



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

Case reference : **LON/00AN/LSC/2016/0334**

Property : **Flat 5 West Kensington Court**

Applicant : **West Kensington Court Limited**

Representative : **The Beavis Partnership**

Respondent : **Ms Shazia Sheikh**

Representative : **N/A**

Type of application : **A summary determination of the Application following a debarring order and a determination in connection with costs under Rule 13**

Tribunal members : **Judge Carr
Mr Harris FRICS**

Date and venue of hearing : **23rd January 2017
10 Alfred Place, London WC1E 7LR**

Date of decision : **23rd January 2017**

DECISION

Decisions of the tribunal

- (1) The tribunal determines that costs of £ 3,393.00 are payable by the Applicant.
- (2) The tribunal makes the determinations as set out under the various headings in this Decision

(3) The application

1. Following a debarring order dated 16th December 2016 the tribunal was required to consider making a summary determination of the sums due from the Respondent and to determine an application that the Respondent should pay costs under Rule 13 of the the Tribunal Procedure (First tier Tribunal) Property Chamber Rules 2013.
2. Proceedings were originally issued in the County Court under claim no. C96YJ746. The claim was transferred to the Hammersmith County Court and then in turn transferred to this tribunal, by order of District Judge Swan on 22nd August 2016.
3. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

4. The Applicant was represented at the hearing by Ms Holmes of Counsel instructed by the Beavis Partnership and the Respondent did not appear.

The background

5. The property which is the subject of this application is a flat within a block of which the Applicant is the freeholder.
6. 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. The specific provisions of the lease and will be referred to below, where appropriate.

The issues

7. The issues for determination are

- (i) The payability of service charges claimed by the Applicant.
- (ii) Whether to make an order for costs pursuant to rule 13(3) and if it so determines
- (iii) To assess the amount of such costs to be paid

8. Having heard submissions from counsel and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

Service charges claimed

9. The tribunal determines that the service charges claimed by the Applicant are payable and reasonable .

Reasons for the tribunal's decision

- 10. The Respondent failed to comply with directions and was disbarred from participating in the proceedings.
- 11. The Respondent paid the charges prior to the first directions hearing in this application.
- 12. The tribunal has no issues to raise in connection with the service charge demands.

The Application for costs

- 13. Counsel argued that the Respondent had behaved unreasonably by paying the arrears sought in the application and the claim but then continuing with her defence that charges sought are not reasonable, putting the Applicant to inconvenience and expense, at the same time failing to engage with proceedings.
- 14. The Respondent had several opportunities to withdraw from the proceedings but failed to do so.
- 15. No explanation of her conduct has been provided by the Respondent although she has been given ample opportunity to explain her conduct.
- 16. Counsel submitted that such conduct was vexatious or had the purpose of causing expense and inconvenience to the Applicant which is

unreasonable conduct in accordance with the Upper Tribunal decision, Willow Court v Alexander, Sinclair v 231 Sussex Gardens , Stone v 54 Hogarth Road [2016] UKUT 290 (LC).

The tribunal's decision

17. The tribunal determines that costs are payable under rule 13(3).

Reasons for the tribunal's decision

18. The tribunal accepts the argument of counsel that the Respondent behaved unreasonably as the Respondent paid the service charges but did not withdraw her defence and then failed to engage in proceedings. No explanation has been provided for her conduct.
19. The tribunal determines that such conduct is unreasonable.
20. Considering all of the circumstances as outlined by Counsel and taking into account the efforts made by the tribunal to engage with the Respondent, the tribunal determines to exercise its discretion to make the order.

The amount of costs awarded

21. Counsel provided a summary of costs incurred by the Applicant in this matter from the date of the letter before action. The costs total £3,393.00 inclusive of VAT.
22. The tribunal considered the schedule of costs carefully. It considered those costs to be reasonably incurred and reasonable in amount and therefore determined to make an order that the full amount of the costs claimed should be paid.

Name: Judge Carr

Date: 23rd 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 20

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
- (a) complied with in relation to the works or agreement, or
 - (b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .
- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

- (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
 - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
- (a) an amount prescribed by, or determined in accordance with, the regulations, and
 - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20B

- (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.

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 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.

Schedule 11, paragraph 2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Schedule 11, paragraph 5

- (1) An application may be made to the appropriate 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 the appropriate 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).