

10216



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

Case Reference : LON/00AN/LSC/2014/0222

Property : 55 Pioneer Way, London W12 0EZ

Applicant : Ms Adrianna Schwab

Representative : In person

Respondent : Women's Pioneer Housing Limited

Representative : Mr N Mallows, Director
Mrs J Gasper, Financial Manager

Types of Application : Payability of service and
administration charges

Tribunal Members : Judge Tagliavini
Mr S Mason BSc FRICS FCI Arb
Mrs J Hawkins

**Date and venue of
Hearing** : 14 July 2014
10 Alfred Place,
London WC1E 7LR

Date of Decision : 22 July 2014

DECISION

Decisions of the Tribunal

1. The Tribunal determines the following:

For the service charge years 2011, 2012, 2013 (not finalised) and 2014 (estimated) the following heads of service charge are reasonable and payable:

Cleaning charges
Gardening (grounds maintenance) charges
Paladin bins*
Fire equipment
Landlord's electricity supply**
Fire equipment charges
Heating & hot water charges
Administration (management) charges

*The Applicant is liable to pay her share towards the cost of 5 Paladin bins only that are used by flats C-F.

**The Tribunal determines that the Applicant is not liable for any electricity charges accruing before May 2011 and her service charge demand/account should be adjusted accordingly.

NB: All charges are to be billed at the correct percentages and the Respondent is required to adjust and credit where appropriate the Applicant's service charge account where the wrong percentage has been applied.

The premises

2. The premises comprise a studio flat in Block C-F (48 flats), which makes up part of a development made up of studio or 1 bed properties together with Blocks A (12 flats) and B (originally 1 flat but increased to 3 flats as of April 2014). The development is situated on a private road with public access. The Applicant is charged 2.08% of the costs attributable to her block or to the development dependent upon the head of service charge).

Preliminary matters

3. The Tribunal was provided with two large lever arch files containing primarily the documents and witness statements the Applicant wished to rely upon. The Respondent provided the Tribunal with copies of a fire risk assessment (in-house) and fire alarm maintenance and call out costs, during the course of the proceedings. At the outset of the

hearing, the Applicant requested the Tribunal to inspect the subject premises, but was asked to renew that application once evidence had been heard, as the Tribunal was not persuaded at the outset of the hearing that it was necessary or proportionate. It was also made clear to the Applicant that as none of the other tenants had sought to be joined as a party to the application, the decision of the Tribunal was only directly pertinent to her tenancy and no other. Whether the Respondent chose to apply the Tribunal's determination to any other lessees was a matter for the landlord, or until such time as similar applications are made by other lessees.

The hearing and evidence

4. In addition to providing oral evidence, the Applicant provided the Tribunal with an extensive witness statement dated 25/05/2014, together with detailed commentaries on all of the issues raised in the application. The Tribunal was also provided with copies of lengthy and detailed letters from the Applicant to the Respondent as well as the replies. The Tribunal was also provided with copies of relevant invoices for the challenged costs over the various service charge years and witness statements in support from Christine Phillips (26/05/14), Maria Caruana (26/05/14), Sheelah Casey (26/05/14) Anne Malone (27/05/14) Jacqueline Shaw (02/06/14), Carmen Lopez (28/05/14) Marcia Davis (07/06/14), Suzi Cizik (undated) Angela Hanley (13/06/14) and Statement in Support from tenants of flats 56 and 52. The Tribunal also heard oral evidence from Mr Mallows and Mrs Gasper.

Reasons for the decisions of the tribunal

Cleaning (blocks C-F responsible for 78.69% of costs)

5. The Tribunal accepts the Respondent's evidence that there have been no recorded complaints about this item until this application. The Tribunal finds that the hourly rate of £14.95 is within the range of what is considered to be reasonable and the employment of a cleaner for 2-2.5 hours once a week to clean the internal common part and sweep the exterior roadway is reasonable. The Tribunal notes that extensive anecdotal evidence of cleaners not spending long enough in one part of the property and more in others but notes that no diary of visits or consistent evidence of times spent have been produced. Rather, the witness statements relied upon by the applicant largely recounting a snapshot of a certain time or are dependent on recollection without any diary evidence to support. In the absence of documented complaints by the Applicant or other lessees the Tribunal prefers the Respondent's evidence on this issue and its reliance on the invoices that establish that a service has been provided and paid.

6. The Tribunal notes the Applicant's dissatisfaction with the private road being accessed by the public. The Tribunal notes however, that the applicant was aware of the nature of the property and the terms of the tenancy and is of the view that while the tenants and public alike can be discouraged from dropping litter, it will invariably occur and the proximity of a train line close to the subject premises is likely to result in litter being blown onto the road as well as usual weather conditions. Although the applicant may like to see the public refused access to this private road that matter is not within the Tribunals' jurisdiction and therefore does not deal with it. In so far as the road requires sweeping on a regular basis, the Tribunal determines that the charges incurred are both reasonable and payable.
7. The Tribunal further determines that the costs of removing bulky items to be reasonable and payable. The Tribunal accepts the Respondent's evidence that the cheapest quote has been used in this service. The Tribunal acknowledges that the local authority may charge a lesser sum on the face of it but without detail of the items) removed or how they were disposed it is difficult for the Tribunal to determine, without more that these charges are unreasonable.
8. Therefore the Tribunal finds that the cleaning charges are reasonable and payable by the Applicant for the service charge years in dispute subject to readjustment where the cleaning charges have been wrongly apportioned in 2013.*

**The Respondent informed the Tribunal that the 2013 accounts had not been finalised and were still subject to adjustments.*

Gardening

9. The Tribunal accepts the Respondent's evidence that until recently there was no complaints received until 2012 when the gardening contractor was changed. The Tribunal notes that the "Gardening Services" should more accurately be reflected as "Grounds Maintenance" in light of the limited grassy areas and flowerbeds. However, the Tribunal is satisfied that a service has been provided to the Applicant, which forms part of the service charges. Although, the Tribunal is of the view that the gardening costs are a little on the high side considering the nature and extent of the service provided, the Tribunal was not provided with any comparable against which they could compare the levels of the costs incurred. Therefore, on balance the Tribunal reached the determination that the gardening costs had been properly incurred and are payable by the applicants.
10. The Tribunal notes that the Applicant objects to paying for gardening services provided to other parts of the Development although Flats C-F are charged only 23% of the total gardening costs in view of the limited areas requiring gardening maintenance, of which the Applicant's share

is 2.08%. The Tribunal is of the view that the Respondent landlord retains a discretion as to how service charges are proportioned and the Tribunal accepts that this a reasonable proportion to be charged to the Applicant for gardening works. The Tribunal does not accept that there is any obligation on the part of the landlord to ensure that tenants have the opportunity to "stand over" gardeners or cleaners while they work so they can determine whether or not they will pay for the service provided on any particular day. The informal and formal mechanisms for dispute resolution of this kind are plentiful. The Tribunal is of the view that the requirements of communal living are demanding of some "give and Take" which in the long term equates to reasonable and equitable service charges among all the tenants and service users.

Paladin Hire

11. As the Respondent has conceded that the number of Paladin bins provided for the use of flats C-F is 5 and not the 7 bins billed. The Tribunal determines that is appropriate that the Applicant's service charge account is credited accordingly.

Fire equipment and smoke alarms

12. The Tribunal notes that this issue is also before the Housing Ombudsman although it has not been provided with a copy of the complaint made. It is an error to bring the same complaint before two different forums at the same time. Consequently, the Tribunal deals only with the issues as to whether the charges are reasonable and reasonably incurred and not the wider issue of any inconvenience and distress caused to the Applicant by the repeated "call-outs" to reset the alarm, which are not, in any event within the jurisdiction of this Tribunal.
13. The Tribunal finds that the provision of a fire alarm system and collection of service charges forms part of the lease. The Tribunal notes that the applicant does not complain of an alarm system in disrepair or lacking maintenance. The Tribunal was provided with a copy of the call-out charges of the maintenance company and does not find them to be in excess of what can be regarded as being reasonable. The Tribunal appreciates the high number of call-outs caused by tenants, whether inadvertently or otherwise results in high fees for this service. However, that does not detract from the Tribunal's view that these charges are reasonable and payable for the service charge years in dispute. Whether, the Respondent will consider the commissioning of an Independent fire Safety Expert to ascertain whether the existing system can be safely modified and at what cost is a matter for the landlord.

Heating and hot water (blocks C-F charged 74.64% of total)

14. The Tribunal does not accept the Applicant's arguments that she should only be charged for her usage as a single person and not by way of a percentage of the communal costs. The Tribunal considers that the apportionment utilised by the Respondent is a reasonable method through which to apportion costs and recognises that this is part and parcel of the costs of "communal living".
15. Further, the Tribunal notes that the Applicant asserts that there has been overcharging in 2013 for this service charge item on a number of bills where the incorrect percentage has been applied. The Tribunal has calculated the overpayment demanded from the Applicant to be in the region of £20. The Tribunal also notes that the Respondent is still in the process of finalising the 2013 accounts and therefore is invited to look closely at this item for any overcharging and make a credit appropriately.

Landlord's electricity charges (blocks C-F charge 79.66% of total)

16. The Tribunal does not accept the Applicant's arguments that these are excessive or unreasonable. The Tribunal accepts the Respondent's evidence that these cover communal lighting and some exterior communal lighting and the costs of the Fire Panel and the heating/hot water communal boiler system. However, the Tribunal determines that the Respondent is not entitled to recover any sum for the landlord's electricity charges that have arisen before the Applicant's tenancy was created with effect from May 2011. Consequently, any sum that has been demanded from the Applicant in this respect should be re-credited to her.

Estimated service charges for 2014

17. The Tribunal notes the concession made by the Respondent that the estimated charges for heating and hot water could be reduced to £15,000. For the remainder of the estimated service charges the Tribunal is satisfied that these are properly based on previous costs incurred and are properly demanded and payable by the Applicant.

Administrative charges

18. The Tribunal is satisfied that the Respondent is entitled to charge "administrative costs" in accordance with clause 3(15) of the lease at 15%. It is also evident to this tribunal that a considerable amount of time is sent administering to this development.

Conclusion

19. The Tribunal accepts that there have been some errors in the service charge accounts made by the Respondent. However, the Tribunal is also satisfied that the accounts are independently audited and are subjected to scrutiny where errors are reversed, as has been demonstrated by the Respondent. The Tribunal is also satisfied that the Respondent will continue to scrutinise the accounts for 2013 where some incorrect proportions have been charged to the applicant; charge the Applicant for the use of 5 Paladin bins until this issue is finally resolved; re-credit any service charges incurred prior to May 2011 but demanded of the applicant and adjust the 15% administrative charge to reflect these credits and credit the Applicant's service charge account accordingly.

20. Although the Applicant made a further request at the end of the hearing for an inspection of the premises, the Tribunal declined to do so for the following reasons:
 - The Tribunal is unable to assess historic complaints from 2011, 2012 and 2013; the area of gardens/shrubs was not disputed and the tribunal was assisted by the aerial photographs provided; and
 - the total costs likely to be recovered by the Applicant do not exceed £500 rendering any inspection disproportionate to the costs incurred by an inspection and the sums recovered by the applicant.

Section 20C

21. As the Respondent indicated it would not seek to add the costs of this litigation to the service charges, the Tribunal does not need to consider this issue.

Signed: Judge Tagliavini

Dated: 22 July 2014

Appendix of relevant legislation

Landlord and Tenant Act 1985

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 a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to

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- (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 a leasehold valuation 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) a leasehold valuation 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.

Leasehold Valuation Tribunals (Fees)(England) Regulations 2003

Regulation 9

- (1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.
- (2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).

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 a leasehold valuation 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 a leasehold valuation 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).

Schedule 12, paragraph 10

- (1) A leasehold valuation tribunal may determine that a party to proceedings shall pay the costs incurred by another party in connection with the proceedings in any circumstances falling within sub-paragraph (2).
- (2) The circumstances are where—
 - (a) he has made an application to the leasehold valuation tribunal which is dismissed in accordance with regulations made by virtue of paragraph 7, or
 - (b) he has, in the opinion of the leasehold valuation tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.
- (3) The amount which a party to proceedings may be ordered to pay in the proceedings by a determination under this paragraph shall not exceed—
 - (a) £500, or
 - (b) such other amount as may be specified in procedure regulations.
- (4) A person shall not be required to pay costs incurred by another person in connection with proceedings before a leasehold valuation tribunal except by a determination under this paragraph or in accordance with provision made by any enactment other than this paragraph.