



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

Case reference : **LON/00AP/LSC/2018/0408**

Property : **Flat 1, 28 Shepherds Hill, London,
N6 5AH**

Applicant : **Meadow View Property Ltd**

Representative : **Mr Cleaver from the Urang Group
Managing Agent**

Respondent : **Mr Anthony John Press**

Representative : **Dr Perova of Counsel**

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

Tribunal members : **Judge Carr
Mr Sennett**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of decision : **18th April 2019**

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the sum of £ 14,342.98 is payable by the Respondent in respect of the service charges for the years 2016 – 2017 and 2017 – 2018.
- (2) The sum is to be reduced by the two payments each of £1252.78 which have been made since the claim was issued.
- (3) The tribunal makes the determinations as set out under the various headings in this Decision.
- (4) The tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985
- (5) The tribunal determines that the Respondent shall pay the Applicant £300 within 28 days of this Decision, in respect of the reimbursement of the tribunal fees paid by the Applicant
- (6) Since the tribunal has no jurisdiction over county court costs and fees, this matter should now be referred back to the County Court at Clerkenwell and Shoreditch.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 (“the 1985 Act”) and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (“the 2002 Act”) as to the amount of service charges and (where applicable) administration charges payable by the Respondent in respect of the service charge years ending 24th March 2017 and 2018.
2. Proceedings were issued in the County Court Business Centre under claim no. E2AY176P. The claim was transferred to the County Court at Clerkenwell and Shoreditch and then in turn transferred to this tribunal, by order of District Judge Manners on 18th October 2018.
3. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

4. The Applicant was represented by Mr Cleaver at the hearing and the Respondent was represented by Dr Perova of Counsel.

5. Immediately prior to the hearing the Respondent handed in further documents, namely the defence from the County Court application. Mr Cleaver explained that the directions had not made it clear that when he was to prepare the bundle for the hearing that he was also to liaise with the Respondent and it was because of this misunderstanding that the documents had not been included.

The background

6. The property which is the subject of this application is a Victorian terraced house which has been converted into eight residential flats. Five of the flats are let to long lessees and the remaining three flats have been retained by the landlord.
7. Following an application to the tribunal, Mr Cleaver of Urang Property Management was appointed manager of 28 Shepherds Hill, Highgate London pursuant to s.24 of the Landlord and Tenant Act 1987 on 18th August 2015 for a period of two years. The order was varied by the tribunal on 19th July 2017 extending his appointment for a further five years ending on 18th August 2022.
8. The tribunal did not consider that an inspection of the property was necessary, nor would it have been proportionate to the issues in dispute.
9. 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 specific provisions of the lease and will be referred to below, where appropriate.

The issues

10. At the directions hearing the judge identified the relevant issues for determination as follows:
 - (i) Whether the Respondent is liable to pay the disputed service and administration costs and whether they were reasonably incurred and reasonable in amount.
 - (ii) Whether an order under section 20C of the 1985 Act should be made
 - (iii) Whether an order for reimbursement of application/hearing fees should be made.

11. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

Preliminary matters

12. The Respondent's representative raised four issues in connection with the proceedings which she considered to be defective. First she argued that Mr Cleaver had no authority from the Applicant to issue the proceedings, and indeed that those proceedings were issued without the knowledge of the Applicant. Second she argued that the particulars of claim and the statement of case in the County Court should be struck out as they were not signed by anyone in authority. Third she questioned whether there was an obligation to deal with the disrepair as she considered there was a conflict between the lease and the management order. Finally she pointed out that Mr Cleaver was late in submitting his statement of case.
13. Mr Cleaver in response argued that he has always signed statements of case, and that he has the authority to do so under the Tribunal rules. He clearly had power to deal with the disrepair in the property as determined by the lease. He apologised for the 24 hour delay in getting the statement of case to the Respondent but there was a power cut at his office on the due date and he was therefore unable to print the documents until the following day.
14. The Tribunal briefly adjourned to consider the application.

The tribunal's decision

15. The Tribunal determines that Mr Cleaver has authority to pursue unpaid service charges in his own name and that the proceedings should not be struck out.

Reasons for the tribunal's decision

16. Mr Cleaver is a Tribunal appointed manager. The terms of the order entitle him to set demand and collect his own service charge payable by the lessees and to instruct solicitors to recover unpaid rents and service charges and any other monies due to the Manager. Mr Cleaver also has the power to deal with and ameliorate the conditions in the property. The delay in submitting the statement of case was minimal, there was a reasonable excuse and the Tribunal notes that had Mr Cleaver asked the Tribunal for an extension of time this would have resulted in a further delay. There was no prejudice to the Respondent.

Arguments in relation to the County Court claim

17. The Applicant's statement of case sets out in full why he considers that the monies demanded are payable and reasonable. The Applicant considered that the Respondent's case was unclear, and that it was simply an attempt to delay paying the outstanding charges.
18. The Respondent's statement of case at D5 in the bundle disputes the following charges headings:
 - (i) Gutter and drains clearance
 - (ii) Survey fees
 - (iii) External works
 - (iv) Decoration
 - (v) Fire alarms and emergency lights
 - (vi) General repair and maintenance
 - (vii) Management fees
 - (viii) Accounting fees
 - (ix) Solicitors and legal fees
19. Despite these headings the tribunal struggled with understanding the Respondent's case. The tribunal granted an adjournment which unfortunately did not lead to more specificity in the challenges to the service charge items claimed. However Counsel for the Respondent stated that the following were at issue:
 - (i) Reasonableness of major works costs
 - (ii) Fees for management of major works
 - (iii) General management fees
 - (iv) Legal fees
 - (v) Accounting fees.
20. The Respondent also took issue with a reserve fund sum of £722.28 to September 2016 but accepted the sum was validly charged after explanation by the Applicant.

21. Mr Cleaver detailed the items that comprised the major works as follows:
 - (i) External refurbishment
 - (ii) health and safety including fire safety works
 - (iii) drainage works.
22. Total costs were in the region of £150,000. He received no observations on costs initially from the lessees but as he was conscious that there were no reserve fund monies, he decided, in consultation with the lessees, to split up and prioritise works. The initial tribunal appointment as manager was nearing expiry so with the support of lessees he applied for and was given a further appointment for five years from 12th July 2017.
23. Fire safety and associated internal decorations were prioritised. Mr Cleaver sought additional quotations from a leaseholder suggested contractor.
24. Drainage works were required due to collapsed drains prior to the commencement of external works. This was because scaffolding could not be safely erected without these works being done. Attempts to secure funds via an insurance claim for the drainage, insisted upon by Mr Press, proved unsuccessful after lengthy negotiations with the insurer.
25. At the hearing Mr Press told the tribunal that he was more than happy to pay for drainage and guttering works.
26. The fee for major works was as set out in the management agreement at 10% and Mr Cleaver's general management fee at £2880 for the block for the service charge year 2017, and £3060 fee for the year 2018. The tribunal considered this was reasonable in quantum and reflected the cost of day-to-day management of the block.
27. Mr Press thought it should be reduced due to delays in doing fire alarms and the drainage.
28. The Respondent wanted the major works management fee to be reduced to 5% as 3 of the flats (owned by the landlord and vacant) had not had the fire alarm formally connected.
29. Mr Cleaver told the Tribunal that the wiring for the alarms was complete but not commissioned in the three vacant flats. He also stated that all other flats had paid their contribution for these works.

30. The accountancy fee was £690 for 2017 and £720 for 2018.
31. At the hearing Mr Press accepted these costs were reasonable and payable and dropped any objections.
32. The legal fees of £2200 in the 2018 accounts related to the Tribunal costs associated with extending the manager appointment for a further five years and were legitimately charged.
33. On routine management charges, Mr Press said these should be nil as the managing agent had not responded to his letters.
34. Mr Cleaver said that Mr Press had made no payments towards the reserve or major works though a management action plan had been sent to all lessees as part of the Tribunal reappointment application, and the application had been agreed by all lessees.
35. Due to Mr Press's resolve not to pay, Mr Cleaver told the Tribunal that he had no option but to issue proceedings to ensure that he had sufficient funds to get the work done and preserve the building. He considered that he had dealt with all the issues contained in Mr Press's letters and that the letters were simply another delay/avoidance strategy.
36. The internal decoration works came in £4000 under budget and the 10% management fee only comes into play on actual costs of major works.
37. Mr Press provided no detail of his objections other than the external works could be undertaken more cheaply and he put forward no challenge to the costs of general repairs and maintenance. He was concerned about delay in remedying the damp to his property but put forward no specific challenge to the schedule of works produced by Mr Cleaver.
38. Mr Press said he had paid 2 contributions of £1252.78 towards the service charge demands shown on his account. Receipt of these sums was acknowledged by Mr Cleaver.
39. At the conclusion of the hearing the parties were given an opportunity to provide written submissions. Mr Cleaver did not take up the opportunity. Dr Perova provided submissions. Much that was in those submissions comprised new arguments and is therefore disregarded by the Tribunal. In so far as the submissions provided a summary of the arguments of the Respondent, the matters raised have been determined in this decision.

The tribunal's decision

40. The tribunal determines that the amount payable in respect of the County Court claim is £ 14,342.98. Two payments each of £1252.78 have been made by the Respondent. Therefore the total outstanding is £11,837.42 which is to be paid by the Respondent.

Reasons for the tribunal's decision

41. The Applicant provided a clear and coherent explanation of the claim. There were no challenges to the specific charges demanded by the Applicant. The tribunal did not accept the more general challenge to the claim as there was no evidence underpinning it, and the Respondent failed to provide any specifics as to what amount the claim should be reduced by, if anything. The Respondent's arguments about delay were explained properly and professionally by the Applicant.

Application under s.20C and refund of fees

42. The Directions indicated that the Tribunal would consider an application for a refund of the fees that the Applicant had paid in respect of the application/ hearing¹. Having heard the submissions from the parties and taking into account the determinations above, the tribunal orders the Respondent to refund any fees paid by the Applicant within 28 days of the date of this decision.
43. The Respondent applied for an order under section 20C of the 1985 Act. Taking into account the determinations above, the tribunal determines not to make such an order.

The next steps

44. The tribunal has no jurisdiction over ground rent or county court costs. This matter should now be returned to the Clerkenwell and Shoreditch County Court.

Name: Judge Carr

Date: 18th April 2019

Rights of appeal

¹ The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 SI 2013 No 1169

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 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).