

12140



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

Case reference : **LON/00AY/LSC/2016/0444**

Property : **17 Coachman's Terrace, 80-86
Clapham Road, London SW9 0JR**

Applicant : **Coachman's Terrace RTE Co Ltd**

Representative : **Ms Thompson (solicitor)**

Respondent : **Bodie Trenton**

Representative : **Self representing**

Type of application : **For the determination of the
reasonableness of and the liability
to pay a service charge**

Tribunal members : **Mr A Harris LLM FRICS FCI Arb
Mrs L Walter**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of decision : **7 April 2017**

DECISION

Decisions of the Tribunal

- (1) The Tribunal determines that the sum of £7119.44 is payable by the Respondent in respect of the service charges for the years 1 April 2010 to 31 March 2016.
- (2) The Tribunal refuses leave to the Respondent to challenge the reasonableness of the service charges claimed.
- (3) Since the Tribunal has no jurisdiction over county court costs and fees, this matter should now be referred back to the Lambeth County Court.

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 and (where applicable) administration charges payable by the Respondent in respect of the service charge years 1 April 2010 to 31 March 2016.
2. Proceedings were originally issued in the County Court Money Centre. The claim was transferred to the Lambeth County Court under claim number C71YJ326 and then in turn transferred to this Tribunal, by order of District Judge Zimmels on 15 November 2016.
3. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

4. The Applicant was represented by Ms Thompson accompanied by Ms Ridges from HML Shaw, the managing agent at the hearing and the Respondent appeared in person.

The background

5. The property which is the subject of this application is a one of a block of 17 flats. The freehold is owned by the Applicant following enfranchisement.
6. 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.

7. 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.

Directions

8. Directions were given by Tribunal Judge Mr M Martynski following a hearing on 31 January 2017.
9. At paragraph D of the directions, it is recorded that *"the Respondent stated that he does not challenge the reasonableness of the service charges incurred since 2010. He maintains that he is not liable to pay some or all of the current arrears because, following the previous Tribunal decisions in 2003 and 2009 - prior to 2010 he was in credit on his account and so has effectively paid some or all of the current arrears. Given that there is no issue regarding the reasonableness of the service charges now claimed, the onus is on the Respondent to prove that he has effectively paid those charges"*.
10. Prior to the hearing the Respondent wrote to the Tribunal seeking leave to challenge the reasonableness of the service charges. This application was refused in writing with the Respondent directed to raise the matter again at the hearing if he still challenged the reasonableness of the service charges.

The issues

11. At the start of the hearing the parties identified the relevant issues for determination as follows:
 - (i) The payability and/or reasonableness of service charges for 1 April 2010 to 31 March 2016. The dispute arises out of a claim for arrears of service charges.
 - (ii) Whether the Respondent was in credit with his service charge payments on 1 April 2010.
12. Having heard evidence and submissions from the parties and considered all of the documents provided, the Tribunal has made determinations on the various issues as follows.

The Applicant's case

13. At the date of the hearing the Applicant's claim amounted to £7650.64. A statement is exhibited at page 125 of the bundle showing how the arrears have built up from 1 April 2010. Following previous difficulties with management of the building resulting in two previous applications to this Tribunal HML Shaw were appointed managing agents in 2010. The account shows an opening balance of £5441.92 with legal costs of £223.80. The Tribunal was informed that these amounts had been written off on 23 March 2016.
14. The statement lists the amounts demanded for annual service charge and for contributions to the annual reserve fund. There are four other items; an arrears management fee of £54.00 Land Registry fees of £148.40 and two solicitor's bills for £118.20 and £210.60.
15. In response to questions from the Tribunal the Applicants were not able to say what these items related to.
16. Reasonableness of the service charges is admitted. The Applicant disputes that the Respondent was only given the breakdown of the service charges immediately prior to the directions hearing and in particular a full breakdown of the claim was attached to the original particulars of claim. It was the Respondent who stated that he did not challenge the reasonableness of the service charges incurred since 2010. This is recorded in the directions.
17. Interest was originally calculated in the claim on the basis of the judgement rate of interest and has been recalculated using the lease rate of interest which is 3% over the base rate of Barclays Bank.
18. The Respondent claims to have made various payments by cheque which the Applicants were unable to trace. In any event these were for a period prior to 2010 and not relevant to these proceedings.
19. The Respondent has provided no evidence that any of the charges have been paid and that any credit was due to him in 2010 to offset the subsequent charges.
20. The Tribunal requested copies of the service charge demands which have been sent to the lessee and these were obtained during the hearing and provided to the Tribunal. These are in the proper form.

21. In response to a question from the Tribunal the managing agent confirmed that copies of the annual accounts and service charge demands had been sent to the Respondent at the property.

The Respondent's case

22. The Respondent stated that this is the third application before the Tribunal which had found in his favour on the previous two occasions and that the landlords have not made any adjustments to the service charge in response to the Tribunal's decisions.
23. The Respondent stated that the district judge in the County Court at Lambeth ordered the claimant to provide a breakdown of how the sum claimed is calculated and the period or periods to which they relate. This order was not complied with. A breakdown was only provided to the Respondent immediately prior to the directions hearing and the claimant then presented to the judge that the Respondent was not challenging the reasonableness of the service charges incurred since 2010. How could such an undertaking be given if the Respondent had only been given the breakdown a moment before without a proper opportunity to scrutinise the information. This is a deliberate and wilful intention to withhold information. The Respondent was therefore seeking an explanation of various items in the accounts.
24. An out-of-court settlement has been made with another leaseholder but this does not appear within the service charge statement. This is a further example of a deliberate and ill-advised manner in which the management company is being run.
25. The Applicant arrived at the directions hearing with news that part of the claim had been written off. The Respondent avers that this is due to the fact the claimant could not provide a breakdown or substantiate how the sums claimed came to be. The sum was written off because it was bogus.
26. The Respondent made a series of payments totalling £3500 in 2008 and 2009. He provided evidence in support of this and the Tribunal is satisfied that the payments were made. The Respondent claims that following the Tribunal decision in 2009 (reference LON/00AY/LSC/2009/0131) the Respondent was in credit and the claim therefore amounts to harassment.
27. The Respondent claims that the Applicant asserted there were no records of payments made due to a change of managing agents. The payments which were made by the Respondent which is the basis of this dispute were made during the period that the right to enfranchise

was being managed by the freeholder. The records are therefore available to the Applicant. The Applicant has a responsibility for a proper audit of funds in its trust. Change of management is not a reasonable excuse for poor record-keeping or lack of reasonable record-keeping as is the case here. The Respondent claimed that he had not been provided with any information by the Applicants and that whenever he requested information this was refused or at least not supplied.

28. In response to questions from the Tribunal the Respondent was not able to say what he thought the account position should have been in 2010 and what credit he should have been due.
29. The Respondent drew attention to several small items of disrepair and said that his entry phone had not been working properly over the period in question. He produced a letter written in 2011 to support this. There is no evidence of subsequent following up of this complaint but the agents agreed to look into it as a matter of urgency.
30. In response to a question from the Applicant the Respondent confirmed that he was a director of the freehold company. Following tabling of the service charge demands during the hearing, the Respondent confirmed that he had seen some of these bills.

Reasons for the Tribunal's decision

31. The Tribunal refuses leave to the Respondent to challenge the reasonableness of the service charges claimed. In particular, the Tribunal noted that the Respondent is a director of the freehold company with attendant duties and responsibilities. The accounts have been properly signed off by the board of directors and have been properly prepared by an independent firm of accountants. The time to challenge reasonableness was when the draft accounts were first presented to the board. The Respondent agreed he was not an active director but the Tribunal does not accept that as an excuse. The responsibilities go with the office.
32. On the balance of probabilities, the Tribunal is satisfied that service charge demands and annual service charge accounts have been provided at the appropriate time to the Respondent.
33. No satisfactory evidence was provided to the Tribunal that a credit was due to the Respondent in April 2010 which would offset some or all of the claim. The Respondent was unable to say what he thought the figure should be. The Tribunal notes that the arrears which were originally claimed as at 1 April 2010 have been written off and that the

claim is concerned with amounts which are due since that date. The Tribunal finds that a zero-credit balance as at 1 April 2010 is the appropriate place to start.

34. In respect of the four items claimed which are not within the service charge accounts, the two solicitor's bills, land registry fees and an arrears management fee, in the absence of a proper explanation as to what these relate to the Tribunal was not satisfied these are properly payable.
35. Taking these four items out of the amount claimed reduces the balance payable to £7119.44.

The next steps

36. The Tribunal has no jurisdiction over county court costs. This matter should now be returned to the Lambeth County Court.

Name: A Harris LLM FRICS FCIArb **Date:** 7 April 2017

Valuer Chair

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.

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).