



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

**Case Reference** : **LON/00AL/LSC/2014/0040**

**Property** : **60 Warrior Close, London SE28  
0NL**

**Applicant** : **The Gateway (Thamesmead)  
Management Company Limited**

**Representative** : **Mr J Wragg, Counsel**

**Respondent** : **Mr M Sutton**

**Representative** : **In person**

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

**Also present** : **Mr M Barretto of Houston  
Lawrence Management Ltd,  
managing agents for the Applicant**

**Tribunal Members** : **Judge P Korn (chairman)  
Mr H Geddes JP RIBA MRTPI  
Mr A Ring**

**Date and venue of  
Hearing** : **28<sup>th</sup> May 2014 at 10 Alfred Place,  
London WC1E 7LR**

**Date of Decision** : **26<sup>th</sup> June 2014**

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**DECISION**

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## **Decisions of the tribunal**

- (1) The service charges of £4,751.68 are payable in full.
- (2) At the request of the Applicant and with the agreement of the Respondent – and on the basis that the county court is an equally appropriate forum for determining such issues – the tribunal remits back to the county court for determination the issue of the payability or otherwise of the agent’s administration fee of £72.00 and the debt collection fee of £150.00.
- (3) No section 20C order is made and no other cost orders are made.
- (4) For the avoidance of doubt, nothing in this determination is intended to fetter the discretion of the county court in relation to county court interest or fees.

## **The application**

1. The Applicant seeks and, following a transfer from the county court, the tribunal is required to make a determination pursuant to section 27A of the Landlord and Tenant Act 1985 (“**the 1985 Act**”) as to the reasonableness and payability of certain service charges charged to the Respondent.
2. The county court claim was for the following sums plus costs:-
  - Service charges £4,751.68
  - Agent’s administration fee £72.00
  - Debt collection fee £150.00
3. The relevant statutory provisions are set out in the Appendix to this decision. The Respondent’s lease (“**the Lease**”) is dated 22<sup>nd</sup> January 2007 and was made between Fairclough Homes Limited (1) Jonathan Mark Gervaise (2) and the Applicant (3). The Respondent is the current leaseholder and the Applicant is the management company named in the Lease.

## **Preliminary issues at hearing**

4. At the start of the hearing the tribunal asked the Respondent why he had not complied with the tribunal’s directions. The Respondent replied that he had not received any letters from the tribunal, had not received the tribunal’s directions and had only received documents from the Applicant on the Thursday prior to the hearing. However, the

tribunal put it to the Respondent that he had himself written to the tribunal in connection with the case management conference – at which directions were issued – and therefore seemingly he did know about the case management conference and its purpose. He must also have received notification regarding the final hearing itself, as he was in attendance.

5. The Respondent now sought permission to bring in evidence some documents which he had brought with him to the hearing. Mr Wragg for the Applicant said that he would not object to the Respondent using this evidence provided that he did not go beyond the issues already raised by him in his defence to the county court claim.
6. Also at the hearing Mr Wragg for the Applicant requested that the issue of the payability of the administration charges – namely the agent's administration fee of £72.00 and Property Debt Collection Ltd's fee of £150.00 – be dealt with by the county court. The Respondent said that he had no objections and in the circumstances the tribunal agreed that the administration charges could be dealt with by the county court.

### **County court defence**

7. The Respondent's defence to the county court claim was as follows:-
  - Intercom system not working for 5 years
  - Damp in the Property
  - Boiler condemned by manufacturer
  - Underground car park pipes leaking
  - Interior pipes in Property not properly connected
  - Homeless people sleeping in the building.

### **Applicant's case**

8. Mr Wragg for the Applicant referred the tribunal to a statement of account in the bundle and said that the unpaid service charges related to the period 1<sup>st</sup> July 2011 to 31<sup>st</sup> December 2013 inclusive (2½ service charge years). Mr Wragg also took the tribunal through the relevant service charge demands, service charge accounts and service charge estimates. He also referred the tribunal to various letters before action served on the Respondent, and the Respondent confirmed to the

tribunal that he had been in correspondence with the Applicant's debt collection agency regarding the arrears.

9. Mr Wragg also referred the tribunal to the relevant provisions of the Lease, including the service charge proportions, the definition of maintenance expenses, the service charge mechanism and the service charge payment obligation.
10. In response to a question from the tribunal Mr Wragg said that the actual service charge for 2011/12 and 2012/13 was slightly higher than the estimated amount but that the Applicant had not sought to claim the balance from the Respondent. On closer examination the tribunal noted – and Mr Wragg did not disagree – that the balance seemed to have been taken out of the reserve fund. However, that balance is not the subject of this claim.
11. The Applicant did not accept the validity of any of the Respondent's defences to the county court claim but it was agreed that the Respondent would explain his defence in more detail and then Mr Wragg would respond.

### **Respondent's defence**

12. The Respondent said that the intercom system had not been working at all for the last 5 years. He conceded that at no point had he written to the Applicant to complain about this but he believed that others had done so. He had complained by telephone but did not have any evidence, for example call logs or notes of conversations. The Respondent accepted that the Applicant was now trying to address the issue but did not accept that the damage had been caused by vandalism. He also conceded that it was possible that repairs had been carried out to the intercom system during times when he was not in the building.
13. Regarding the alleged damp in the Property, the Respondent said that a builder instructed by him had told him that the central heating piping had not been properly connected. The Respondent also suggested that the damp could have been covered by the Applicant's building insurance policy, although this seemed to be a wholly new point not previously raised by the Respondent.
14. Also on the damp issue, the Respondent said that there had been a leak from the roof into his bathroom for the past 3 to 4 years. The Respondent admitted that at no point had he raised this issue with the Applicant in writing (whether by letter or email) but said that he had mentioned it verbally. His response to the problem was to stop paying the service charge, although he admitted that he had not explained to the Applicant that this was the reason for withholding payment. He was unable to provide specific evidence of any complaint ever having

been made other than his stated recollection of having mentioned the problem verbally.

15. Regarding the boiler, the Respondent said that it has not been working and has been condemned.
16. Regarding the underground car park pipes, the Respondent accepted that the problems stemmed from vandalism. He showed the tribunal some copy colour photographs and said that the damage had resulted in the periodic leaking of sewage into the car park. His evidence was that he had reported the problem verbally about 18 months ago and was told that there was insufficient money available to carry out the work.
17. Regarding the homeless people in the building, the Respondent said that the problem had begun about 2 years ago and stopped about 4 months ago. He had complained by telephone to the Applicant at the time and the Applicant had done nothing and so the Respondent had to remove the homeless people himself. The Applicant had made it easy for homeless people by failing to lock the side gate and communal doors.

#### **Applicant's response**

18. Regarding the intercom system, the Applicant accepted that there had been some problems but submitted that the main problem had been vandalism over the years. However, the intercom had been working for large periods over the last 5 years, and to support this point the Applicant asked the tribunal to note from the service charge accounts the amounts spent on maintaining the intercom system.
19. Regarding the central heating piping issue, Mr Wragg referred the tribunal to a Defect Investigation Report commissioned by the Applicant dated 24<sup>th</sup> February 2014 and prepared by HL Professional Services Limited which concluded that the problem had been fixed. In particular it stated "*leaks from the heating system in the past ... have either been resolved or the defective pipes capped as the wall and floor surfaces do not test damp with the moisture meter*". In any event, in Mr Wragg's submission, the maintenance of the central heating piping within the Property is the tenant's (i.e. the Respondent's) responsibility under the Lease.
20. As to whether damp had been caused by a leak from the roof, the Applicant agreed that there had been a leak but Mr Wragg said that the problem was being dealt with. The Applicant had gone through a competitive tendering process in relation to the work needed to mend the roof and the necessary work would be carried out. Mr Wragg

referred the tribunal to an email, a purchase order and a specification and estimate in the hearing bundle.

21. Regarding the boiler, Mr Wragg said that this too was the Respondent's responsibility to maintain under the Lease.
22. Regarding the underground car park pipes, it was accepted that there had been vandalism which had led to piping being stolen. Mr Wragg referred the tribunal to the Applicant's written statement in the hearing bundle, which states that the police were notified on the occurrence of each act of vandalism, that contractors were employed to repair the damage and that insurance claims were made. The leaks were water leaks, not sewage leaks.
23. Regarding the homelessness issue, the Applicant's case was that there had only been one homeless person who had been living in the common parts for a number of weeks. The Applicant's staff had since successfully moved that homeless person on and there had been no further reports of intruders since. As regards the Respondent's statement that the communal doors did not lock, the Applicant simply did not agree.
24. As a general point, Mr Wragg submitted that the Respondent had not addressed the question of the reasonableness of the service charge at all. One possible exception was that the Respondent's submissions could possibly be understood to constitute an indirect challenge to the reasonableness of the amounts spent on maintaining the intercom system, but in the Applicant's submission these sums were considered to have been reasonable in amount and reasonably incurred. In relation to any work done by the Applicant, approved contractors had been used and the Applicant believed the work to have been carried out competently.

### **Tribunal's analysis and determinations**

25. The tribunal notes the Applicant's general submissions as to the payability and reasonableness of the service charges, most of which were not challenged by the Respondent. Subject to the specific issues raised by the Respondent, the tribunal is satisfied that the Applicant served the appropriate demands that the sums are all recoverable under the terms of the Lease, that the relevant costs were reasonably incurred and that the relevant services/works were of a reasonable standard.
26. On the issue of the intercom system, the Respondent's evidence is that the intercom system has not been working at all for the last 5 years but that at no point has he written to the Applicant to complain. He says that he has complained by telephone but does not have any evidence of this. He has produced no evidence from any other leaseholders in

support of his position. The tribunal does not find his evidence on this point particularly credible. The Applicant accepts that there have been problems, which it says have mainly been due to vandalism, but the Applicant also says that work has been done from time to time to repair the system and has produced written evidence by way of copy accounts that appears to show that money has been spent periodically on repairing the system. In the absence of a proper challenge from the Respondent the amounts spent by the Applicant seem reasonable in amount and seem to have been reasonably incurred.

27. On the central heating piping issue, the Applicant has referred the tribunal to a report indicating that the problem has been fixed or at least that there is no continuing damp problem. Whilst that report is not conclusive, the Respondent has failed to come up with a coherent basis, let alone any proper evidence, for a challenge to the service charge linked to problems with the central heating piping. He has also failed to provide any proper evidence as to how the problem arose or when he first raised it with the Applicant.
28. In any event, Mr Wragg contends that the repair and maintenance of the central heating piping within the Property (described in the Lease as the “Demised Premises”) is the responsibility of the Respondent as tenant under the terms of the Lease. Paragraph 9 of Part One of the Eighth Schedule to the Lease contains a covenant by the tenant *“To repair and keep the Demised Premises and all Service Installations exclusively serving the same (but excluding such parts of the Demised Premises as are included in the Managed Land) and every part thereof and all of the Builder’s fixtures and fittings therein and all additions thereto in good and substantial repair order and condition at all times during the Term including the renewal and replacement forthwith of all worn or damaged parts ...”*. The “Managed Land” is excluded from the tenant’s repairing responsibilities. There is a very long separate definition of the “Managed Land”, but essentially it comprises various areas outside the building, the structure of the building, the common parts of the building, and all Service Installations not used exclusively by any individual dwelling. “Service Installations” are defined as *“sewers drains channels pipes watercourses gutters mains wires cables conduits aerials tanks apparatus for the supply of water electricity gas (if any) or telephone or television signals or for the disposal of foul or surface water”*.
29. Based on the above and the evidence submitted, the tribunal’s view is that the repair and maintenance of the central heating piping within the Property is indeed the Respondent’s responsibility. The Respondent is responsible for the repair and maintenance of the whole of the interior of the Property – including renewal and replacement of worn or damaged parts – save for any service installations which do not exclusively serve the Property. On the basis of the evidence provided the tribunal’s view is that – assuming it fits the definition of service installation – the central heating piping concerned exclusively serves

the Property and therefore is the Respondent's responsibility to maintain.

30. The Respondent raised the possibility at the hearing that the repair of the central heating piping might be covered by insurance. However, he had not previously raised this point and brought no evidence or proper argument to substantiate the point and it is not accepted. In conclusion on this issue, the tribunal does not accept that any of the Respondent's arguments in relation to the central heating piping issue warrant a reduction in the service charge.
31. Regarding the leak from the roof, again at no point had the Respondent raised this issue with the Applicant in writing and he was unable to supply proof even that the issue had been mentioned verbally. His response to the problem was simply to stop paying the service charge without explaining to the Applicant that this was the reason for withholding payment. The evidence indicates that the Applicant has been dealing with the problem and the Respondent has offered no proper evidence to demonstrate that the Applicant has not been dealing with it in a timely and effective manner. Therefore, the tribunal does not accept that any of the Respondent's arguments in relation to the roof leak issue warrant a reduction in the service charge.
32. Regarding the Respondent's complaints about the boiler, the tribunal's view is that repair and maintenance of the boiler is the Respondent's responsibility under paragraph 9 of Part One of the Eighth Schedule to the Lease (quoted above), as the evidence indicates that the boiler is a service installation exclusively serving the Property.
33. Regarding the underground car park pipes, having seen the Respondent's photographs and heard and seen the other available evidence the tribunal does not consider it credible to suggest (in particular given the type and location of the pipes) that these pipes were carrying or discharging sewage. The Applicant accepts that there has been water leakage, and the tribunal considers – based on the evidence provided – that the Applicant has acted reasonably in dealing with the problem and therefore does not accept that any of the Respondent's arguments in relation to the underground car park pipes issue warrant a reduction in the service charge.
34. Regarding the homelessness issue, the Respondent relies on mere assertions, with no written evidence to back them up. It is common ground between the parties that there was a problem, but the evidence indicates – in the absence of anything stronger from the Respondent – that the Applicant dealt with the issue in a reasonable manner. Accordingly, a reduction in the service charge is not warranted based on the Respondent's arguments in relation to the homelessness issue.



35. In summary, none of the Respondent's challenges are considered strong enough to warrant a reduction in the service charge.

**Cost Applications**

36. The Respondent applied for an order under section 20C of the 1985 Act that the Applicant should not be entitled to add its costs incurred in connection with these proceedings to the service charge. As the Respondent has not been successful on any of the issues in dispute and has neither complied with directions nor submitted much in the way of serious evidence it would not be appropriate to make a section 20C order against the Applicant. Therefore, the tribunal declines to make a section 20C order.
37. No other cost applications were made.

**Name:** Judge P Korn

**Date:** 26<sup>th</sup> June 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.