



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

Case Reference : LON/00AE/LSC/2018/0041

Property : 24B Kenneth Crescent Willesden
London NW2 4PN

Applicant : London Borough of Brent

Representatives : Mr Chris McCarthy of Counsel

Respondent : Ms Haver Leona Armstrong

Representative : In person

Type of Application : Reasonableness of and liability for
service charges and administration
charges under the Landlord and
Tenant Act 1985

Tribunal Members : Professor Robert M. Abbey
(Solicitor)
Mr Nat Miller (Professional
Member)
Mr Richard Shaw FRICS
(Chartered Surveyor)

**Date and venue of
Hearing** : 4th June 2018 at 10 Alfred Place,
London WC1E 7LR

Date of Decision : 13th June 2018

DECISION

Decisions of the tribunal

1. The Tribunal determines that as at the date when the county court proceedings were issued by the applicant there was payable by the respondent to the applicant:

Service charges years 2010-2011

Unpaid service charges for the above service charge year £320.81

Service charges years 2011-2012

Unpaid service charges for the above service charge year £237.80

Service charges years 2012-2013

Unpaid service charges for the above service charge year £263.72

Service charges years 2013-2014

Unpaid service charges for the above service charge year £261.79

Service charges years 2014-2015

Unpaid service charges for the above service charge year £120.70

Service charges years 2015-2016

Unpaid service charges for the above service charge year £185.47

Service charges years 2016-2017

Unpaid service charges for the above service charge year £446.31

Major Works Service charges

Unpaid service charges for the above major works;
The amounts confirmed as reasonable AND set out in paragraphs 10 to 18 below.

2. The file shall be returned to the County Court at Willesden for the determination of the following claims which this tribunal does not have jurisdiction to determine:
 - Court fee(s), interest and
 - Costs
3. The reasons for our decisions are set out below.

The application and procedural background

4. In October of 2017 the applicant landlord commenced legal proceedings against the respondent as proprietor of a long lease of the subject property. The claim made in the county court was for unpaid service charges.
5. The respondent did file a defence which asserted that the Respondent was not liable because she said she was entitled to challenge elements of the claimed service charges but made an admission as to part of the claim in the sum of £1558.56.
6. The applicant's claim concerning the determination of service charges referenced D06YY957 was transferred to this tribunal by order of Deputy District Judge Nadoo from the County Court at Willesden. The date of the order was 29 January 2018.
1. Relevant legal provisions are set out in the Appendix to this decision as are rights of appeal.

The hearing

2. There was an oral hearing on the date shown above. The applicant was represented by Mr McCarthy of Counsel while the respondent was unrepresented and appeared in person. There were no witnesses for the applicant and no oral evidence was heard. Mr McCarthy explained that as the major works were from some eight years ago there was no one able to give oral evidence in support of the claim and so invited the Tribunal to make a decision based upon the papers before it. A trial bundle was handed to the tribunal and the respondent on the morning of the hearing. As the respondent did not appear to have seen this before appearing before the Tribunal she was allowed time to read it although it simply contained documents previously disclosed and sent to her by post in March 2018 by the applicant.

The background

3. 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.
4. The landlord applicant claimed service charges of £1836.60 for the service charge years 2010 through to 2017 as well as additional charges for major works for 2010-2011 in the sum of £8298.28. It is these sums that are in dispute and are the items referred to the tribunal by Deputy District Judge Nadoo.

The service charges claimed

5. Having read and heard oral evidence and submissions from the parties and considered all of the documents provided, the tribunal determines the issue as follows.
6. In regard to the claimed service charges the tribunal finds that the service charges claimed are in part reasonable and payable by the respondent.
7. Dealing first with the charges for the years 2010-2017 it was accepted by the tribunal that these were all reasonable charges and were therefore properly payable by the respondent. In the main they represent insurance premiums for the property. The tenant did express frustration with the insurance particularly regarding a claim affecting a damaged and unrepaired front door but this was in regard to an insurance claim rather than the level of premium. Accordingly, in the absence of any evidence to the contrary the tribunal considered all these yearly charges to be reasonable and therefore the amounts claimed by the Applicant must be payable by the Respondent in the sum of £1836.60.
8. Dealing secondly with the charge for major works for 2010- 2011, these were detailed in a schedule of works at pages 92 through to 97 of the trial bundle giving a breakdown of the completed works as at February 2012. They were set out at page 97 in eight parts covering scaffolding, roof work, rainwater work, brickwork, fascia work, door work, exterior decorations and electrical work. The tribunal considered these in turn and the outcome of these deliberations are set out below.
9. The main difficulty the Tribunal had in relation to the major works was that there was no condition report or survey by or for the Council that took place before the works were completed and which highlighted the need for these works. This kind of report or survey would have been required before going out to tender. Therefore the tribunal was disadvantaged in its decision making process by not knowing the condition of the property at the time the works were commenced. The tribunal therefore could not form a complete view as to the necessity of the works. However, clearly works were done by the applicant but the tribunal had to take into account the lack of this report and any oral evidence at the tribunal hearing. Determinations were therefore made by the tribunal in the light of these deficiencies.
10. The first item was in regard to scaffolding work. The total amount payable by the respondent was shown as being £1854.76, being half of the full charge for the whole building of £3709.52 as of course the respondent is only responsible to refund one half of these charges in accordance with the terms of her lease. It was apparent from the evidence provided by the respondent and not really contested by the applicant that the scaffolding was up at the property for an excessively and unnecessary long period of time. In her defence to the claim filed in

15. The sixth item was said to cover door works where the amount claimed by the applicant from the respondent was declared to be half of £395.90 being £197.95. The work in the main seemed to relate to meter cupboards. The Tribunal thought that this charge was too high for all the works listed and took the view that the reasonable charge to the respondent for these works should be **£175.00**.
16. The seventh item related to external decorations. The amount claimed by the applicant was in the sum of £696.25. The evidence from the respondent was that there were no such works and that she had in fact completed these external decoration works herself. She said that the Council had never decorated the property. The Tribunal again noted that there was no schedule of condition to help them or any oral evidence to support this element of the claim. In the circumstances the tribunal decided to disallow this item completely. Therefore the amount allowed for external decorations is **£nil**.
17. The eight and final item was in relation to electrical works where the respondents contribution was claimed in the sum of £75. The Tribunal could find no convincing evidence to support this element of the claim and in these circumstances the Tribunal decided to disallow this item completely. Therefore the amount for electrical works is **£nil**.
18. In the light of the problems regarding the absent schedule of condition and oral evidence, these eight items are the only service charge amounts the Tribunal has been able to determine. Consequently, any other additional items claimed by the applicant are therefore determined as unreasonable and to be disallowed in full.
19. Therefore with regard to the service charges the tribunal was satisfied that these were, apart from the various items mentioned above, reasonable and proportionate given the nature of the claim and the hearing. The tribunal therefore decided that the service charges set out in paragraph one of this decision were payable by the Respondent.

Transfer back to the County Court

20. There were some claims made in the court proceedings which we do not have jurisdiction to determine. We have therefore transferred the file back to the County Court so that these claims may be pursued if the applicant wishes to do so.

Name: Judge Professor Robert
M. Abbey

Date: 13 June 2018

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

Administration charges

Part 1 Reasonableness of administration charges

Meaning of “administration charge”

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.

Reasonableness of administration charges

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

3(1) Any party to a lease of a dwelling may apply to a leasehold valuation tribunal for an order varying the lease in such manner as is specified in the application on the grounds that—

- (a) any administration charge specified in the lease is unreasonable, or
- (b) any formula specified in the lease in accordance with which any administration charge is calculated is unreasonable.

- (2) If the grounds on which the application was made are established to the satisfaction of the tribunal, it may make an order varying the lease in such manner as is specified in the order.
- (3) The variation specified in the order may be—
- (a) the variation specified in the application, or
 - (b) such other variation as the tribunal thinks fit.
- (4) The tribunal may, instead of making an order varying the lease in such manner as is specified in the order, make an order directing the parties to the lease to vary it in such manner as is so specified.
- (5) The tribunal may by order direct that a memorandum of any variation of a lease effected by virtue of this paragraph be endorsed on such documents as are specified in the order.
- (6) Any such variation of a lease shall be binding not only on the parties to the lease for the time being but also on other persons (including any predecessors in title), whether or not they were parties to the proceedings in which the order was made.

Notice in connection with demands for administration charges

- 4(1) A demand for the payment of an administration charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to administration charges.
- (2) The appropriate national authority may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.
- (3) A tenant may withhold payment of an administration charge which has been demanded from him if sub-paragraph (1) is not complied with in relation to the demand.
- (4) Where a tenant withholds an administration charge under this paragraph, any provisions of the lease relating to non-payment or late payment of administration charges do not have effect in relation to the period for which he so withholds it.

Liability to pay administration charges

- 5(1) An application may be made to a leasehold valuation 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 a leasehold valuation 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 subparagraph (1).

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)