



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

Case Reference : **CHI/43UB/LSC/2018/0087**

Property : **Sandown House, 1 High St, Esher,
Surrey KT10 9SL**

Applicant : **Various lessees**

Representative : **Mr R Heald**

Respondent : **Long Term Reversions Ltd**

Representative : **Mr B Stimmler of Counsel**

Type of Application : **S27A and s20C Landlord and
Tenant Act 1985 Rule 13 costs**

Tribunal Members : **Judge F J Silverman Dip Fr LLM
Mrs J E Coupe FRICS**

**Date and venue of
Hearing** : **Havant Justice Centre
05 September 2019**

Date of Decision : **10 September 2019**

DECISION AND DIRECTIONS

DECISION

In the absence of any substantiated evidence from the Applicants to the contrary, the Tribunal determines that the amounts demanded by the Respondents for the service charge years 2017 to 2018 are reasonable. No order is made under s20C.

REASONS

- 1 The Applicants are tenants and long leaseholders of the property known as Sandown House, 1 High Street, Esher Surrey KT10 9SL (the property) of which the Respondents were at the relevant time the landlord and reversioner.
- 2 This application, together with a second application which the Tribunal heard separately, was dated 29 August 2018. The Decision in the earlier case, which related solely to insurance payments, was promulgated on 01 April 2019 and this decision should be read in conjunction with that earlier decision in respect of which no appeal was lodged.
- 3 Directions were issued by the Tribunal on 22 October and 26 November 2018 and on 8 February, 7 March 2019 and 10 June 2019. The Directions recorded that the parties did not consider that an inspection of the property was necessary. On that basis and since no request to inspect was made by either party, the Tribunal did not inspect the property.
- 4 A bundle of documents comprising two lever arch files was presented for the Tribunal's consideration and had been read by the Tribunal prior to the commencement of the hearing.
- 5 At the hearing the Respondents were represented by Mr B Stimmler of Counsel. The Applicants had been advised and represented throughout by Mr R Heald FRICS.
- 6 The issue before the Tribunal related to the charges demanded in respect of a major works contract during the service charge year 2017-2018.
- 7 The Respondents' right to recover the service charges and the Applicants' obligation to pay a contribution towards them are contained in their respective leases (Schedule 5 Clause 8) and were not disputed.
- 8 Similarly, no issue was taken by the Applicants about the s20 procedures nor in relation to the service or content of demands by the

- Respondents. No demands or invoices were included in the hearing bundle.
- 9 The Applicants' application asked the Tribunal to order the reimbursement to the Applicants of the sum of £155,000 (later reduced to £110,000) being the cost incurred by the Respondents in carrying out the major works and which the Applicants contended were defective or sub-standard. The Tribunal explained that it had no jurisdiction to order damages or the repayment of money and that its role under s27A was simply to determine the reasonableness of the service charges demanded by the Respondents.
- 10 The Respondents had included within the hearing bundle a report from an independent surveyor who had concluded that work to the value of approximately £29,000 was required to complete outstanding works and to rectify areas where the work already done was not of an acceptable standard. The Tribunal adjourned briefly to allow the Applicants to consider whether a reduction of their service charge by this sum would satisfy their demands. Following that adjournment the Applicants' representative informed the Tribunal that this sum was insufficient.
- 11 The Tribunal noted that the statement setting out the Applicants' application was in the form of an expert's report from Mr Heald who was also acting as the Applicants' representative. The bundle also contained a further witness statement from Mr Heald. The Tribunal reminded him that as an expert his primary duty was to the Tribunal and that in those circumstances it would be incompatible with his duty of impartiality for him to have both advised the Applicants and prepared their application and then to purport to give evidence as an expert. No other witnesses were to appear for the Applicants. Other statements contained within the hearing bundle were unsubstantiated. Mr Heald said that he would choose to act as a representative and not as an expert in this case.
- 12 For the Respondents Mr Stimmler said that his clients were in some difficulty because although the Applicants had included many photographs in their bundle they had not set out any answerable case. In particular, they had not complied with the Tribunal Directions in that they had not provided an independent expert report which had therefore meant that the parties' respective experts had not met and no definitive Scott Schedule had been prepared. They said that there was nothing in the Applicants' documentation which made a case under s27A and therefore that the Tribunal should either strike it out or dismiss it.
- 13 Having considered the documentation included in the bundle the Tribunal agreed with the Respondents that it contained no evidence on which an application under s27A could succeed. The Applicants had supplied a schedule which itemised various alleged defects and attributed to each defect a sum of money which they required to be reimbursed. At no point was there any statement which explained the precise nature of the defects or justified the sums claimed. No attempt had been made to obtain an independent report from a suitably qualified surveyor or builder and no alternative quotations in terms of the nature of the remedial work or its costs were supplied. It is for the

- Applicants to establish their case and there is no requirement for the Respondents to disprove a case which has not been made out.
- 14 In this case the Applicants have significantly failed to establish any arguable case challenging the works done by the Respondents' which leaves the Tribunal with little option but to issue a determination that the charges demanded by the Respondents are reasonable. This the Tribunal does with considerable reluctance because it is clear from the Respondents' own evidence that a quantified amount of remedial work needs to be undertaken. Since the Respondents are no longer the freeholders it would no doubt be of assistance to the Applicants if the Respondents could, as a gesture of goodwill, offer a voluntary contribution towards the cost of those remedial works.
- 15 The Tribunal was asked by the Respondent either to strike out or dismiss the Applicants' case but is unable under the Tribunal Rules of Procedure to make either of those orders because no prior written warning of the Tribunal's intention to make such an order had been given. Similarly, the Tribunal is unable in this case to impose a sanction on the Applicants for failure to comply with the Tribunal's Directions because the Respondents have not made an application in the appropriate form and it is in any event now too late to impose any meaningful penalty.
- 14 A s20C application was made by the Applicants in relation to both this hearing and the previous hearing. On behalf of the Respondents it was said that such an order would be pointless because the Respondents no longer owned the freehold of the property and so were not in a position to recover any costs from the Applicants through the service charge. Taking that into account, together with the fact that the Applicants have failed to succeed in either of their applications the Tribunal considers that it would not be appropriate to make such an order and declines to do so.
- 15 In respect of the Respondents' application for costs under Rule 13 the Tribunal makes the following DIRECTIONS
- 15.1 On or before 17.00 on 26 September 2019 the Respondents will serve on the Applicants a written statement setting out their case under Rule 13 accompanied by a summary statement of costs and any supporting documentation.
- 15.2 The Applicants will serve their written response and any supporting documents on the Respondents on or before 17.00 on 17 October 2019.
- 15.3 If required, the Respondents may serve a short written reply on the Applicants on or before 17.00 on 31 October 2019.
- 15.4 The Respondents will prepare a paginated hearing bundle containing all the documentation which has been exchanged between the parties under the preceding sub-paragraphs and will deliver 3 copies to the Tribunal and one copy to the Applicants to arrive on or before 17.00 on 8 November 2019.
- 15.5 The Tribunal will determine this matter by way of a paper determination on the first available date after 11 November 2019.
- 15.6 Liberty to apply for further Directions if needed.

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.

21B Notice to accompany demands for service charges

(1) A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges.

(2) The Secretary of State 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 a service charge which has been demanded from him if subsection (1) is not complied with in relation to the demand.

(4) Where a tenant withholds a service charge under this section, any provisions of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.

(5) Regulations under subsection (2) may make different provision for different purposes.

(6) Regulations under subsection (2) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Failure to comply with rules, practice directions or Tribunal directions Rule 8

8.—(1) An irregularity resulting from a failure to comply with any provision of these Rules, a practice direction or a direction does not of itself render void the proceedings or any step taken in the proceedings.

(2) If a party has failed to comply with a requirement in these Rules, a practice direction or a direction, the Tribunal may take such action as the Tribunal considers just, which may include—

1. (a) waiving the requirement;
2. (b) requiring the failure to be remedied;
3. (c) exercising its power under rule 9 (striking out a party's case);
4. (d) exercising its power under paragraph (5); or
5. (e) barring or restricting a party's participation in the proceedings.

(3) In land registration cases, the action that the Tribunal may take includes—

1. (a) where the party who failed to comply was the person who made (or has been substituted for or added to the party who made) the original application, directing the registrar to cancel the original application in whole or in part;
2. (b) where the party who failed to comply was an objector to (or was substituted for or added as an objector to) the original application, directing the registrar to give effect to that application in whole or in part as if that objection had not been made.

(4) In land registration cases, the Tribunal must, if the action taken does not include either of the requirements referred to in paragraph (3), send written

notice to the parties of the Tribunal's decision as to what action is taken (if any) and give any consequential directions.

(5) The Tribunal may refer to the Upper Tribunal, and ask the Upper Tribunal to exercise its power under section 25 of the 2007 Act in relation to, any failure by a person to comply with a requirement imposed by the Tribunal—

1. (a) to attend at any place for the purpose of giving evidence;
2. (b) otherwise to make themselves available to give evidence;
3. (c) to swear an oath in connection with the giving of evidence;
4. (d) to give evidence as a witness;
5. (e) to produce a document; or
6. (f) to facilitate the inspection of a document or any other thing (including any premises).

Striking out a party's case Rule 9

9.—(1) The proceedings or case, or the appropriate part of them, will automatically be struck out if the applicant has failed to comply with a direction that stated that failure by the applicant to comply with the direction by a stated date would lead to the striking out of the proceedings or that part of them.

(2) The Tribunal must strike out the whole or a part of the proceedings or case if the Tribunal—

1. (a) does not have jurisdiction in relation to the proceedings or case or that part of them; and
2. (b) does not exercise any power under rule 6(3)(n)(i) (transfer to another court or tribunal) in relation to the proceedings or case or that part of them.

(3) The Tribunal may strike out the whole or a part of the proceedings or case if—

1. (a) the applicant has failed to comply with a direction which stated that failure by the applicant to comply with the direction could lead to the striking out of the proceedings or case or that part of it;
2. (b) the applicant has failed to co-operate with the Tribunal such that the Tribunal cannot deal with the proceedings fairly and justly;
3. (c) the proceedings or case are between the same parties and arise out of facts which are similar or substantially the same as those contained in a proceedings or case which has been decided by the Tribunal;
4. (d) the Tribunal considers the proceedings or case (or a part of them), or the manner in which they are being conducted, to be frivolous or vexatious or otherwise an abuse of the process of the Tribunal; or
5. (e) the Tribunal considers there is no reasonable prospect of the applicant's proceedings or case, or part of it, succeeding.

(4) The Tribunal may not strike out the whole or a part of the proceedings or case under paragraph (2) or paragraph (3)(b) to (e) without first giving the parties an opportunity to make representations in relation to the proposed striking out.

(5) If the proceedings or case, or part of them, have been struck out under paragraph (1) or (3)(a), the applicant may apply for the proceedings or case, or part of it, to be reinstated.

(6) An application under paragraph (5) must be made in writing and received by the Tribunal within 28 days after the date on which the Tribunal sent notification of the striking out to that party.

(7) This rule applies to a respondent as it applies to an applicant except that—

1. (a) a reference to the striking out of the proceedings or case or part of them is to be read as a reference to the barring of the respondent from taking further part in the proceedings or part of them; and
2. (b) a reference to an application for the reinstatement of proceedings or case or part of them which have been struck out is to be read as a reference to an application for the lifting of the bar on the respondent from taking further part in the proceedings, or part of them.

(8) If a respondent has been barred from taking further part in proceedings under this rule and that bar has not been lifted, the Tribunal need not consider any response or other submission made by that respondent, and may summarily determine any or all issues against that respondent.

Orders for costs, reimbursement of fees and interest on costs Rule 13.—(1) The Tribunal may make an order in respect of costs only—

(a) (b)

(c)

under section 29(4) of the 2007 Act (wasted costs) and the costs incurred in applying for such costs;

if a person has acted unreasonably in bringing, defending or conducting proceedings in— (i) an agricultural land and drainage case,

(ii) a residential property case, or

(iii) a leasehold case; or

in a land registration case.

(2) The Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor.

(3) The Tribunal may make an order under this rule on an application or on its own initiative. (4) A person making an application for an order for costs—

(a) must, unless the application is made orally at a hearing, send or deliver an application to the Tribunal and to the person against whom the order is sought to be made; and

(b) may send or deliver together with the application a schedule of the costs claimed in sufficient detail to allow summary assessment of such costs by the Tribunal.

(5) An application for an order for costs may be made at any time during the proceedings but must be made within 28 days after the date on which the Tribunal sends—

1. (a) a decision notice recording the decision which finally disposes of all issues in the proceedings; or
2. (b) notice of consent to a withdrawal under rule 22 (withdrawal) which ends the proceedings.

(6) The Tribunal may not make an order for costs against a person (the “paying person”) without first giving that person an opportunity to make representations.

(7) The amount of costs to be paid under an order under this rule may be determined by—

1. (a) summary assessment by the Tribunal;
2. (b) agreement of a specified sum by the paying person and the person entitled to receive the costs (the “receiving person”);
3. (c) detailed assessment of the whole or a specified part of the costs (including the costs of the assessment) incurred by the receiving person by the Tribunal or, if it so directs, on an application to a county court; and such assessment is to be on the standard basis or, if specified in the costs order, on the indemnity basis.

Judge F J Silverman as Chairman

Date 10 September 2019

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.