

12590



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

**Case reference** : LON/00AY/LSC/2017/0326

**Property** : Flat 31, 25-35 Whittlesey Street,  
London SE1 8TA

**Applicant** : CH Chesterford Limited

**Representative** : Mr Green (solicitor agent)

**Respondent** : Mr S Canelle

**Representative** : In Person

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

**Tribunal members** : Mr S Brilliant  
Mr H Geddes

**Date and venue of  
hearing** : 11 January 2018  
10 Alfred Place, London WC1E 7LR

**Date of decision** : 30 January 2018

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**DECISION**

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## **Decisions of the Tribunal**

- (1) The Tribunal determines, following the agreement of the parties, that the following sums are payable by the Respondent in respect of the service charges for the following years:

01 January 2014 - 31 December 2014                      £807.97

01 January 2015 - 31 December 2015                      £697.90

01 January 2016 - 31 December 2016                      £749.68

- (2) The Tribunal also determines, following the agreement of the parties, that an administration charge of £72.00 is payable in the year 01 January 2016 - 31 December 2016
- (3) Since the Tribunal has no jurisdiction over statutory interest, County Court costs and fees, or the recovery of any balancing charge, this matter should now be remitted back to the County Court at Central London.

## **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 payable by the Respondent in respect of the service charge years 2014, 2015 and 2016. The service charge years run from 01 January to 31 December.
2. Proceedings were originally issued in the County Court Money Claims Centre at Northampton under claim no. D26YJ388. The claim was transferred to the County Court at Central London and then in turn transferred to this Tribunal, by order of Deputy District Judge Bishop on 16 June 2017.
3. The relevant legal provisions are set out in the Appendix to this decision.

## **The hearing**

4. The Applicant was represented by Mr Green at the hearing and the Respondent appeared in person.

## **The background**

5. The property which is the subject of this application ("the flat") is a first floor flat in what was once a terraced house. The house was part of a row of houses which was rebuilt as flats, behind the original façade, following bomb damage in the last war. There are six flats in the development and the Respondent pays a one sixth of the cost of the services provided by the Applicant.
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 flat granted to him dated 15 April 1992 which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge.

### **The issues**

8. The issues before us concern the service charges arising for the years 2014, 2015 and 2016.
9. At the directions hearing on 10 October 2017, the Respondent was directed to send to the Applicant a Scott schedule setting out by reference to each service charge year the item and amount in dispute, the reasons why the amount is disputed and the amount, if any, which the Respondent would pay for that item.
10. In the year 2014, the Respondent, in particular, challenged the payability of an invoice for electrical works in the sum of £610.00. This was on the grounds that the work was not of an acceptable standard.
11. In the year 2015, the Respondent, in particular, challenged the payability of an invoice for electrical works in the sum of £140.00 on the grounds that the same invoice had been paid for in the previous year.
12. In the year 2016, the Respondent, in particular, challenged the payability of an administration charge of £72.00.
13. In each of these years the Respondent also made a general challenge to the payment of any service charge, without particularising why.
14. At the hearing, with the encouragement of the Tribunal, the parties spent time usefully discussing their differences.
15. The result of the discussions was that the Applicant accepted that the invoice for electrical works in the sum of £140.00 in the year 2015 was

not recoverable. The service charge for that year is therefore reduced to £4,187.41, of which the Respondent's share is £697.90.

16. The parties otherwise agreed that the service charges and administration charge claimed were due and payable.
17. It was hoped that the parties might be able to reach agreement in respect of statutory interest, the County Court costs and fees, and the recovery of any balancing charge, so that all the matters between them could be resolved. The parties were given a further eight days in which to try and reach such an agreement. But, unfortunately, they were unable to do so.
18. Accordingly, the matter must now be remitted back to the County Court for these outstanding issues to be decided.

|              |                        |              |                        |
|--------------|------------------------|--------------|------------------------|
| <b>Name:</b> | <b>Simon Brilliant</b> | <b>Date:</b> | <b>30 January 2018</b> |
|--------------|------------------------|--------------|------------------------|

## **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.