

11942



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

Case Reference : **LON/00AP/LSC/2016/0368**

Property : **44a Woodstock Road London N4
3EX**

Applicant : **London Borough of Haringey**

Representatives : **Ms Bisakha Dewan, Senior Legal
Assistant**

Respondent : **Ms Tangul Ahmet**

Representative : **-**

Type of Application : **Reasonableness of and liability for
service charges and administration
charges under the Landlord and
Tenant Act 1985**

Tribunal Members : **Professor Robert M. Abbey
(Solicitor)
Mr Trevor Sennett (Professional
Member)**

**Date and venue of
Decision** : **11th January 2017 at 10 Alfred
Place, London WC1E 7LR**

Date of Decision : **11th January 2017**

DECISION

Decisions of the tribunal

1. The Tribunal determines that as at the date when the county court proceedings were issued by the applicant there was payable by the respondent to the applicant:

Service charges years 2012-2013

Unpaid service charges for the above service charge year £584.56

Service charges years 2013-2014

Unpaid service charges for the above service charge year £414.32

2. The file shall be returned to the County Court at Clerkenwell and Shoreditch for the determination of the following claims which this tribunal does not have jurisdiction to determine:
 - Court fee, interest and
 - Costs
3. The reasons for our decisions are set out below.

The application and procedural background

4. In July of 2016 the applicant landlord commenced legal proceedings against the respondent as proprietor of a long lease of the subject property.
 5. The respondent did file a defence which asserted that the Respondent was not liable because she said she was entitled to challenge elements of the claimed service charges.
 6. The applicant's claim concerning the determination of service charges referenced C1QZ3J86 was transferred to this tribunal by order of Deputy District Judge Murch from the County Court at Clerkenwell and Shoreditch. The date of the order was 7 October 2016. The claim made in the county court was for unpaid service charges.
1. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

2. There was an oral hearing on the date shown above. Oral evidence was heard from both parties on the nature and reasonableness of the claimed service charges.

The background

3. The respondent 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.
4. The landlord applicant claimed service charges of £1149.37 for the years 2012 through to 2014. It is this sum that is in dispute and is the item referred to the tribunal by Deputy District Judge Murch.

The service charges claimed

5. Having read and heard oral evidence and submissions from the parties and considered all of the documents provided, the tribunal determines the issue as follows.
6. In regard to the claimed service charges the tribunal finds that the service charges claimed are in part reasonable and payable by the respondent.
7. Dealing first with the charge for 2013-2014 it was accepted by the parties that the Respondent did not now challenge the figure or the basis for it and therefore in the absence of a challenge the amount claimed by the Applicant must be payable by the Respondent.
8. Dealing secondly with the charge for 2012- 2013, there were two elements to this charge that the Tribunal found to be unreasonable while all the remaining items were considered reasonable and approved as stated by the Applicant. The first item considered unreasonable was the door lock charge at £43.34. There was little or no evidence to support this item and there was considerable confusion as to which lock this might refer to. In these circumstances the Tribunal considered this charge to be unreasonable and should be deducted completely.
9. Secondly a charge was made for renewing an asphalt roof. These works were completed and charged to the tenant. However, evidence emerged at the hearing that this work was for this property and the adjoining property at 46 Woodstock Road although the Applicant maintained that the charge was for this property alone. The Tribunal preferred the evidence from the Respondent that it affected 44 and 46 and therefore considered that this was a charge that should have been shared between the properties. Accordingly the Tribunal thought that it right to reduce the charge to £107.15.
10. Therefore with regard to the service charges the tribunal was satisfied that these were, apart from the two items mentioned above, reasonable and proportionate given the nature of the claim and the hearing. The

tribunal therefore decided that the service charges set out in paragraph one of this decision were payable by the Respondent.

Transfer back to the County Court

11. There were some claims made in the court proceedings which we do not have jurisdiction to determine. We have therefore transferred the file back to the County Court so that these claims may be pursued if the applicant wishes to do so.

Name: Judge Professor Robert M. Abbey **Date:** 11 January 2017

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 sub-paragraph (1).