FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00AP/LSC/2016/0411**
Property	:	**167 Lordship Lane, London N17 6XF**
Applicant	:	**Kevin Kirton**
Representative	:	**In person**
Respondent	:	**Residential Properties Limited**
Representative	:	**Mr A Berger of Feldgate Limited (managing agents)**
Type of application	:	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal members	:	**Judge N Hawkes** **Mr K M Cartwright JP FRICS**
Date and venue	:	**6th April 2017 at 10 Alfred Place, London WC1E 7LR**
Date of decision	:	**18th April 2017**

DECISION

Decision of the Tribunal

The Tribunal determines that, by reason of the findings which are set out below, the sum of £50.91 remains payable by the applicant in respect of the service charges for the years 2015 and 2016.

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 charges which are payable by the applicant in respect of the service charge years 2015 and 2016.

2. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

3. The applicant appeared in person at the hearing and the respondent was represented by Mr A Berger of Feldgate Limited, the landlord's managing agents. The applicant was accompanied by Ms Green who played no part in the proceedings.

4. Immediately prior to the hearing, the respondent handed in a bundle of documents which had been prepared in accordance with a letter from the Tribunal letter dated 4th April 2017, for the reasons set out below.

5. The start of the hearing was delayed while the Tribunal considered the new documents.

The background

6. The property which is the subject of this application is a two bedroom flat on the first floor of a house which has been converted into two flats.

7. 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.

8. The applicant 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.

9. By an application dated 1st November 2016, the applicant sought to challenge the service charges demanded by Feldgate on behalf of the landlord in respect of the service charge years 2015 and 2016.

10. On 29th November 2016, the Tribunal gave detailed Directions leading up to a final hearing which was due to take place on 30th March 2017. The Directions contain a prominent Note which provides:

IMPORTANT NOTE:

- **These directions are formal orders and must be complied with**
- **They are intended to help the parties and the tribunal deal with applications swiftly and economically**
- **If the applicant fails to comply with these directions the tribunal may strike out all or part of their case pursuant to rule 9(3)(a) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the 2013 Rules").**
- **If the respondent fails to comply with these directions the tribunal may bar them from taking any further part in all or part of these proceedings and may determine all issues against it pursuant to rules 9(7) and (8) of the 2013 Rules.**
- **Orders may be made for the defaulting party to reimburse costs or fees thrown away as a result of the default.**
- **Whenever you send a letter or email to the tribunal you must also send a copy to the other parties and note this on the letter or email**

11. Notwithstanding this Note and notwithstanding that it is common ground that the applicant has been involved in previous Tribunal proceedings, the applicant has failed to comply with the Tribunal's Directions.

12. On 23rd February 2017, the Tribunal received an email from the respondent stating that the applicant had failed to comply with Paragraph 3 of the Directions, by which he was directed to set out his case in the manner described in the Directions by 27th January. The respondent had therefore been unable to respond to the applicant's case by 17th March 2017 in accordance with Paragraph 4 of the Directions.

13. On 24th February 2017, the applicant asked for an extension of time for compliance with the Directions on the basis that he had been under pressure at work; he has a long commute to work; and he had been ill with flu for three weeks.

14. On 28th February 2017, the Tribunal granted the applicant's request for an extension of time despite the fact this resulted in the need to vacate date fixed for the hearing of the application and to relist the hearing.

15. On 4th April 2017, the respondent wrote to the Tribunal stating:

"To date we received literally nothing from the Applicant, no statement, no documents, no bundles not even an email or letter explaining why nothing has been sent.

Since we are the Respondent in this case, without a statement we have no idea what the Applicant's case is and we can obviously not prepare to defend it."

16. By letter dated 4th April 2017, the Tribunal directed that the hearing would proceed on 6th April 2017; that the respondent's representative should bring to the hearing three bundles containing all those documents disclosed to the applicant in accordance with Direction 2 of the Tribunal's Directions; and that at the hearing the Tribunal would make a determination as to the reasonableness of the disputed service charges in light of the applicant's apparent failure to particularise his claim.

17. Direction 2 of the Tribunal's Directions provides:

"By 13 January 2017 the landlord shall send to the tenant:

a) copies of all relevant service charge accounts and estimates for 2015 and 2016, together with all demands for payment and details of any payments made.

b) copies of the list of building works carried out and/or billed in 2015 and 2016 with copies of consultation documentation, including notices served, responses received, the contractor selection decision justification, and for each set of works; the specification, bill of quantities, tenders invited, tenders received, contract awarded, and of the payments made."

18. At the commencement of the hearing, the applicant informed the Tribunal that he had that he had failed to comply with the varied Directions because had been busy at work. He stated that he has a full-time job working with young people; that the hours are long and stressful; and that they have been short staffed. The applicant explained that he lives in Edmonton and he works in Putney. He also reiterated that he had been sick for three weeks.

19. The applicant stated that he could see that he had made a mistake in failing to provide any evidence in support of his case in accordance with the Directions. He stated that he will comply with the Directions made in respect of any future proceedings.

The issues and determination

20. The applicant was very limited in his conduct of the proceedings by virtue of the fact that he had failed to serve any statement of case or evidence.

21. He did, however, seek to raise an issue which turned on the evidence which was contained in the respondent's hearing bundles, namely, whether or not the respondent has complied with the statutory consultation requirements in respect of work to the roof of the building in which the premises are situated which is described in an invoice dated 14th August 2015 ("the work to the roof"). The total cost of the work to the roof was £745 and, of this, the applicant has been charged £372.50.

22. Although the applicant had not raised this issue in any statement of case, the Tribunal considered that the respondent would not be prejudiced by the raising of the issue at the hearing because Direction 2 of the Tribunal's Directions had required the respondent to disclose copies of all consultation documentation.

23. Further, Mr Berger was clearly aware of the consultation requirements contained in section 20 of the 1985 Act and the associated Service Charges (Consultation Requirements) (England) Regulations 2003. Mr Berger, sensibly, did not object to the applicant raising this issue for the first time at the hearing.

24. Mr Berger stated that the statutory consultation may not have been carried out and he accepted that, in any event, there was no evidence before the Tribunal to the effect that the statutory consultation process had been followed. He did not argue that dispensation from the consultation requirements should be granted.

25. Accordingly, the Tribunal finds that the sum payable by the applicant in respect of the work to the roof is limited to £250. The applicant is therefore entitled to a credit in the sum of £122.50 against the sum charged.

26. The applicant was unable to raise any other issues without seeking to refer to evidence which was not before the Tribunal and the Tribunal finds that, save that the sum charged in respect of the work to the roof falls to be reduced by £122.50, the service charges claimed by the respondent in respect of the service charge years 2015 and 2016 are reasonable.

27. The total sum charged by the respondent for the service charge year 2015 was £2,394.39 and the total sum charged for the service charge year 2016 was £1,135.91. Mr Berger produced a statement of account

showing that, of the sums charged by the respondent (which do not take into account the Tribunal's finding in respect of the work to the roof), the sum of £173.41 remains outstanding.

28. The applicant disputed that any sum is outstanding he stated that the statement of account is confusing. However, he did not claim to have made any specific additional payments which are not shown on the statement of account and the Tribunal finds that it is likely, on the balance of probabilities, that of the sums claimed by the respondent the sum of £173.41 is outstanding.

29. However, the Tribunal has found that the sum charged to the applicant in respect of the work to the roof is to be reduced by £122.50. Accordingly, the sum currently outstanding and payable by the applicant in respect of the service charge for the service charge years 2015 and 2016 is £50.91.

Name: Judge N Hawkes **Date:** 18th April 2017

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).

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.