



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

**Case reference** : LON/00BB/LSC/2016/0295

**Property** : 4 Falmouth Street, London E15 1JQ

**Applicant** : Simply Property (London) Limited  
(‘the landlord’)

**Representative** : SLC Solicitors

**Respondent** : Mr Hakan Keki

**Representative** : In person

**Type of application** : Liability to pay service charges and  
administration charges

**Tribunal member(s)** : Miss A Seifert FCI Arb  
Mr R Shaw FRICS

**Date and venue of  
hearing** : 16<sup>th</sup> November 2016 at 10 Alfred  
Place, London WC1E 7LR

**Date of decision** : 20<sup>th</sup> November 2016

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**DECISION**

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## Decision of the tribunal

- (1) The tribunal determines that a total figure of £402.34 is payable by the tenant to the landlord (unless already paid) for service charges and administration charges for the service charge year 2015.**
- (2) No order is made for costs under Rule 13(1)(b) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.**

## The background

1. The landlord seeks and following a transfer from the County Court the tribunal is required to make, a determination under section 27A of the Landlord and Tenant Act 1985 as to whether service charges are payable and under schedule 11 to the Commonhold and Leasehold Reform Act 2002 as to whether administration charges are payable.
2. The landlord issued a claim in the County Court (received on 21<sup>st</sup> March 2016) for a money judgment for £2,104.19 (plus court fee and legal representative's costs). In the Particulars of Claim it was stated that the tenant is the owner of the leasehold interest in 4 Falmouth Street, London E15 1JQ ('flat 4').
3. A copy of the lease dated 8<sup>th</sup> November 2006 ('the lease'), made between Himat Singh Chana and Charanbir Sahni as landlords and Himat Singh Chana as tenant, was included in the hearing bundle before the tribunal ('the bundle'). The tenant's interest under the lease is now vested in Mr Zeki.
4. The tribunal were informed that flat 4 forms part of the ground floor of a building on the corner of Falmouth Street and Maryland Road. That building comprises a total of 6 flats, one of which is in the basement. The freehold title registered at Her Majesty's Land Registry number EGL246537. The freehold interest and the landlord's interest under the lease was vested in Simply Property (London) Limited on 5<sup>th</sup> August 2014.
5. In the Particulars of Claim in the County Court it is alleged that in breach of the terms of the lease the tenant failed to pay the service charges due in respect of the period 1<sup>st</sup> January 2015 to 31<sup>st</sup> December 2015 ('the service charge year 2015'). The claim relating to service and administration charges was for £1,270 service charges with £25 for administration charges (total £1,295). Other sums were claimed which were not within the jurisdiction of the tribunal such as ground rent and interest.

6. The tenant filed a notice of intention to defend and filed a defence in the County Court.
7. By an order dated 13<sup>th</sup> July 2016, the relevant aspects of the claim were transferred to the tribunal. The tribunal issued directions on 22<sup>nd</sup> August 2016.
8. A hearing was held on 16<sup>th</sup> November 2016. The landlord was represented by Mr C Green, as agent for SLC Solicitors. The tenant appeared in person.

### **Reasons for the Tribunal's decision**

9. Mr Green informed the tribunal that the sum claimed for service charges in the County Court was based on estimated charges for the service charge year 2015. The actual expenditure had since been determined at £903.34 (rather than the estimated figure of £1,270). A breakdown of the services charges was at page 91 of the bundle. The figure of £25 for administration expenses remained the same. The accountant's report was at page 87 of the bundle. The only service charge year in issue was 1<sup>st</sup> January 2015 until 31<sup>st</sup> December 2015.
10. Although interest and ground rent were claimed in the County Court, Mr Green confirmed that these items were not a matter for the tribunal's determination.
11. In the circumstances the tribunal addressed the actual expenditure claimed for the service charge year 2015 of £903.34 (rather than the estimated figures) plus the administration charge claimed of £25.
12. Several points were taken by the tenant in his defence in the County Court, however the hearing before the tribunal focused on the amount payable for flat 4 for the service charge year 2015. The tenant however reserved his position in respect of the other points raised in his defence in so far as these related to whether payments had already been made or were otherwise not due to the landlord in respect of the service charge year 2015.
13. Turning to the breakdown of the items making up the landlord's claim to the service charge of £903.34 as set out on page 91 of the bundle, this included the following items: 'Building Insurance', 'Sinking Fund Contribution', 'Service Charge' and 'Management Fee'.
14. 'Building Insurance'
  - 14.1 The amount claimed as payable by the tenant based on actual expenditure was £104.

- 14.2 Mr Green referred to the Certificate of Insurance for the period August 2015 to August 2016 at page 85 of the bundle. He also referred to the broker's, Residents Insurance Services', covering letter and to a receipt for the payment of £623.55. The rounded up figure of £624 was shown on the service charge statement at page 87 of the bundle. Although the lease stated that the tenant's proportion was 20% of expenditure, it was common ground that as there were now 6 flats in the building, that the tenant was in practice charged 1/6 (16.67%).

The tribunal's decision

- 14.3 **The tribunal finds that the amount payable for flat 4 for the item 'Building Insurance' for the service charge year 2015 was £104 (1/6 of £624).**

15. 'Sinking Fund Contribution'

- 15.1 £350 was claimed as a 'Sinking Fund Contribution' on the actual expenditure on page 91 of the bundle. This figure was 1/6 of the figure of £2,100 described as 'Reserve fund contribution' in the service charges statement for 2015 on page 87.

- 15.2 Mr Green submitted the landlord had a general obligation to maintain the building and that major works were anticipated for next year including redecoration and works to the roof. No evidence was provided in respect of proposed works.

- 15.3 Mr Green submitted that the 'Sinking Fund Contribution' was recoverable under clause 3.2.4 of the lease.

*3.2.4 Pay the Interim Charge and the Service Charge at the times and in the manner provided in clause hereto both such Charges to be recoverable in default as rent in arrears, and to pay a sum of three Hundred and Fifty Pounds on account of Service Charge at the date hereof*

- 15.4 Alternatively he submitted that that the Sinking Fund contributions may be charged under clause 9.1.1

*9.1.1. 'Total Expenditure' means the total expenditure incurred by the landlord in any Accounting Period in carrying out his obligation under Clause 6(5) of this lease and any other costs and expenses reasonably and properly incurred in connection with the building including without prejudice to the generality of the forgoing (a) the costs of employing managing agents (b) the costs of any Accountant or Surveyor employed to determine the Total Expenditure and the amounts payable by the Tenant hereunder*

### The tribunal's decision

- 15.5 The tribunal considers that clause 3.2.4 and clause 9.1.1 of the lease do not entitle the landlord to claim payments to a Sinking Fund.
- 15.6 Clause 3.2.4 contains a covenant by the tenant to pay the Interim Charge and the Service Charge at the times and in the manner provided in the lease. The 'Service Charge' and the 'Interim Charge' are defined in clause 9. Under clause 9.4 there are provisions for the crediting of any balance of Interim Charge if this exceeds the Service Charge. Clause 3.2.4 does not indicate that payments can be gathered by the landlord and retained as a Sinking Fund.
- 15.7 Further the provisions of clause 3.2.4 are *to pay a sum of three Hundred and Fifty Pounds on account of Service Charge at the date hereof*. The tribunal considers that *'the date hereof'* was the date of the lease. This does not provide for a yearly payment of £350 by the tenant to a Sinking Fund.
- 15.8 In respect of clause 9.1.1, the definition of 'Total Expenditure' refers to costs and expenses *incurred*. The tribunal considers that this does not include future anticipated expenditure, which has not been *incurred*.
- 15.9 The tribunal finds that the item 'Sinking Fund Contribution' is not chargeable to the tenant under the terms of the lease, and that no sum is payable for this item.
16. 'Service Charge'
- 16.1 The figure in the breakdown of actual expenditure alleged payable by the tenant was £382.67 for this item (1/6 of the total expenditure claimed of £2,296).
- 16.2 The figure of £2,296 was made up of the following items in the service charge statement on page 87 of the bundle: electricity, general administrative expenses, property maintenance, legal and professional fees, accountancy fees.
- 16.3 Mr Green referred to:
- (1) A receipt for £50 from 'Get Man & Van' dated 30<sup>th</sup> June 2015 for £50.
- (2) An invoice dated 10<sup>th</sup> January 2016 for 'Cleaning and Repairs' for £150 from Simply Property (London) Ltd.

(3) Electricity bills for periods from 28<sup>th</sup> August 2014 onwards to 30<sup>th</sup> December 2015 totalling £300.29. But only £200 was charged.

(4) An invoice from 'Financial Visibility' Chartered Accountants for a total of £420 including VAT dated 21 September 2016.

(5) A General Administration charge of £90.

The property maintenance charge was made up of items (1) and (2), the electricity charge was supported by item (3), and the accountancy fees were supported by item (4).

16.4 In respect of the charge for legal and professional fees, Mr Green referred to:

(6) An invoice from Salvum Limited dated 5<sup>th</sup> February 2016 for £330 (including VAT) relating to asbestos management survey and Fire Risk Assessment.

(7) An invoice from Child & Child Solicitors, dated 10<sup>th</sup> February 2015, relating to the period 2<sup>nd</sup> October 2014 to 10<sup>th</sup> February 2015 for a total of £1,716 including VAT. This stated that it related to charges in connection with acting on Simply Property (London) Limited's behalf relating to 'the above matter', 53 Maryland Road.

16.5 The invoice from Child & Child referred to a printout attached to the letter containing 'further details'. However, the tribunal was informed by Mr Green that the print-out was not produced as it was privileged. Mr Green informed the tribunal that £1,053 had been paid by the landlord in respect of the amount claimed. Mr Green informed the tribunal that the invoice related to legal fees for tracing the tenant of the abandoned basement flat at 53 Maryland Road. He said that there was a leak which caused damage to the common parts and that the services of Child & Child were used to track down the leaseholders of the basement flat for the leak to be stopped.

#### The tribunal's decision

16.6 Having considered the evidence the tribunal finds that the sums for electricity, general administration expenses, and property maintenance, and accountancy (items (1) to (5) above) were reasonable and reasonably incurred. The tribunal also finds that the sums under (6) above for the asbestos management survey and fire risk assessment (£330) were reasonable and reasonably incurred.

16.7 The tribunal considers that the sum of £1,053 in respect of the Child & Child invoice was not recoverable under the service charge, or if it was

that it was not reasonable or reasonably incurred. On the information provided these were legal expenses relating to an issue between the landlord and the tenant of the basement flat and did not form part of the service charge. Further, there was no evidence in relation to a leak or damage to the common parts.

16.8 The charge for legal and professional fees is therefore limited to £330 for the asbestos management survey and fire risk assessment.

16.9 The tribunal considers that total amount for the item 'Service Charge' in respect of flat 4 was £1,240 (electricity £200, general administration expenses £90, property maintenance £200, accountancy fees £420 and legal and professional fees £330).

16.10 **The tribunal finds that the amount payable for flat 4 for the item 'Service charge' was £206.67 (1/6 of £1,240).**

17. 'Management Fees'

17.1 The figure of £66.67 was the actual expenditure claimed under the heading 'management fees' for the service charge year 2015.

17.2 It was shown on the service charges statement for 2015 on page 87 of the bundle, that the total figure for management fee was £400. The contribution for flat 4 was £66.67 (1/6 of £400).

17.3 The management is carried out by the landlord. Mr Green referred to clause 9.1.1 of the lease, the terms of which are set out in paragraph 15 of this decision.

17.4 Mr Green submitted that the cost of managing the building charged by the landlord were within 'other costs and expenses reasonably and properly incurred in connection with the building...' He submitted that this had been a pub converted into 6 flats and involved management including arranging health and safety matters such as the asbestos and fire inspections, arranging the insurance, organising repairs and maintenance and administration of the service charges.

17.5 Mr Zeki submitted that he was dissatisfied with regard to the lack of effective management of the building. It was stated in the defence in the County Court that 'The claimant has a telephone number whilst trying to contact automatically would go to Voicemail. Messages left would not be answered. Emails sent would not be responded to or would be responded to after an unreasonable delay...'. At the hearing Mr Zeki described the quality of the service as 'bad'. He said that there was 'no answer' when he telephoned.

### The tribunal's decision

- 17.6 Having considered the evidence and submissions, the tribunal finds that the figure of £66.67 for flat 4 to be reasonable and reasonably incurred for management fees for the service charge year 2015. Although Mr Zeki was dissatisfied with communications as he described, the tribunal accepts the submission that there were management duties which were undertaken in respect of the building such as described by Mr Green and referred to in the invoices provided. The tribunal considers that the management services provided were part of the Total Expenditure for the purposes of clause 9.1.1.
- 17.7 **The tribunal finds that the amount payable for flat 4 for the item 'Management fee' was £66.67 (1/6 of £400).**

### Administration charge £25

18. There was no specific challenge to the administration charge.
19. **The tribunal finds that the figure of £25 was payable for this item.**

### Summary of decision

20. The figure for service charges for flat 4 for the service charge year 2015, which the tribunal found to be reasonable and reasonably incurred, was £402.34.
21. The figure for administration charge for flat 4 payable was £25.

### Application for Rule 13(1)(b) costs

22. At the hearing Mr Green applied on behalf of the landlord for an order for costs under Rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.
23. Under Rule 13(1)(b) The tribunal may make an order in respect of costs only –
- (b) if a person has acted unreasonably in bringing, defending or conducting proceedings in



(ii) a residential property case

24. Mr Green referred the tribunal to the decision in *Willow Court Management Company (1985) Limited v Mrs Ratna Alexander [2016] UKUT 0290 (LC)*.
25. Mr Green submitted that Mr Zeki had not specifically disputed the amounts on page 91 of the bundle and had made payments as referred to in his schedule.
26. Mr Zeki said that the matter had taken up much of his time and should have been resolved. He considered that there was a lack of clarity and in particular that the invoices relied on by the landlord referred to various addresses. The lease of flat 4 at 1.19 defined 'the building' as *the freehold property known as 2-10 Falmouth Street, London E15 1JQ as the same is registered at HM Land Registry under title number EGL246537*. However some of the invoices were in respect of 53 Maryland Road, London E15 1JL. This matter had been raised in correspondence and although he had been informed that the latter address formed part of the building, it was not until the hearing of this matter before the tribunal that the landlord produced a copy of Registered Title which showed that the address for EGL246537 was 53 Maryland Road. He submitted that in all the circumstances he had not acted unreasonably.

#### The tribunal's decision

27. The tribunal finds that it has not been shown that Mr Zeki has acted unreasonably and makes no order under Rule 13(1)(b).

#### Section 20C

28. For the avoidance of doubt no application under section 20C of the Landlord and Tenant Act 1985 was made.

Name: A Seifert

Judge of the First-tier Tribunal (Property Chamber)

Date: 20<sup>th</sup> November 2016

## **Rights of appeal**

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).