



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

Case Reference : **LON/00/AZ/LBC/2018/0042**

Property : **Ground Floor Flat, 161
Wellmeadow Road, London SE6
1HP**

Applicant : **Westleigh Properties Ltd**

Representative : **Ms Melling
Gateway Property Management**

Respondent : **Chardmoor Property Ltd**

Representative : **Did not appear and was not
represented**

Type of Application : **S27A Landlord and Tenant Act
1985**

Tribunal Members : **Judge F J Silverman Dip Fr LLM
Mr H Geddes**

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

Date of Decision : **11 October 2018; reissued 15
November 2018**

DECISION

The Tribunal determines that the Respondent is liable to pay the sum of £7,097.30 to the Applicant under the service charge provisions contained in its lease.

The Tribunal determines that the amount of the advance payments demanded by the Applicant are reasonable.

The Tribunal orders the repayment to the Applicant of their hearing fee of £200.

We exercise our powers under Rule 50 to correct the clerical mistake, accidental slip or omission at paragraph 17 of our Decision dated 11/10/2018. Our amendments are made in bold.

Signed: Judge F J Silverman
Dated: 15 November 2018

REASONS

- 1 The Applicant is the landlord of the property known as Ground Floor Flat, 161 Wellmeadow Road, London SE6 1HP (the property) of which the Respondent is the tenant and leaseholder.
- 2 This matter, relating to the recovery of a sum under the service charge provisions contained in the lease was transferred to the Tribunal from the County Court.
- 3 Directions were issued by the Tribunal on 9 January and 21 June 2018.
- 4 A bundle of documents was presented for the Tribunal's consideration.
- 5 The service charge issue before the Tribunal related to the recovery of arrears of service charge for the years 2009, 2010 and 2011 together with the reasonableness of the advance demands and the issue of their payability in the light of the provisions of s47 Landlord and Tenant Act 1987.
- 6 The items claimed by the Applicants appear on a Scott Schedule starting at page 29 of the bundle. References to individual items refer to their number as given in the Scott Schedule.
- 7 With the exception of the specific items dealt with separately below (paragraphs 8-14) and subject to paragraph 15 below the Tribunal examined the invoices, accounts and demands relating to items 1, 3, 4, 9 and 14 and was satisfied as to the validity and reasonableness of the sums charged.
- 8 Item 6 relates to an advance payment of service charge (£748.25). The Respondent had not challenged the Applicant's right to demand a sum in advance but had queried its reasonableness. The Applicant demonstrated to the Tribunal that the advance payment was based on

- an annual budget a copy of which was sent to each tenant (pages 239-240). On that basis the Tribunal determines that the amount of the advance payments demanded by the Applicant is reasonable.
- 9 The Respondent challenged item 7 which related to major works saying that he had not been served with the appropriate s20 documentation. Pages 60-108 of the bundle contain a copy of the relevant s20 documentation addressed to the Respondent. The Tribunal therefore finds this objection unsubstantiated and subject to paragraph 15 below, determines that the amount demanded under the invoice on page 231 is payable by the Respondent.
- 10 Item 2 is not a service charge item and is therefore not within the Tribunal's jurisdiction (£236 for service of a s146 notice).
- 11 Items 5 and 11 had been conceded by the Applicants as not being payable by the Respondent.
- 12 Item 8 relating to the recovery of a water rates charge which had been paid by the Applicant on the Respondent's behalf is not a service charge item and therefore not within the Tribunal's jurisdiction.
- 13 Items 12 and 13 on the Scott Schedule are both credit items where money is being repaid to the Respondent by the Applicant and are not effectively challenged by the Respondent.
- 14 Item 15 post dates the accounting years under consideration in this application and so has not been debated by the Tribunal in terms of its reasonableness.
- 15 With the exception of item 15 none of the invoices produced by the Applicants complied with s47 Landlord and Tenant Act 1987. The Applicant argued that the invoice relating to item 15 (page 253) did satisfy the requirements of the section and in so doing retrospectively validated all the previous non-compliant invoices. Although there is support for this contention (see *Dallhold Estates (UK) Ltd v Lindsey Trading Inc* [1994] 1EGLR93), the Tribunal prefers to rely on the conventional view that liability for a sum demanded under a defective invoice is suspended until a new compliant invoice is served on the tenant. In this case none of the invoices referred to above had complied with s47 and the recovery by the Applicant of the sums due is therefore dependent on the service in each case of a fresh invoice (for the original amount) which does contain the landlord's name and address as required by the Act.
- 16 The amount claimed by the Applicant in the present proceedings under paragraph 3 of the Directions is £7,521.60. This sum must be reduced by £424.30 representing items 2 and 8 from the Scott Schedule, neither of which is claimable under the jurisdiction of the Tribunal. The amount payable by the Respondent to the Applicants is therefore £7097.30.
- 17 No application was made under s20C Landlord and Tenant Act 1985. **The Applicant's application for costs was declined because the Tribunal had no jurisdiction to hear it.**
- 18 The case is remitted to the Central London County Court.

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).

Section 47 Landlord and Tenant Act 1987

(1) Where any written demand is given to a tenant of premises to which this Part applies, the demand must contain the following information, namely—

(a) the name and address of the landlord, and

(b) if that address is not in England and Wales, an address in England and Wales at which notices (including notices in proceedings) may be served on the landlord by the tenant.

(2) Where—

(a) a tenant of any such premises is given such a demand, but

(b) it does not contain any information required to be contained in it by virtue of subsection (1),

then (subject to subsection (3)) any part of the amount demanded which consists of a service charge [F1 or an administration charge] (“the relevant amount”) shall be treated for all purposes as not being due from the tenant to the landlord at any time before that information is furnished by the landlord by notice given to the tenant.

(3) The relevant amount shall not be so treated in relation to any time when, by virtue of an order of any court [F2 or tribunal], there is in force an appointment of a receiver or manager whose functions include the receiving of service charges [F3 or (as the case may be) administration charges] from the tenant.

(4) In this section “demand” means a demand for rent or other sums payable to the landlord under the terms of the tenancy.

Judge F J Silverman as Chairman
Date 11 October 2018
Reissued 15 November 2018

Note:
Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking