

10/12/20



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

**Case Reference** : LON/00AC/LSC/2014/0377

**Property** : 7 Grovefield, Coppies Grove, London  
N11 1NS

**Applicant** : Miss Patricia McGrady

**Representative** : In Person

**Respondent** : The London Borough of Barnet

**Representative** : Barnet Homes

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

**Tribunal Members** : Ms N Hawkes  
Mrs H C Bowers BSc(Econ) MSc MRICS

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

**Date of Paper  
Determination** : 11<sup>th</sup> November 2014

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**DECISION**

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## **Decisions of the Tribunal**

- (1) The Tribunal determines that the management fees claimed by the respondent in the service charge years 2011/12, 2012/13 and 2013/14 are reasonable and payable.
- (2) The Tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985.
- (3) The Tribunal does not make an order requiring the respondent to reimburse the Tribunal fees paid by the applicant.

## **The application**

1. The applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of management fees payable by the applicant in respect of the service charge years 2011/12, 2012/13 and 2013/14.
2. On 2<sup>nd</sup> September 2014, directions were given which provide that this application is to be determined without a hearing unless either party makes a written request to be heard before the determination. Neither party has requested an oral hearing. Accordingly, this application has been determined on the papers.
3. The relevant legal provisions are set out in the Appendix to this decision.

## **The background**

4. The property which is the subject of this application is a one bedroom flat in a purpose built block.
5. Neither party requested an inspection and the Tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.
6. The applicant holds a long lease of the property which requires the landlord to provide services and the lessee 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**

7. The relevant issues for determination are as follows:

- (i) Whether the management fees charged by the respondent in the service charge years 2011/12, 2012/13 and 2013/14 are reasonable.
  - (ii) Whether an order should be made under section 20C of the Landlord and Tenant Act 1985.
  - (iii) Whether an order should be made for the reimbursement of the Tribunal fees paid by the applicant.
8. Having considered all of the documents provided, the Tribunal has made determinations on the various issues as follows.

### **The Management Fees**

9. The applicant submits that the management fees are disproportionately high when compared with the basic service charge costs. She states that she is being charged a management fee which is in excess of 50% of the service charge costs.
10. By the Third Schedule to the lease, the applicant is required to pay a proportionate part by way of service charges of the costs incurred by the respondent in the management of the block and of the estate.
11. The Tribunal notes that the respondent states in its Statement of Case that the management fee is levied against all service charge items except for central heating, insurance and ground rent.
12. However, the Tribunal also notes that by Section A, Part 1, section 2 and by Section A, Part 2 section 5 of the Third Schedule to the lease, the service charge costs include the costs of obtaining insurance and that it is common practice to analyse the management fee as a percentage of the total service charge costs.
13. The management fee as a percentage of the service charge costs appears high (over 50%) if the insurance costs are excluded from the calculation. However, if the insurance costs are included in the calculation the management fee is 32% of the total service charge costs in the service charge year 2011/12 and 30.4% in the service charge years 2012/13 and 2013/14.
14. The applicant's service charge is relatively low and therefore the management fee as a percentage of the service charge costs is likely to be higher than is the case for blocks with a high level of service charge.

15. The applicant relies upon the London Assembly Planning and Housing Committee Report dated March 2012 (“the 2012 Report”). This sets out the management fee for various London boroughs as a percentage of the “total” service charge.
16. This document is of some relevance but it carries limited weight because the percentages given for each area will be averages across a range of different types of block. Some blocks in these areas will have higher than average service charges with the consequence that the management charge as a percentage of the total service charge is likely to be lower than the average figures. Conversely some blocks will have lower than average service charges with the consequence that the management fee as a percentage of the total service charge is likely to be higher than the average figure.
17. However, the Tribunal notes that management fees representing 32% and 30.4% of the total service charge fall within the range given in the 2012 Report (which include 34% for Waltham Forest, 33% for City West Homes and 31% for Hillingdon).
18. In addition to considering the management fees as a percentage of the total service charge costs, the Tribunal has considered overall figures charged. The management fees charged to the applicant were £200.69 in 2011/12; £200.76 in 2012/13 and £198.91 in 2013/14.
19. At paragraph 8 of its Statement of Case, the Respondent states that Barnet Homes carried out a benchmarking survey in 2012 which identified that of the 21 organisations which took part in the 2012 Report, seven were charging higher a management fee than the respondent’s average of £190.
20. The Tribunal accepts this evidence and notes that the average management fee charged by Homes for Haringey in 2012 was £262; the average management fee charged by Hackney Homes in 2012 was £235; and that the average management fee charged by Havering Homes in 2012 was £229.48 plus 18.85% for repairs.
21. Having carefully considered the evidence provided by both parties the Tribunal is satisfied that the management fees charged by the respondent in the service charge years in question fall within the reasonable range and determines that they are reasonable and payable.

### **Application under s.20C and refund of fees**

22. The applicant has not been successful in her application and, accordingly, the Tribunal does not order the respondent to refund any fees paid by the applicant and does not consider that it would be just

and equitable to make an order under section 20C of the Landlord and Tenant Act 1985.

Judge N Hawkes

11<sup>th</sup> November 2014

## **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 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.