

12385



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

Case Reference : **LON/00AJ/LSC/2017/0015**

Property : **Second Floor Flat, 605 Lady
Margaret Road, Southall, Middx
UB1 2QQ**

Applicant : **LMR Management Co. Limited**

Representative : **Mr C Green, Solicitor's Agent**

Respondent : **Mrs Sharmeen Sethhi**

Representative : **In person**

Type of Application : **For the determination of the
liability to pay a service charge**

Tribunal Members : **Judge W Hansen (chairman)
Mr S Mason FRICS FCI Arb**

**Date and venue of
Hearing** : **21 August 2017 at 10 Alfred Place,
London WC1E 7LR**

Date of Decision : **22 August 2017**

DECISION

Decisions of the Tribunal

- (1) The Tribunal determines that the Respondent is liable to pay the following by way of service charges:
 - (a) For 2011/12 we determine that the Respondent is liable to pay 1/9th of $(£250+£110.24+£1600+£900+£1150+£288) = \underline{£477.59}$
 - (b) For 2012/13 we determine that the Respondent is liable to pay 1/9th of $(£250.02+£100.71+£1500.03+£710+£1233.90+£288) = \underline{£453.63}$
 - (c) For 2013/14 we determine that the Respondent is liable to pay 1/9th of $(£540+£15+£152.57+£1890+£540+£1182.71+£3484.40) = \underline{£867.19}$
 - (d) For 2014/15 we determine that the Respondent is liable to pay 1/9th of $(£570+£71.84+£2268+£450+£1230.49+£150+£1308.41 + £13.11) = \underline{£673.54}$
 - (e) For 2015/16 we determine that the Respondent is liable to pay 1/9th of $(£600+£308.57+£2268+£540+£1279.71+£456) = \underline{£605.81}$.
- (2) The tribunal determines that the Respondent is liable to pay the administration charge of £72.00;
- (3) The Tribunal makes no order under s.20C of the Landlord and Tenant Act 1985;
- (4) The Tribunal orders the Respondent to reimburse the Applicant's hearing fee in the sum of £200;
- (5) For the avoidance of doubt, nothing in this determination is intended to fetter the discretion of the county court in relation to county court interest or costs, including contractual costs.

The Application

1. On 2 August 2016 the Applicant commenced proceedings in the County Court seeking arrears of service charge, an administration charge, costs and interest covering the period from 1 June 2011 up to and inclusive of 31 March 2016 in the sum of £5,252.82. The Respondent served a Defence to that claim dated 20 August 2016 admitting part of the claim (£849.61) but denying the remainder and on 7 January 2017 the claim was transferred to this Tribunal pursuant to the Order of District Judge Nichols.
2. By virtue of that Order this Tribunal is required to make a determination pursuant to section 27A of the Landlord and Tenant Act 1985 ("LTA 1985") as to the reasonableness and payability of certain service charges charged to the Respondent.

Procedural Background

3. On 4 April 2017 Judge Korn fixed a hearing date of 21 August 2017 and issued detailed directions for the further conduct of the claim in order to ensure that it was properly prepared. The directions ordered the Applicant to prepare a Scott Schedule setting out for each year the item in issue, the sum claimed and the basis of the claim and directed that the Respondent should "*in relation to each head of charge for each year ... state whether that charge is considered to be fully payable and if not (a) how much is considered to be payable and (b) a brief explanation as to why*". He also directed statements of case and witness statements in the usual way.
4. During the course of the hearing it became clear that the Scott Schedule had been prepared on the basis of the budgeted sums rather than the actual sums expended, despite the fact that this is a claim for historic service charges where the actual sums expended for the relevant years

are known. This began to cause a number of difficulties in working out what adjustments were due. It also meant we ran the risk of making inconclusive findings in relation to (at least) the final year in dispute and that we were not in fact resolving the claim that had been transferred to us by the County Court which is a claim for the actual sums due, not the budgeted amounts.

5. It was common ground that this made no difference for 2011/12 and 2012/13 because the actual expenditure was in line with the budgeted sums. However, for subsequent years there was a variation between the budgeted sums and the actual sums expended. Both parties therefore agreed that we should determine the payability and reasonableness of the actual sums expended in relation to the years 2013/14, 2014/15 and 2015/16 and that we should conduct the case on the basis that the Scott Schedule had been recast for those years to reflect the actual sums expended in those years. The actual figures for each of those years appear at pages 184, 185 and 187 of the bundle and we proceed accordingly.

The Issues

6. Against that background, and having regard to the Scott Schedule, the following issues arise for our determination:
 - (i) The reasonableness of the accountancy fees charged each year;
 - (ii) The reasonableness of the managing agents's fees for each year;
 - (iii) The reasonableness of the gardening charges for each year;
 - (iv) The reasonableness of the charges for repair and maintenance for 2013/14, 2014/15 and 2015/16;

- (v) The reasonableness of other professional fees for 2013/14, 2014/15 and 2015/16;
 - (vi) The reasonableness of various small sundry charges for certain years;
 - (vii) The reasonableness of the administration charge of £72.00 claimed in the County Court proceedings.
7. The relevant legal provisions of the LTA 1985 are set out in the Appendix to this decision.
8. In reaching our conclusions we heard evidence from Mr Bone FRICS on behalf of the Applicant and from the Respondent Mrs Sethi. We say at this point that we accept Mr Bone's evidence and where it conflicted with Mrs Sethi's evidence, we preferred his evidence. However, in reality, Mrs Sethi's evidence was very limited and consisted mainly of assertion, rather than evidence. She invited us to consider a video which had been disclosed to the Applicant as supporting her case. We did so but it did not assist. It was made in August 2016, too late to be of any real assistance or relevance, and in any event was potentially misleading. It appeared to focus to a considerable extent on the poor state of the stairway and railings but these were not the subject of any claim in these proceedings and in any event have since been redecorated.

Background

9. The Respondent is the long lessee of a second floor flat within a block comprising 9 flats. The block was built in the late 1960s. The Respondent's lease ("the Lease") is dated 29 May 1970 and is between Eatonwill Construction Limited, "the Lessor", 591/607 Lady Margaret Road Management Limited, "the Company", and Mr and Mrs Buckner, "the Tenant". The Company acquired the freehold in 2008 and was registered as proprietor on 9 June 2008. It then changed its name to

LMR Management Co Ltd: see paragraph 4 of Applicant's Statement of Case and paragraph 2 of w/s of Nigel Bone. The Applicant is entitled to recover a service charge under the terms of the Lease: see Clause 4(a) and Third Schedule. The Tenant's Proportion is 1/9th.

10. Beyond that, and save as hereinafter mentioned, nothing turns on the precise terms of the Lease. The focus of the challenge is on the reasonableness of the charges. We note that the Respondent has made no payments towards the service charge for the relevant period in dispute, i.e. 2011-2016, and was not in fact living at the flat for much of the period. It was tenanted until April 2014 when she moved back in with her family.

2011/12

11. The Respondent challenges the sum of £250 charged for accountancy fees. The Respondent objects that the fees are "too high" and offers £100. Accounts were undoubtedly prepared. They are in the bundle beginning at p.217. This necessarily involved a reasonable amount of work on the part of the accountants, collating the relevant documents, preparing accounts and verifying their accuracy. There is no rival quotation from the Respondent. We consider the charge a very modest one indeed and allow this sum in full.
12. The charge for electricity (£110.24) is admitted.
13. The Respondent challenges the sum of £1600 claimed in respect of management fees. This works out at £177.78 per flat. There is an invoice from the then manager, Ms Geeta Thethy, at p.123. The background to her appointment is set out in the witness statement of Mr Bone at paragraph 13 whose evidence we accept. It appears to us that Ms Thethy did a reasonable job of managing the block in difficult circumstances. The block was properly insured. There was lighting and the garden was maintained by contractors. Essential drainwork was arranged (the drains appear to have been a recurrent problem). There

were no repairs carried out at this time but none have been identified as essential and in any event this meant that the charges were that much lower. A detailed budget was prepared. She would have had to liaise with the accountants over the preparation of the accounts. Service charges were raised and collected. There is no rival quotation from the Respondent. The Respondent complains that the charge is unreasonable and unfair but we consider it eminently reasonable in the circumstances. This sum is payable in full.

14. The Respondent challenges the sum of £900 claimed for gardening charges. This equates to £100 per flat. She says "*gardening is only done twice a year*" and offers £50, or £450 across the nine flats. There are some invoices for gardening during this period but they do not total £900. However, we accept that the gardeners came significantly more often than twice a year. The invoices in the bundle for this and subsequent years support that conclusion. We recall that the Respondent was not living at the property at this time. We propose to allow £450 for this item in this year.
15. The insurance charge of £1150 is admitted.
16. The drainage charge of £288 is admitted.
17. Accordingly, for 2011/12 we determine that the Respondent is liable to pay 1/9th of ($£250+£110.24+£1600+£900+£1150+£288$) = £477.59.

2012/13

18. The Applicant challenges the sum of £250.02 claimed for accountancy fees on the same basis as previously. We repeat our comments in paragraph 11 above. We consider the charge a very modest one indeed and allow this sum in full.
19. The electricity charge of £100.71 is admitted.

20. The managing agent's fees of £1500.03 is challenged as unfair and unreasonable. There is an invoice at p.124. The charge equates to £166.67 per flat. We repeat our comments in paragraph 13 above. We determine that this sum is payable in full.
21. The gardening fees of £720 are challenged. The Respondent offers £40 or £360 in total. There are invoices for this period which total £710. We allow this sum.
22. The insurance charge of £1233.90 is admitted.
23. The drainage of £288 is admitted.
24. Accordingly, for 2012/13 we determine that the Respondent is liable to pay 1/9th of (£250.02+£100.71+£1500.03+£710+£1233.90+£288) = £453.63

2013/14

25. During the course of this year Mr Nigel Bone FRICS of NRB Chartered Surveyors took over management of this block following a meeting with the directors of the Applicant and a number of the lessees, albeit the Respondent was not present. He told us that part of his remit was to bring a fresh eye to the management of the block. He was encouraged to appoint new accountants whom he had dealt with before and he told us his proposed management fees were agreed at this meeting. This is by way of background. It in no way precludes the Respondent from challenging the reasonableness of the service charges under Mr Bone's management. In considering this year and subsequent years we are considering the actual sums expended - we refer to paragraphs 4 & 5 above.
26. The Respondent challenges the sum of £540 for accountancy fees. There is an invoice for this amount at page 120. The service was provided by a new firm of accountants as explained above. Clearly the

charge is more than twice the previous charge. When we put this to Mr Bone, his response was that the lessees had previously got away with very low charges. Notwithstanding that the charge is significantly higher than the charge for previous years, we consider that the sum is still a reasonable one. There is no alternative quotation from the Respondent. We allow this sum in full.

27. We allow £15.00 for bank charges based on the documents at pp.181-182.
28. The electricity charge of £152.57 is admitted.
29. The claim for management fees for this period is £3390 made up of £1500 (described at page 184 as "*expenditure prior to takeover*") and £1890 which equates to 10 monthly charges of £189 on the part of Mr Bone which in turn equates to £210+VAT per flat. It seems to us that Mr Bone has done a good job of managing what is not an easy block to manage. He has begun the task of tackling the essential repairs but in a phased and sensible way. We consider the sum of £1890 to be eminently reasonable.
30. However, we do not allow the sum of £1500. This appears to be double counting. We allow the sum of £1890 under this head.
31. We allow the gardening charge in the sum of £540 for which there are invoices.
32. The insurance charge of £1182.71 is admitted.
33. There is a claim for £3580.40 for repairs. There are invoices for these repairs totalling £3484.40. The most extensive of these is one for £2232 for what we accept were essential repairs to a flat roof over the stairwell. The Respondent appeared to suggest that the repairs had not been properly undertaken because there were still leaks but there was no evidence to this effect. A large number of the other charges relate to

the drains which appear to require regular flushing to deal with blockages. It may be that a more permanent repair will become necessary but for the present we are satisfied that these charges have been reasonably incurred. We allow £3484.40 under this head.

34. Accordingly, for 2013/14 we determine that the Respondent is liable to pay 1/9th of (£540+£15+£152.57+£1890+£540+£1182.71+£3484.40) = £867.19.

2014/15

35. The Respondent challenges the accountancy fees of £570 on the same basis as previously. There is a receipted invoice at p.121. We repeat our comments under paragraph 26. We allow this sum in full.
36. The electricity charge of £71.84 is admitted.
37. The managing agents' fees of £2268 (£210+VAT per flat) are challenged as unreasonable. We repeat our comments under paragraph 29. We allow this sum in full.
38. We allow the gardening charge of £450. This is less than the Respondent's offer of £60 (which equates £540).
39. The insurance charge of £1230.49 is admitted.
40. The pest control charge of £150 is admitted.
41. We do not allow the sum of £240 which is a sum claimed by NRB for "acting as registered office". Having considered the terms of the Lease, in particular paragraphs 1 and 5 of the Third Schedule, we are not satisfied that the lease covers this charge.
42. We allow the sum of £1308.41 for repairs and maintenance based on the invoices itemised in the breakdown at p.209.

43. We allow only £13.11 of £401.11 relating to sundries. The lion's share of these charges relates to a late filing fee of £375.00 for filing the company's accounts late. We do not see why the Respondent should be responsible for this. We also disallow £13.00 which relates to a fee for submitting the Company's Annual Return.
44. Accordingly, for 2014/15 we determine that the Respondent is liable to pay 1/9th of (£570+£71.84+£2268+£450+£1230.49+£150+£1308.41 + £13.11) = £673.54.

2015/16

45. The Respondent challenges the accountancy fees of £600 on the same basis as previously. There is a receipted invoice at p.122. We repeat our comments under paragraph 26. We allow this sum in full.
46. The electricity charge of £308.57 is admitted and insofar as it is not, we consider it reasonable.
47. The managing agents' fees of £2268 (£210+VAT per flat) are challenged as unreasonable. We repeat our comments under paragraph 29. We allow this sum in full.
48. We allow the gardening charge of £540. This is as per the Respondent's offer of £60 (which equates £540).
49. The insurance charge of £1279.71 is admitted.
50. We disallow the registered office fee for the same reasons as are set out above.
51. We allow £456 for repairs based on the invoices in the bundle (pp. 206-207).

52. We disallow the sundry claim for £26 for the same reasons as are set out in paragraph 41 above.
53. Accordingly, for 2015/16 we determine that the Respondent is liable to pay 1/9th of (£600+£308.57+£2268+£540+£1279.71+£456) = £605.81.

Administration Charge

54. The claim includes a claim for an administration charge of £72. This relates to chasing payment and instructing solicitors. We recall that the Respondent has paid nothing for more than 5 years. We consider this charge a reasonable one in the circumstances.

Reimbursement of Hearing Fee

55. The Applicant applied for reimbursement of its hearing fee (£200) under paragraph 13(2) of the 2013 Procedure Rules. This is a matter for our discretion. It does not require any finding of unreasonableness on the part of the Respondent.
56. In view of our findings above, and the fact that the Applicant has succeeded to a very substantial extent, we allow that claim and order the Respondent to reimburse the Applicant its hearing fee of £200.

Other Applications

57. There were no other applications by either party at the conclusion of the hearing. However, of our own motion, we raised the issue of s.20C as the directions had invited the parties to deal with that issue at the conclusion of the hearing. Having explained that provision to the Respondent, she made an application.

58. We express no view either way on the terms of the Lease but we make no order under s.20C. Having regard to our findings above, such an order would be neither just nor equitable.

Name: Judge W Hansen

Date: 22 August 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.