



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

Case Reference : **LON/00BK/LSC/2017/0320**

Property : **Flat 103 Dorset House, Gloucester
Place, London NW1 5AE**

Applicant : **Dorset House Residential Limited
(DHRL)**

Representative : **Dale and Dale, Solicitors**

Respondent : **Mrs Nehir Firat Chadwick
Mr Rupert Clifford Chadwick**

Representative :

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

Tribunal Members : **P M J Casey MRICS
M Cairns MCIEH**

**Date and venue of
Hearing** : **23 February, 2018
10 Alfred Place, London WC1E 7LR**

Date of Decision : **16 April 2018**

DECISION

Decision of the tribunal

The tribunal determines that the following sums are payable by the respondent in respect of the service charges for the years in question

Amount	Year Ending
£5,921.19	29.9.12
£7,339.66	29.9.13
£6,409.35	29.9.14
£7,995.91	29.9.15
£8,323.06	29.9.16
£4,585.28	As an interim on account payment for year ending 29.9.17

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 2012, 2013, 2014, 2015, 2016, and the payment on account for 2017.
2. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

3. The applicant was represented by Mr Comport of Dale and Dale, solicitors, at the hearing and the respondent appeared in person accompanied by Mr M M Myers, Chartered Accountant.
4. The application is dated 10 August 2017. Directions for the conduct of proceedings in relation to it were issued by the tribunal on 21 September 2017. The applicant complied with the first direction by providing the tenant and, in the hearing bundle, the tribunal with full particulars of the service charges the subject of the application, by providing copies of all relevant service charge accounts and demands for payment as well as a copy of the High Court decision in the case *Ajay Vasdev and Others and (1) Bellnorth Limited (in liquidation) (2) Dorset House Residential Limited* [2017] EWHC 1395 (Ch) given by Mr Registrar Jones.
5. The directions also required the respondent to complete a schedule in the form attached to the directions setting out in the relevant column for each service charge year the item and amount in dispute, the reason(s) for disputing the amount and the amount, if any, the tenant

would pay for the item. The respondent simply wrote on the schedule that "I dispute all amounts for all years as claimed by the Applicant".

6. On 16 February Dale and Dale wrote to the tribunal to say they would be seeking leave to introduce a witness statement from a Mr Dennis Daly dated 15 February 2018 relating to matters raised by the respondent dating back to 2003 and 2006. The witness statement had appended to it a decision of the then Leasehold Valuation Tribunal relating to major works at Dorset House, reference LON/00BK/LSC/2009/346, and the witness statements given by Mr Daly and a Mr Nick Johns in those proceedings. Immediately prior to the hearing the respondent handed in further documents, namely a witness statement from Mr Myers. As neither party had any objections we decided to allow these documents in evidence.

The background

7. Dorset House is a substantial mixed use building erected in the mid-1930s in Art Déco style. It is Grade II listed. There is underground car parking and commercial premises on the ground floor. The flat which is the subject of the application is said to be a one bedroomed unit, one of some two hundred residential flats, on, principally, the nine upper stories of the building.
8. By the 1990s it became clear that the building's services had reached the end of their natural life and a phased programme of major works was implemented to replace the existing cold water supply, the communal boilers, the electricity supply and the system for providing hot water and central heating to the individual flats. The vast cost of these works undertaken by the then head lessee, Bellnorth Limited, under its obligations under the terms of the various long leases was to be met by the long leaseholders through their obligations to pay service charges under those leases. It suffices for this case simply to say that the works did not go to plan. Various issues came before the LVT arising from disputes between the landlord and the tenants. Eventually on 23 December 2010 Bellnorth went into voluntary liquidation owing large sums to contractors. Bellnorth's interest in Dorset House was subsequently sold to Dorset House Residential Limited.
9. 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.
10. 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 respondent takes

no points regarding the provisions of the lease and no further reference need be made to it.

The issues

11. The applicant identified the relevant issues it sought determination of as being the payability and/or reasonableness of service charges actually incurred for the years ending 29 September 2012 to 2016 inclusive and of the budget for the year ending 29 September 2017. For her part the respondent alleges no sums are payable to the applicant because it obtained its interest by fraud and no sums were payable for insurance because that too had involved fraud.
12. Mr Comport, for the applicant, said that the respondent had not disputed the quantum or quality of any of the heads of service charge expenditure for any of the years in question but had made various allegations of fraud which she claimed invalidate the demands for service charges made in respect of her ownership of the long leasehold interest. The applicant had produced in evidence those demands, lawfully served, together with the year-end accounts on which they were based. The evidence also included a copy of the High Court judgement of Mr Registrar Jones referred to in 4) above in which it was determined that the applicant had acquired its head leasehold interest for monies worth and not through any fraudulent transaction. The Land Registry entry showing the applicant as proprietor of that interest was also in evidence.
13. He called evidence from Mr T Burr, of Parkgate Aspen, the managing agents, who had provided a witness statement. Mr Burr said the amounts sought were year ending (y/e) 29/9/12 £5,921.19, y/e 29/9/13 £7,339.66, y/e 29.9.14 £6,409.35, y/e 29/9/15 £7,995.91, y/e 29/9/16 £8,323.06 and estimated y/e 29/9/17 £4,585.28 (interim only). The estimated charge for y/e 29/9/17 is based on the previous completed year accounts whilst the first two years had been adjusted to remove sums disallowed by the First-Tier Tribunal under case reference LON/00Bk/LSC/2016/0135. Whilst he had not been involved at the relevant times in 2003 and 2006 he understood the respondent's complaints that the flat had not been connected to the new electrical cabling and had not had new radiators installed for heating stemmed from the failure to give access to contractors. It was the only flat out of some 200 in this position. The insurance provider was aware of the situation.
14. Mr Comport also called Mr D Daly to give evidence. He is a principal of CD Associates Consulting Engineers and was closely involved in two of the major works packages at Dorset House. In addition to his witness statement he included a copy of the witness statement he gave in the LVT hearing referred to at 6) as well as a copy of that decision

and the witness statement given at the time by Mr N John employed in a tenant liaison role for that project.

15. Mr Daly spoke to the difficulties encountered in gaining access to the respondent's flat (as well as to many others) which resulted in the failure to connect the new electricity supply cable to the meter in the flat. Beyond the meter, and per the lease, rewiring the flat itself was the individual leaseholder's responsibility. Following court proceedings access was obtained to run the new hot water and heating mains through the flat but further access difficulties prevented the landlord's contractors installing the radiators off a spur from the mains.
16. Mrs Chadwick's main defence to the claim against her is that the applicant is not the true landlord having obtained its title through fraud. As such it has no right to issue demands for or to collect service charges. Her allegations appear to be based on copy records which she obtained from Companies House relating to date of formation of DHRL its various previous incarnations/names and the personnel of it and other companies involved in the transfer. The respondent also alleges DHRL acquired the head leasehold interest at an undervalue by fraudulent means. She also claims the insurance policy for the block had been obtained by fraud and she provided copies of various insurance documents and her correspondent with Aviva and the broker. The policy does not have any exclusions or special conditions which in her view it would have if the insurer had been informed of the true condition of the electrical wiring in the flat. A further fraud is claimed to have been perpetrated through the engagement of a firm called Vision Building Services Ltd to act as project managers and "troubleshooters" when the heating and hot water replacement project ran into difficulties. Large sums were paid to this firm in fees.
17. Mrs Chadwick explained why there had been access difficulties with her flat as being the fault of the then head lessee, Bellnorth Ltd, whose contractors when given access in late 2001 early 2002 had left the flat contaminated with asbestos resulting in her and her son suffering ill health and leading to a lack of trust on her part. Her flat had not been connected to the new electrical cabling and she had for years now had no heating; it was almost uninhabitable. The head lessee had failed to comply with consent orders in 2005 and 2008 under which various County Court actions were supposed to have been resolved with the landlord agreeing to do necessary works to the flat.
18. Mr Myers in his statement supported the claims made by Mrs Chadwick.

The tribunal's decision

19. DHRL is registered at the Land Registry as the owner of the head leasehold interest in Dorset House under which it is obliged to provide certain services to the block the cost of which it is entitled to recover through service charges payable by the long leaseholders including the respondents. Mr Registrar Jones, sitting in the High Court, decided in *Ajay Vasdev and others and (1) Bellnorth Limited (in liquidation) (2) Dorset House Residential Limited [2017] EWHC 1395 (Ch)* that DHRL had paid monies worth to acquire the head leasehold interest and were the owners of it. As a First-tier Tribunal of the Property chamber we can only accept that decision and the registration as right. It is appreciated that Mrs Chadwick's allegations of fraud in connection with the acquisition raise other matters than whether or not market value was paid and that those matters were not considered in the High Court case. They are however matters of company law and possibly criminal law which are not within this tribunal's jurisdiction to consider. If she wishes to pursue these allegations she will have to do so elsewhere.
20. The claim that the insurance was obtained by fraud and is thus invalid is made solely on the basis that the policy of insurance contains no exclusions or special conditions referring to the claimed dangerous condition of the electrical wiring in the subject property. The applicant says the insurer is aware but puts forward no witness evidence to this effect claiming that it hadn't been appreciated that this was the basis of the respondent's claim. The absence of any exclusions or special conditions is not of itself sufficient evidence for us to find that the insurance was obtained by fraud and as such is of no value and should not be contributed to by the respondent's through their service charge payments.
21. Allegations of fraud in relation to the contract employing Vision Services are of no relevance to the service charges in issue. The LVT in 2009 considered these fees and determined that the contract employing Vision Services was a long term qualifying agreement. None of the consultation requirements of S20 of the Act had been complied with in respect of it and the tribunal refused an application under S20ZA of the Act for dispensation. As such leaseholder service charge contributions in respect of these fees were limited to £100 per annum per flat which the tribunal was of the view was less than the value of the service provided. It is not clear what if any of such fees feature in the service charge years in question and 2011/12 and 2012/13 have already been subject to a First-tier Tribunal determination.
22. The condition of the respondent's flat could be a ground for bringing an action for breach of covenant against the landlord if it or any part

of it is due to a failure of the landlord to perform its obligations under the lease. It could also form the basis for a counter claim in these proceedings but Mrs Chadwick has seen the making of such a claim as acknowledging or legitimising DHRL's claim to be the lawful landlord which she disputes. In that no counter claim was particularised, evidenced and argued before us there is nothing the tribunal can do. Nor was it argued before us that DHRL as successor in title has any obligations in respect of the undertakings entered into by Bellnorth on the Consent Order either legally or morally. We would however take the opportunity to urge the parties to make the effort to resolve these repair issues amicably.

23. On the evidence before the tribunal and bearing in mind the limits of our jurisdiction we determine that the amount claimed as services charges incurred and as payments in advance by DHRL are payable to it by the respondents.

Name: Patrick M J Casey

Date: 16 April 2018

ANNEX - RIGHTS OF APPEAL

1. 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.
2. 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.
3. 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.
4. 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.

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.