



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

Case reference : **LON/00AG/LSC/2019/0058**

Property : **Raised Ground Floor Flat, 180
Camden Road, London NW1 9HG**

Applicant : **Stella Wong-Lun-Sang and Davide
Sola**

Representative : **Not in attendance**

Respondent : **180 Camden Road Ltd**

Representative : **Christopher Briere-Edney
(Director)**

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

Tribunal Members : **Judge Robert Latham
Mr Peter Roberts DipArch RIBA**

**Venue and Date of
Hearing** : **10 Alfred Place, London WC1E 7LR
on 15 May 2019**

Date of decision : **20 May 2019**

DECISION

Decisions of the Tribunal

- (1) The Tribunal substitutes 180 Camden Road Ltd as Respondent to this application.
- (2) The Tribunal determines that the following service charges are payable:

- (i) A management fee of £700 payable for 2017 and 2018;
 - (ii) Repairs of £5,128 charged to the service charge accounts for 2018; and
 - (iii) An advance service charge of £343.24 demanded on 4 January 2019 on account of the service charges for 2019.
- (3) The Tribunal does not make any order under section 20C of the Landlord and Tenant Act 1985 or paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002. Neither does the Tribunal make any order for the refund of fees.

The Application

1. By an application issued on 13 February 2019, the Applicants seek a determination pursuant to s.27A of the Landlord and Tenant Act 1985 as to the amount of service charges in respect of the service charge years 2017 and 2018. They seek a determination of the payability and reasonableness of the following service charge items, in respect of which their share is 35%:
 - (i) A management fee of £700 payable for 2017 and 2018;
 - (ii) Repairs of £5,128 charged in the service charge accounts for 2018; and
 - (iii) An advance service charge of £343.24 demanded on 4 January on account of the service charges for 2019.
2. The Applicants specified in the application form that the following are their landlords: Mr Christopher Briere-Edney, Ms Kathryn Briere-Edney and Ms Elaine Lewis. On 1 March, Mr Briere-Edney notified the Applicants that they had not issued the application against the correct landlord. It should have been issued against 180 Camden Road Ltd which acquired the freehold interest on 15 June 2016 and became the relevant landlord. The Tribunal is satisfied that this is correct and makes an order pursuant to Rule 10 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rule 2013 (“the Tribunal Rules”) substituting 180 Camden Road Ltd as the Respondent.
3. The Applicants indicated that they were content for the application to be determined on the papers. On 15 February, the Tribunal gave Directions. It was satisfied that the matter should be determined at an oral hearing. The matter was set down for hearing for today.
4. Pursuant to the Directions:

(i) The Respondent provided the Applicants with copies of the relevant service charge accounts, demands for payment and invoices for the sums in dispute;

(ii) The Applicants have filed their Bundle of Documents (reference to which will be prefixed by “A.____”); and

(iii) The Respondents have filed their Bundle (reference to which will be prefixed by “R.____”). This includes witness statements from Mr Briere-Edney, Ms Briere-Edney and Ms Lewis.

5. On 27 February, Dr Wong-Lun-Sang informed the Tribunal that the Applicants would be away on business on 15 May and would be unable to attend. They stated that, if possible, they would like the matter to be dealt with on the papers. Dr Wong-Lun-Sang is a medical doctor and a solicitor. In their application, the Applicants had been asked to specify any dates in the subsequent four months when they would not be available. No dates were specified. On 2 March, the Respondents opposed this application, arguing that an oral hearing was required. On 5 March, the papers were considered by a Procedural Judge who decided that the hearing should proceed on 15 May.
6. The relevant legal provisions are set out in the Appendix to this decision.

The Hearing

7. The Applicants did not appear. On 14 May, Dr Wong-Lun-Sang informed the Tribunal that she would not be able to attend the hearing. She stated that she was assisting, pro bono, the QC who is representing victims at the London Bridge Inquest. She did not indicate why her husband could not represent their interests. She did not request an adjournment.
8. We were satisfied that it was appropriate to proceed. There has been a history of proceedings between the parties both before this Tribunal and the County Court. On 12 February 2019, the Applicants failed to appear in the County Court to defend a claim for costs relating to the service of a Section 146 Notice (E8QZ0K4F). The Respondent obtained a judgement in the sum of £1,043. We were told that there have been previous occasions on which the Applicants have failed to attend. The Applicants are not currently paying their service charges. On 26 February 2019, there were arrears of £2,383.03.
9. Mr Briere-Edney, Ms Briere-Edney and Ms Lewis all appeared on behalf of the Respondent. They are the sole shareholders and directors of 180 Camden Road Ltd. Mr Briere-Edney acted as the main representative, but the Tribunal heard from the three of them.

10. Mr Briere-Edney has held senior management positions with Debenhams and John Lewis. He has been involved in commercial and residential property for some 40 years. He, together with Ms Briere-Edney, own and manage 10 other commercial and residential properties. Ms Lewis is a chartered accountant and is employed as an auditor.

The Background

11. 180 Camden Road (“the building”) is a three storey Victorian property in a Conservation Area which has been converted into three flats:

- (i) The Garden Flat is owned and occupied by Ms Elaine Lewis. She has owned her flat since about 2009.

- (ii) The Raised Ground Floor Flat is owned by Dr Stella Wong-Lun-Sang and Professor Davide Sola. They do not currently occupy the flat.

- (iii) The First Floor Flat is owned by Mr Briere-Edney and Ms Briere-Edney. They do not occupy their flat but live elsewhere in Camden Road.

12. In 1995, Dr Wong-Lun-Sang had acquired the freehold which included the Raised Ground Floor Flat. However, the other lessees exercised their statutory right to acquire the freehold which was completed on 4 November 2014. Upon the statutory enfranchisement, Dr Wong-Lun-Sang was granted a 999-year lease at a peppercorn rent of the Raised Ground Floor Flat.

13. There have been three Tribunal determinations in respect of the enfranchisement (LON/00AG/OC9/2013/0074 – 28 January 2014; and LON/00AG/OCE/2013/0251 – 18 March and 25 June 2014). On 25 June 2014, the Tribunal made a penal costs order against the Dr Wong-Lun-Sang under Rule 13(1)(b) of the Tribunal Rules having regard to her unreasonable conduct of the proceedings.

14. There have been two subsequent transfers:

- (i) On 15 June 2016, Mr Briere-Edney, Ms Briere-Edney and Ms Lewis transferred the freehold interest to 180 Camden Road Ltd. Since this date, all demands for rent have specified 180 Camden Road Ltd as the relevant landlord.

- (ii) In March 2015, Dr Wong-Lun-Sang made Professor Sola, her husband, a joint tenant of her flat. Mr Briere-Edney complained that the landlord was not notified of this transfer as required by the lease.

15. The Respondents state that when they acquired the freehold from Dr Wong-Lun-Sang there was a backlog of repairs. They commissioned a 10 Year Maintenance Report from Willmotts (at R1.3). The execution of the required works has been delayed because of the Applicants' failure to pay their service charge.
16. In March 2016, Mr Briere-Edney, Ms Briere-Edney and Ms Lewis issued proceedings for a determination of the payability and reasonableness of service charges (LON/00AG/LSC/2016/0139). These proceedings were eventually compromised. Mr Briere-Edney stated that he had hoped that this would help to foster a better relationship with Dr Wong-Lun-Sang for the future. Unfortunately, this has not occurred.
17. This Tribunal is required to determine service charges payable for 2017 and 2018, together with an advance service charge for 2019. The Service Charge Accounts for 2017 are at R2.10-13 and for 2018 at R2.25-28. The accounts provide full details of the repairs and maintenance items.
18. The Respondents rely upon the following demands, all of which have been accompanied by the relevant Summary of Rights and Obligations:
 - (i) On 24 January 2018 (at R2.7-18), the Respondent demanded payment of the service charges for 2017;
 - (i) On 4 January 2019 (at R2.22-33), the Respondent demanded payment of the service charges for 2018;
 - (i) On 4 January 2019 (at R2.24), the Respondent demanded payment of the interim service charge of £343.24 for 2019.

All these demands make it quite clear that the relevant landlord is 180 Camden Road Ltd.
19. There was extensive pre-action correspondence prior to the issue of the application. On 8 January 2019 (at R2.54), the Applicants raised six queries. On 15 January, the Respondent made a full response (R2.55). The Applicant was invited to inspect the relevant invoices and receipts. On 15 January (at R2.58), the Applicant raised further queries. They stated that it was "rather onerous" for them to inspect the documentation during normal working hours. The Respondent replied on 17 January (at R2.16). There were further emails dated January 18,19, 21, 28 and February 11 (at R2.66-71). Despite these responses, the Applicants issued their application on 13 February.

The Lease

20. The Applicants' lease, dated 9 November 2014, is at A4. It is for a term of 999 years from 24 June 2013 at a peppercorn rent. The Tribunal highlights the following provisions:
- (i) Clause 5 specifies the lessor's covenants. This includes covenants to:
 - (a) insure the building;
 - (b) clean, decorate and repair the common parts.
 - (c) maintain and keep in good and substantial repair and condition the main structure of the building, including the roof, gutters and main water pipes.
 - (ii) By Clause 4(4) the lessee covenants to pay a service charge which is reserved as rent. This extends to the costs incurred by the landlord in carrying out its repairing obligations and the other heads of expenditure specified in Schedule 5.
 - (iii) The lessee's contribution to the service charge is 35%. The amount of the service charge is to be certified by a Certificate. The Certificate shall contain a summary of the lessor's expenses and outgoings over the previous year. There is also an obligation on the lessor to furnish the lessee with service charge accounts.
 - (iv) The service charges are normally paid in arrears. However, there is provision for an advance service charge in two circumstances:
 - (a) a fair and reasonable proportion of any expenditure of a periodic recurring nature including provision for anticipated expenditure (sub-paragraph (e));
 - (b) a sum, not exceeding 15% of the amount set out in the Certificate as being the expenditure in the previous year (sub-paragraph (f)).
 - (v) The Fifth Schedule sets out heads of expenditure which may be included in the service charge. This includes the proper fees of managing agents and the proper fees and expenses incurred in respect of the annual Certificate and the accounts.

The Tribunal's decision

21. The Tribunal found Mr Briere-Edney, Ms Briere-Edney and Ms Lewis to be truthful witnesses who gave careful and accurate evidence. They have done their utmost to manage the property in a cost-effective manner. They have had careful regard to the terms of the lease. They have performed duties themselves which could have been performed by professional management agents at a considerably higher cost.

Issue 1: The Management Fee of £700 per annum (2017 and 2018)

22. The Respondent has arranged for the property to be managed by Mr Briere-Edney. He is assisted by Ms Briere-Edney and Ms Lewis. The basis of his management fee is described in the Service Charge Accounts (see R2.13 for 2017 and R2.28 for 2018). On 1 December 2018 (at R2.53), Mr Briere-Edney submitted an invoice to the Respondent Company for £700. The specified duties are: “arrange insurance; keep communal areas clean, keep front path and dustbin areas clean, deal with maintenance and repair work at the building; deal with matters arising at the property”. Mr Briere-Edney does not charge VAT. The charge is £233 per flat.
23. In an e-mail to the Applicants, dated 11 February 2019, Mr Briere-Edney explained that the fee of £700 included the cost of cleaning the common parts five times a year at a cost of £25 per visit.
24. The Applicants complain that they cannot assess whether the charge is reasonable unless told what jobs have been carried out. They assert that the Respondent has refused to provide this information. Dr Wong-Lun-Sang states that between 1996 and 2015, when she was the freeholder, she did not charge any management fee for collecting rents and arranging insurance. The Applicants suggest that it would take “no more than 2 minutes” to clean the common parts. The Applicants have not provided any evidence that another managing agent would manage this property for a lesser sum.
25. Mr Briere-Edney told us that his agreement with the Respondent Company was oral. It is renewed annually, but could be determined at any time upon reasonable notice. On 24 October 2016, the Respondent had consulted the Applicants on the management arrangements (see R6.14-15). An estimate had been obtained from Ringley for Block Care 300 who had quoted £930 (inc VAT). He described the duties which he, assisted by Ms Briere-Edney and Ms Lewis would perform. The Applicants were invited to respond by 18 November. Mr Briere-Edney stated that Dr Wong-Lun-Sang had indicated that she was satisfied with the arrangement.

26. Mr Briere-Edney has obtained further evidence for the hearing. Salter Rex provided an estimate of £350 to £400 per flat + VAT (see R6.16); Drivers and Norris quoted a minimum charge of £1,250 + VAT (R6.17). He has provided a schedule indicating where additional charges would be payable (at R6.18).
27. Where a company landlord arranges for a director to manage a property for a fee, this Tribunal subjects such an arrangement to some scrutiny. In the current case, the Respondent has been transparent about the basis of the charge. The Tribunal is satisfied that were an external managing agent to be appointed, it would charge significantly more than £700. We note that there is a ten-year maintenance plan. The lease requires the landlord to produce service charge accounts and a Certificate of the service charge that is payable. An additional charge would be levied for cleaning. We are satisfied that Mr Briere-Edney has provided a professional service. We conclude that the management fee is payable and reasonable.

Issue 2: Repairs of £5,128 (2018)

28. The Applicants dispute their liability to contribute 35% of the £5,128 which is included in the 2018 accounts for repairs and maintenance. The repairs are described (at R2.28), namely “during 2018, work was carried out to repair the communal front porch, front steps and remove bin cupboards (£4,290), carry our repairs to the roof (£708) and unblock water drainage (£130)”.
29. The Applicants raise three points: (i) were they properly consulted; (ii) were the works necessary, value for money and/or carried out to a reasonable standard; and (iii) were they payable pursuant to the terms of the lease.
30. The significant item is the sum of £4,290 for repairs to the communal front porch, front steps and bin cupboards. On 5 January 2018, the Respondent served its Stage 1 Notice of Intention (at R2.36-7). It was hand delivered to the Applicants’ address at 43 Ashley Road, N19. They were invited to respond by 5 February. They did not respond. On 22 March, the Respondent served the Stage 2 Notice about Estimates (at R2.42-3). Three estimates had been obtained. These are at R2.39-42. The lowest quote was from M & D Sheridan in the sum of £3,700. No VAT was payable. The Notice stated that there would be a project management charge of 10%. This is reasonable for a contract of this nature. On 25 April, the Respondent notified both the Applicants and their tenant that works were going to commence that week (at R2.44-5). Additional works were found to be necessary. On 1 July, the Respondent notified the Applicants of these additional works (R2.46). They were offered a 10% discount for prompt payment. The Applicants did not take up this offer. The invoice from M&D Sheridan, dated 25 May 2018, in the sum of £3,900 is at R2.48. To this a 10% project

management fee of £390 was added. The Tribunal were shown photographs at R5.8-9. These showed the state of the front area both before and after the works. We are satisfied that the works were required and that they were executed to a reasonable standard.

31. The invoice from E&D Roofing Contractors Ltd, dated 13 September 2018 in the sum of £708 is at R3.5. On 1 September 2018, the Respondent had written to the Applicants explaining why these works were necessary (at R3.6). Mr Briere-Edney referred the Tribunal to the photograph at R5.8 to explain the nature of the work that was executed.
32. The invoice from Richard Management Ltd, dated 10 March 2018, in respect of the work to the rainwater hopper in the sum of £130 is at R3.3. We are satisfied that the works were necessary and were executed to a reasonable standard.
33. All these works fall within the landlord's covenants to maintain the building and keep it in good and substantial repair and condition.

Issue 3: The advance service charge of £343.24 (2019) decision

34. The lease permits the landlord to demand an advance service charge of 15% of the amount set out in the certificate for the previous year. The Certificate for 2018, which totals £2,288.26 is at R2.24. The Respondent is therefore entitled to demand the interim service charge of 15%, namely £343.24. The demand, dated 4 January 2019, is at R2.22.
35. The Applicants state that they cannot be satisfied that this is payable until the Tribunal have determined the service charge payable for 2018. We have now done so. We note that pursuant to Clause 4(4)(f), the landlord would have been entitled to demand an advance service charge of somewhat more than this modest sum.

Applications under s.20C and paragraph 5A and Refund of Fees

36. We have concluded that this application is without merit. In their application form, the Applicants seek orders under section 20C of the Landlord and Tenant Act 1985 and paragraph 5A of Schedule 11 to the commonhold and Leasehold Reform Act 2002. They also seek a refund of the tribunal fees which they have paid. Given our finding on the merits of the application, the Tribunal is not minded to make any order.
37. Mr Briere-Edney indicated that the Respondent was seeking a penal costs order against the Applicant pursuant to Rule 13(1)(b) of the Tribunal Rules on the ground that the Applicants have acted

unreasonably in bringing this application and/or in the conduct of the same. The Tribunal indicated that we normally only make such an order in exceptional circumstances. The Respondent should notify the Tribunal if they wish to pursue this application in the light of our determination. If so, the Tribunal will issue Directions for a paper determination of the application.

Judge Robert Latham
20 May 2019

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).

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 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.