



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

Case Reference : LON/00AF/LSC/2014/03415

Property : Flats 1,2 and 3, 4 Hammelton Road
Bromley BR1 3PY

Applicant : Noel and Lois Vengan Flat 3
Junior Chung Flat 2
Kathleen Macmillan and Gavin
Wallace Flat 1

Representative : In Person

Respondent : Jeffrey and Lilian Matthey

Representative : Crabtree Property Management

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

Tribunal Members : Judge P Leighton LLB
Mr C Gowman B Sc MCIEH

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

Date of Decision : 28th August 2014

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the sum of £275 plus VAT (ie. £330) is payable by the Applicants in respect of each of the flats for the annual management fees for the years 2012/2013 and 2013/ 2014
- (2) The tribunal makes the determination that the audit fee of £150 for each of the years 2012/3 and 2013/4 is disallowed
- (3) The tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985
- (4) The tribunal makes no order in respect of the claim for reimbursement of the application fee
- (5) The tribunal makes no order for costs under Rule 13 of the First Tier Tribunal Property Chamber Rules

The application

1. The Applicants seek a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") in respect of the service charge years 2012/3 and 2013/2014 for the property at 4 Hammelton Road Bromley BR1 3PY
2. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

3. The tribunal directed that the matter should proceed by way of a paper determination at the request of the Applicants and both the Applicants and the Respondent submitted written representations.

The background

4. The property which is the subject of this application is a Victorian house divided into three self contained two bedroom flats
5. None of the parties requested an inspection and the tribunal did not consider that one was necessary having regard to the issues involved, nor would it have been proportionate to the issues in dispute.
6. The Applicants hold long leases 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 will be referred to below, where appropriate.

The issues

7. The tribunal observed that there was a considerable volume of paper provided in particular by the Applicants in relation to a fairly modest claim :and it appeared to the tribunal that the volume of paperwork (371 pages) and the costs involved was disproportionate having regard to the issues at stake
8. It appears to the tribunal that many parties do not appreciate the proper function of paper determinations. They are designed specifically for dealing with short matters involving relatively small sums of money and generally involving no major issues of principle.Part of that objective is to save time and costs
9. To that end a relatively short period of time is allocated to each paper case to enable the tribunal to get to grips with the issues involved and to make a speedy determination...Issues raising matters of law, matters of important principle contested evidence and substantial documentation are not generally suitable for paper determinations . The procedural chair dealing with the original directions may not be aware of all these factors when the case is initially reviewed and allocated to the paper track .
10. Once the parties are aware from the statements of case that the proceedings are likely to be more lengthy, detailed complicated or contentious than originally anticipated they have a duty to draw this to the attention of the tribunal so that a proper decision can be made as to whether it is possible to deal with the matter fairly on paper or whether an oral hearing would better serve the interests of justice.
11. The issues which fall for determination in this case are
 - (i) The payability and/or reasonableness of service charges in relation to the management fees charged by Crabtree Managing Agents for the years 2012/13 and 2013/14
 - (ii) Whether it was reasonable to incur the cost of an audit having regard to the size of the property and the limited nature of the services provided
 - (iii) Whether an order should be made under Section 20C of the Landlord and Tenant act 1985 to limit the right of the landlord to recover the costs of the application through the service charge account

- (iv) Whether the Applicants were entitled to recover from the Respondent the fees incurred for the application
 - (v) Whether the Applicants are entitled to recover costs against the Respondent under Rule 13 of the First Tier Tribunal procedure rules on the grounds that they have conducted the proceedings unreasonably
12. In the view of the tribunal if the Applicants had wished to pursue these matters in such detail (a 74 paragraph statement of case and a 30 paragraph reply with numerous exhibits) it would have been far more sensible for this matter to have proceeded to an oral hearing.
13. The tribunal has therefore in the limited time available endeavoured to deal with the issues raised rather than adjourning this matter for a full hearing in order to save time and costs and having regard to the amounts of money involved. .

Management Fees

14. The amounts claimed for the management fees amounts to £371.66 per flat based on a figure of £929.16 plus VAT for the whole building

The Tribunal's decision

15. The tribunal determines that the amount payable in respect of the management charge is £275 exclusive of VAT and £330 inclusive of VAT for each of the three flats

Reasons for the tribunal's decision

16. The tribunal considers that the appropriate range for the management fee is in the region of between £200 and £300 plus VAT
17. The tribunal rejects the argument that the management fee should be limited to a range of £150 to £210 because the comparable estimates submitted by the tenants are for either Right to Manage properties or assistance to self management. Having read the management agreement the tribunal is satisfied that the services provided amount to a management service rather than mere administration. The tribunal accepts that the range of management fees for properties of this kind can properly vary between £200 to £300 per unit.
18. The tribunal considers that the figure of £371.66 per flat inclusive of VAT is excessive for this type of property and is of the view that the appropriate figure would be £275 plus VAT making a figure of £330 based on the evidence in the bundle concerning the duties of the agent..

The tribunal would have preferred the opportunity to explore the management practices and performance in more detail at an oral hearing but has arrived at its conclusion on a broad brush principle appropriate for a paper determination

- 19 The tribunal considers that the criticism made of the performance of the agents is somewhat premature having regard to the short period of their management. They appear to have responded to most of the issues raised and the tribunal can find no grounds at this stage for reducing the management fee on the basis of poor performance
- 20 It appears that the managing agents may have failed to send service charge to Ms Macmillan and Mr Wallace in Flat 1 but the tribunal accept that the amounts which have been charged and the only amounts which can be charged to each of the flats is one third of the relevant costs incurred. Therefore the tribunal does not accept on the papers submitted that the Applicants Mr and Mrs Vengan and Mr Chung have each been charged 50% of the relevant costs. They are not being charged £540 each as suggested but the sum of £371.66. In any event none of the parties can be charged more than one third of the relevant costs incurred and if the landlord or his agent fails to collect from any one tenant he will have to bear the shortfall Even if it can be stated that a failure to send out demands to Flat 1 is evidence of a failure on the part of the agent , it does not in the view of the tribunal justify grounds for reducing the management fee in relation to Flats 2 and 3

Audit Fee £150 per annum

- 16 The amount claimed for the audit of the service charge accounts is £150 per annum

The tribunal's decision

- 17 The tribunal determines that the amount payable in respect of an audit fee of £150 should be disallowed.

Reasons for the tribunal's decision

- 18 Crabtrees contend that it is professional and efficient to provide audited accounts and rely upon clause 1(b) (v) of the lease to justify charging for services and facilities which they consider to be necessary for the efficient management of the building
- 19 The tribunal considers that for a small property of this type it is not necessary to have audited accounts for which the tenants are required to pay. The preparation of the accounts can be comfortably included in the management fee allowed and would be sufficient for the purpose

Application under s.20C and refund of fees

- 20 The tribunal makes no order in respect of the application under Section 20C of the 1985 Act¹. Having read the submissions from the parties and taking into account the determinations above, the tribunal does not order the Respondent to refund any fees paid by the Applicant. The tribunal considers that the bundles of voluminous documents contained in this case are totally disproportionate to the amounts of money at stake and particularly as the issue arises at such an early stage in Crabtree's period of management of the building. The Applicants have been partially successful but have failed in their main contention about the management fee. Accordingly the tribunal considers it reasonable to make no order for a reimbursement of fees.
- 21 In the application form, the Applicants applied for an order under section 20C of the 1985 Act. In the light of the findings above the tribunal determines that it would not be just and equitable to make such an order. It must be remembered that the landlord may have a proprietary right under the lease (if it provides for the recovery of costs) and the landlord can only be deprived of that right if the tribunal considers that it would be just and equitable to take that course. The tribunal makes no finding as to whether the lease permits recovery of costs but merely that if it does the tribunal should not deprive the landlord of that right.

Costs

- 24 The power of the tribunal under the Procedure Rules Rule 13 permit the recovery of costs in limited circumstances. The Applicants put forward a number of grounds under Paragraph 26 of their reply which it is not necessary to repeat. The first two grounds put forward are not relevant to the jurisdiction. The later grounds relied upon may be relevant in so far as they relate to the conduct of proceedings but the tribunal has to apply the principles which would be relevant to a court when making a wasted costs order.
- 25 Such orders should be made sparingly after hearing both parties and being sure of the defaults being made out. Only in exceptional cases would it be appropriate to make such an order on a paper determination.
- 26 The tribunal is not satisfied that the Respondent's agents have conducted the proceedings in such a manner as to justify making a penal order for costs against them. In the light of the tribunal's findings in which neither side has been completely successful and no

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

order has been made under Section 20C of the 1985 Act it would be doubly inappropriate . Accordingly this application is also disallowed

Name: Peter Leighton

Date: 28th August 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 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.