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

**Case reference** : **LON/00AC/LSC/2018/0277**

**Property** : **Flat 2 708 Finchley Road, London  
NW11 7ND**

**Applicant** : **Triplerose Limited**

**Representative** : **Scott Cohen Solicitors**

**Respondent** : **Ms H Cakan  
Mr S Binyaka**

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

**Tribunal members** : **Judge Daley  
Mrs H Gyselynck MRICS**

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

**Date of decision** : **12 November 2018**

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**DECISION**

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## **Decisions of the tribunal**

- (1) The tribunal determines that the sum of £ 1,325.58 is payable by the Respondent in respect of the insurance for the service charges for the years 2014, 2015 and 2016 and administration charges of £600.00.
- (2) The tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985, The Tribunal makes no order in respect of the reimbursement of the tribunal fees paid by the Applicant
- (3) Since the tribunal has no jurisdiction over ground rent or county court costs and fees, this matter should now be referred back to the Clerkenwell & Shoreditch County Court.

## **The application**

1. Proceedings were originally issued in the County Court Money Claims Centre under claim no D60YM204. The claim was transferred to the Clerk Clerkenwell County Court and then in turn transferred to this tribunal, by order of District Judge Rand on 26 February 2018. The sum claimed was £3882.67 inclusive of interest and ground rent.
2. The relevant legal provisions are set out in the Appendix to this decision.

## **The background**

3. The Respondents 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.
4. The background to this case was that there had been a successful Right to Manage claim and the relevant acquisition date was 26 May 2016. At a case management hearing on 14 August 2018 the Tribunal identified the issues below-:

## **The issues**

- (i) The payability and or reasonableness of service and administration charges in the sum of £3,662.87
- (ii) Whether payments into the account have been properly allocated and whether administration charges incurred after the acquisition date are appropriate.

5. The Tribunal directed that this matter was suitable for a determination without a hearing. The Directions provided that unless either party made a request for the matter to be determined at the hearing on or before 5 October 2018. This Tribunal noted that no request was made and accordingly this matter was determined on the written documents provided to the Tribunal.

**Service charge item & amount claimed total sum claimed £1693.03**

6. The Tribunal had before it the Applicant's statement of case, the service charges demanded were made up of half yearly charges of £714.76 for September March 2015 and £714.76 for March/September 2016 and £263.51 for half yearly charges for March to September 2015.
7. In paragraph 12 of the Applicant's statement of case the Applicant stated:- The Applicant would submit that the acquisition date for the RTM was 26 May 2016 and the last demands were for a period preceding that, being from 25 March 2016. The Landlord is entitled to recovery of funds to meet expenditure arising before the RTM claim. In fact provision is made within the RTM legislation for surplus of funds to be handed to the RTM Company in respect of contributions.
8. The Applicant provided a Statement of Anticipated Service Charge Expenditure for the period 25 March 2015 to 24 March 2016. The Respondent's share of the service charges was 33.4%. The anticipated sums were £500.00 General Maintenance (tenant's share £167.00) Gardening £634.00 (tenant's share £211.76) cleaning £100.00 (tenant's share £211.76) Professional fees £1000.00 (tenant's share £334.00) Insurance (tenant's share £517.70) and smoke control £496.00 (tenant's share £165.66) .
9. The Tribunal noted that the Applicant had not complied with the Directions in respect of Disclosure in that direction 8 required "All relevant invoices" in relation to disputed costs to be included in the bundle and "All relevant accounts".
10. The Applicant in paragraph 6 in their statement of case stated that the Respondents have failed to provide a statement of case or witness statement as required by the Tribunal by Directions dated 14 August 2018. The Applicant would assert that the Respondents have failed to establish a case for the Applicant to answer.
11. The Tribunal in reaching its decision referred to the provisions of the lease which although provided in clause 2 Rents to be payable quarterly in advance and in the fifth Schedule Part 1 made provision in respect of the Maintenance Charge (The 8th schedule provided further information on what sums were included in the maintenance charge.

The Tribunal is satisfied that all of the sums set out in the Anticipated Service Charge expenditure are within the 8<sup>th</sup> Schedule of the lease.

### **The tribunal's decision and Reasons for the tribunal's decision**

12. The Tribunal in reaching its decision referred to the wording in clause 2 of the fifth schedule, which provided that -: "...The Maintenance charge being the percentage specified in Paragraph 7...which the Lessor shall in relation to The Property reasonably and properly incur in each Maintenance Year...the amount of the Maintenance Charge to be certified by the Lessor's Managing Agent or Accountant acting as an expert..."
13. Clause 2 of the fifth schedule also provides for payment in advance on 25 March and 29 September. The Tribunal accepts that Applicant is entitled to claim sums in advance, however at the date of issuing the claim, the sums claimed ought to have been certified sums, and the Tribunal has not been provided with any certified accounts as required by the lease. The Tribunal has also not been provided with any invoices. The only invoices/ ascertainable sums relate to the insurance payments. Accordingly the Tribunal cannot be satisfied on a balance of probabilities that sums were incurred for general maintenance, gardening or professional fees as claimed in the Applicant's statement of claim.
14. The Tribunal has seen the sums claimed for insurance, and have noted that proof has been provided that the sums were incurred for insurance, accordingly the Tribunal is satisfied that the service charges in respect of insurance in the sums of £513.20 (2014/15) £399.59(2015/16) and£412.79 for 2016 in the total sum of £1325.58 is payable. .

### **Administration charge item & amount claimed**

15. Clause 11 of the 8<sup>th</sup> Schedule provides for the payment of all legal and other costs. In the Applicant's statement of claim costs of £444.00 are claimed for Administration fees for "management" for 2016 and £900.00 for legal fees. In his statement Mr Hazan stated of the management fee that £144.00 was for Debt collection in connection with the arrears and £300.00 for initial correspondence and pre action processes in the sum of £300.00.
16. No information is provided concerning the breakdown of the solicitor's fees, the Tribunal has also noted that a notice before Forfeiture dated 11 June 2014,. However the sum of £3,237.42 was recovered by the

leaseholder from the Respondents' mortgagor on 8 September 2014 reducing the sum outstanding. The Tribunal noted that within the bundle was a Statement dated 11 July 2014 from Santander showing a the sum of £4694.84 having been paid, this some is not reflected in the balance, and also forms part of the queries raised by the Respondents ( in an email dated 31 August 2018) . Further, by a letter dated 27 July 2017, the Respondents asked for all the past invoices of the service charge account showing what had been spent on the upkeep of the property.

### **The tribunal's decision and Reasons for the tribunal's decision**

17. There is no information before the Tribunal to say that this request has been complied with the Respondent did make some limited payments of £850.00 between 25 March 2015- 14 August 2017 however this was not enough to satisfy the obligation to pay the service charges in respect of the insurance, accordingly the Tribunal finds that it was reasonable for the landlord to spend money on recovery of the service charges in accordance with clause 11 of the 8<sup>th</sup> Schedule. As the Applicant was not able to satisfy the Tribunal on a balance of probabilities that all of the anticipated expenditure was incurred, the Tribunal has applied a proportionate approach to this cost and has determined that no more than the sum of £600.00 is reasonable and payable.
18. The tribunal determines that the amount payable in respect of Administration charges is £600.00
19. The Total sum payable by the Applicant is £ 1,325.58 for insurance and £600.00 for Administration fees, as the Applicant has not provided invoices or certified accounts in respect of the sums incurred under the anticipated service charges, the Tribunal finds that no other sums are due, and save for arrears prior to March 2016 the sums paid by the Respondent should be credited to the sum found due by the Tribunal.
20. **The Tribunal further directions that the above sum is not payable, unless within 28 days the Applicant provides a statement accounting for the sum of £1457.42 paid by Santander, which does not on the information before the Tribunal appear within the statement of account.**

### **Application under s.20C and refund of fees**

21. No application was made in respect of section 20C by the Respondents and in view of their limited participation and their failure to comply with directions; the Tribunal consider that it is not just or equitable to make an order under section 20C.

### **The next steps**

22. The tribunal has no jurisdiction over ground rent or county court costs. This matter should now be returned to the Clerkenwell & Shoreditch County Court.

**Name:** Judge Daley

**Date:** 12 November 2018

### **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 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).