditure	£6.95
Insurance	£2178.58
Pest control	£58.16

Repairs and renewals	£1821.59
CCTV	£361.90
Management fees	conceded by the applicant; disallowed in full

2009

Bank charges	disallowed in full
Electricity	£45.00
Repairs and renewals	£253.00
Postages	Disallowed in full
Management fees	conceded by the applicant; disallowed in full

2010

Electricity	£815.00
Repairs and renewals	£911.00
Insurance	£2103.00
Professional fees	£352.00
Management fees	conceded by the applicant; disallowed in full
Accountancy	disallowed in full
Bank charges	disallowed in full
Building works	£9143.00

2011

Electricity	£1078.00
Insurance	£2260.00

Management fees	conceded by the applicant; disallowed in full
Accountancy	disallowed in full
Bank charges	disallowed in full
Professional fees	£200.00
Building work	£648.00
<u>2012</u>	
(Electricity	£1241.00 credit)
Insurance	£2821.55
Management fee	conceded by the applicant; disallowed in full
Accountancy	disallowed in full
Bank charges	disallowed in full
Postage	disallowed in full
<u>2013</u>	
(Electricity	£1174.00 credit)
Repairs and renewals	£1079, allowed in part
Management fee	conceded by the applicant; disallowed in full
Accountancy	disallowed in full
Bank charges	disallowed in full
Postage	disallowed in full
<u>2014</u>	
Electricity	£184.00

Repairs and renewals	£268.80
Insurance	£2997.88
Management fee	conceded by the applicant; disallowed in full
Accountancy	disallowed in full
Bank charges	disallowed in full
Postage	disallowed in full

- (2) The tribunal makes an order under section 20(c) of the Landlord and Tenant Act 1985 as more particularly set out below.

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 service charge payable by the respondent in respect of service charges payable for services provided at 43 Chiswick High Road London W4 2LT, (the property) and the liability to pay such service charge.
2. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

3. The applicant was represented by Mr Ben Day Marr and Heidi Slassor of Gateway Property Management Limited and the first respondent was represented by Mr James Harris of Counsel. The other two tenants appeared in person.
4. The tribunal had before its several bundles of documents prepared by the applicant.

The background and the issues

5. The property which is the subject of this application comprises three converted flats within the building. There has been a history of difficulties with the management of the building with the present managing agents having taken over in 2012.

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 the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. Each lessee must pay a one third of the services provided. The issues the applicant and the respondents raised covered the reasonableness of the charges raised for the several items listed above and carried out by the applicant. The respondents consider that the items are either excessive or unreasonable.

Decision

8. The tribunal is of the view that there are elements of the service charges that are unreasonable. The tribunal considered the amounts for each year starting with 2006.
9. In each year some charges and fees were repeated. Dealing with these in turn the comments and decisions set out below apply to these annual charges in each service charge year.
10. In regard to the electricity charges these were agreed and as such the tribunal finds that they are all reasonable as they reflect the actual charges of the electricity company. They also take into account substantial credits made by the electricity company, e.g. £1241 in 2012 and £1174 in 2013.
11. In regard to the insurance charges, again the tribunal finds that they are all reasonable as they simply reflect the actual charges of the insurance company. The tribunal was able to see paperwork in the trial bundle to support these figures. There were insurance certificates to confirm payment. Furthermore, the respondents raised no challenges to the premiums charged.
12. In regard to the management fees at the start of the hearing the applicant conceded that they were to be ignored and would not be demanded for all of the years under review. In the circumstances the tribunal disallowed these items in full for every year in question. We refer again to the matter of management fees later in this decision
13. In regard to the charges for accountancy, bank charges and postages the tribunal could not find any authority in the leases for the payment or liability for these items and therefore concluded that they should each be disallowed in full. The lease is quite specific in what it will cover in relation to service charges and as such it was plain to the tribunal that these items were not covered by the lease provisions. The lease is

not well drafted. The main covenant covering what the tenants must pay relating to service charges indicates that the landlord is responsible for the “repair maintenance renewal” of the property as well as insurance. The lease does therefore somewhat limit what the lessor can charge for.

14. The tribunal also considered individual items and the following such items have been subject to revision. In 2008 the accounts contained an item for cleaning at £180.00 while the application mentioned £150.00. The tribunal was of the view that a sum of £180 was a reasonable charge given the nature of the claim being made. With regard to the item for pest control Mr Harris for the first respondent sought to say that this was outwith the terms of the lease. After careful consideration the tribunal disagreed with him as they thought that pest control could and should be considered maintenance of the property. In 2009 the electricity should be recoverable at £45 and not £11.05 as more particularly set out in the accounts. In 2010 a sum of £9143.00 has been allowed for building works. The tribunal allows this sum in full notwithstanding the absence of one supporting copy invoice for £470.00. The tribunal was satisfied that there was an actual charge for this amount for the further hire of acrow props. In 2013 the repairs and renewals claim was allowed in part. One item at £96.00 was disallowed. It appeared from the invoice put before the tribunal that this was for “waiting time” while works to the electricity system were attempted. The tribunal was not satisfied that this was a legitimate or reasonable expense given the terms of the lease. Having a workman on standby did not seem to the tribunal to be part of the maintenance of the property.
15. With regard to the matter of the management charges Mr Harris for the first respondent asserted that the lease was silent on the payment of such charges and that therefore no management fee was payable by the tenants. In fact the applicants withdrew these charges at the start of the hearing thus enabling the tribunal to find that they could be disallowed in full. The Tribunal did invite written legal submissions on this point and these were received from the applicant and the second and third respondents. The tribunal took time to consider these in detail. However, it seemed to the tribunal that in the light of the decision of the President of the Lands Tribunal in *The London Borough of Brent v Mrs Nellie Hamilton* LRX/51/2005 and the case of *Embassy Court Residents Association v Lipman* (1984) 271 EG 545 that it was possible to construe a liability for the tenant for such a service charge element when it related to a particular service charge element rather than a yearly blanket charge. Indeed this view is supported by the decisions in *Waverley Borough Council v Arya* [2013] UKUT 0501 and in *Westleigh v Grimes* [2014] 0213 (LC). Nevertheless in this decision and in view of the landlord’s concession all such charges have been disallowed.
16. Mr Harris along with the other respondents also raised the matter of the effect of 20(b) of the Act. The tribunal was satisfied that the

landlord did not fall foul of this provision as they had clearly issued demands within the required timescale. Mr Harris also raised the matter of the need for prescribed information on the demands and the applicant was able to demonstrate that these were incorporated in the demands that the managing agents issued as they were printed on the back of their demands etc. As for the conduct of the previous managing agents in this regard there was no evidence one way or the other and as such the tribunal considered that this had no real effect and was a correctable fault should it have arisen and as such nothing else was required in this respect.

17. Mr Harris also raised the question of the payability of the service charges. He asserted that there being no provision in the leases for an interim service charge payment then only the end of year balancing charge is therefore payable. The tribunal carefully considered this point but rejected it. The tribunal looked at the demands and whilst it is true that the lease is silent on interim payments it is the case that final balancing demands were issued. This being so if the interim demands were outside the lease terms then the final balancing demand would enable the landlord to collect the full sum due at that point in time. In essence the lease requires the tenants to simply pay the service charges without any prescribed timescale being incorporated in the lease. This being so it seems to the tribunal that payment would follow the demand and hence there does not seem to be any payability concerns.
18. For all the reasons set out above the tribunal is of the view that the service charges are in part unreasonable and that the amounts should be as set out above.

Application for costs and refund of fees

19. An application was made by the Respondents for costs under Rule 13 of the tribunal rules in respect of the costs of the applications/hearing. The Tribunal did invite written legal submissions on this point and these were received from the second and third respondents. Having heard, read 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.
20. 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.

21. 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.
22. At the case management conference the tribunal directed that costs under section 20C would be considered by the tribunal. The Tribunal did invite written legal submissions on this point and these were received from the second and third respondents. Having heard, read and considered 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 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: 29 March 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.