



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

Case Reference : LON/00AT/LSC/2014/0216 and 0272

Property : Ground Floor Flat, 43 Ellesmere Road,
Chiswick, London W4 3DU

Applicant : Circle Residential Management Limited

Representative : None

Respondent : Ms E M McLoughlin

Representative : In Person

Type of Application : Liability to pay service charges

Tribunal Members : (1) Mr A Vance
(2) Ms A Flynn

Date of Decision : 11.08.14

DECISION

Decision of the Tribunal

1. The tribunal determines that the interim service charge demanded in the sum of £1,200 for the service charge year ending 31.12.12 is payable by the Respondent and that it is reasonable in amount.
2. The tribunal makes no determination in respect of the Respondent's counterclaim in claim no. 3QT67745. Nor does it make any determination as to whether two administration charges of £540 each relating to a s.146 Notice and Agents Fees are payable by the Respondent and if they are reasonable in amount.
3. This matter should now be referred back to the Brentford County Court for determination of the matters set out in paragraph 2 above.

Introduction

4. Numbers in square brackets below refer to pages in the tribunal's bundle as supplied by the Applicants.
5. The Respondent is the lessee of Ground Floor Flat, 43 Ellesmere Road, Chiswick, London W4 3DU ("the Property"), a three-bedroom flat in a converted house containing three flats in total ("the Building").
6. The freehold owner of the Building is Mr Charles Packe ("the Landlord") who was registered as the freehold proprietor on 05.03.09 [8].
7. The Applicants were the managing agents for the Property until the lessees acquired the Right to Manage the Building on 26.08.12 [67].
8. The Respondent holds a long lease of the property dated 21.10.95 which requires the Landlord to provide services and the Applicant 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.
9. The relevant legal provisions are set out in the Appendix to this decision.

The Applications

10. There are two applications before the tribunal, one brought by each party.
11. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charge payable by the

Respondent in respect of an interim service charge demand in the sum of £1,200 for the service charge year ending 31.03.12 (LON/00AT/LSC/2014/0216).

12. Proceedings relating to that sum were originally issued in the Northampton County Court under claim no. 3QT67745 [44]. The claim was transferred to the Brentford County Court and then in turn transferred to this tribunal by order of District Judge Willans dated 07.04.14 [45].
13. As well as the sum of £1,200 referred to above, claim 3QT67745 also included sums of £540 described in the general particulars of claim on the claim form as relating to a s.146 Notice and £540 in respect of Agents Fees.
14. It is the tribunal's view that the only matter transferred from the county court to this tribunal for determination was whether or not the sum of £1,200 was payable by the Respondent. The tribunal does not consider that the county court transferred to it the issue of whether the two sums of £540 are payable by the Respondent. The order states the following:
 1. *Case be transferred regarding Service Charge to the Leasehold Valuation Tribunal (LVT).*
 2. *The balance of the claim be stayed pending the determination of then [sic] LVT."*
15. The wording of that order indicates, firstly, that the only matter transferred to the tribunal related to *service charge* and, secondly, that there was a remaining '*balance*' of the claim which was to be determined by the county court once the claim was remitted to it by the tribunal. In reaching this conclusion, the tribunal has had regard to an email on the county court file from the Applicant to the court dated 17.03.14, prior to the transfer, in which the Applicant requested that "*only the Service charge element of the claim be transferred to be dealt with under the provisions of s27A(1)...*". This email supports the tribunal's interpretation of the transfer provisions of the order of 07.04.14.
16. The only *service charge* claimed in claim 3QT67745 is the interim demand of £1,200. The two sums of £540 are not sums that appear to have been demanded as service charge. Instead, they appear to be variable administration charges as defined in Schedule 11 Commonhold and Leasehold Reform Act 2002 (amounts that the Applicant contends are payable by the Respondent as part of or in addition to rent and which are payable for costs arising from non-payment of a sum due to the landlord, or costs arising in connection with a breach (or alleged breach) of the lease. The order of 07.04.14 did not transfer the issue of administration charges to the tribunal.
17. Nor does the tribunal consider that the county court order transferred the counterclaim brought by the Respondent in that claim to the tribunal. In her Defence and Counterclaim the Respondent counterclaimed the sum of £8,298.72 relating to:

- (i) Sums recovered by the Applicant directly from her mortgagee following two other county court claims (2QT17072 and 2QT61035) **[144 and 145]**; and
 - (ii) A sum of £1,130.40 for building work that she stated she carried out in January 2013 involving works to guttering, downpipes, brickwork to the Building and the installation of a new bathroom window. She asserts that this work should have been carried out by the Applicant; and
 - (iii) Two sums of £250 being excess charges paid by her relating to insurance claims she had to make following water penetration incidents from the flats above her.
- 18.** In the tribunal's view the sums counterclaimed are not directly related to the Applicant's service charge liability and were not transferred to the tribunal for determination under the provisions of s.27A of the 1985 Act.
- 19.** On 19.05.14 the Respondent submitted her own application to the tribunal (**LON/00AT/LSC/2014/0272**) in which she sought to challenge service charges claimed by the Applicant in the three county court claims namely:
- (i) Claim no. 2QT610353- amount claimed £4,635.72 which included a claim for payment of interim and final service charges due for the service charge years ending 24.12.10 and 24.12.11; and
 - (ii) Claim no. 2QT17072 – amount claimed £343.00 which related to ground rent of £50 and agents fees of £258.00.
 - (iii) Claim no. QT67745– amount claimed £2,360.00 which included a claim for payment of the interim service charge due on 25.03.12 (for the service charge year ending 24.12.12). Whilst the claim form records the sum as due in respect of the interim service charge due on 25.03.13 the Applicant has clarified that this is an error **[68]**. The Applicant will wish to seek permission from the county court to amend its claim
- 20.** The tribunal considers it has no jurisdiction to determine the sums claimed at (i) and (ii) above. This is because in respect of (i) a default judgment was obtained by the Applicant on 29.06.12 relating to the 2010 and 2011 service charge years **[47]**. A subsequent application to set aside that default judgment was refused on 05.07.13 **[48]**. The entry of a default judgment is a determination of the county court which deprives the tribunal of jurisdiction.
- 21.** As for (ii) it appears from the service charge statement at **[140]** that a fee for requesting default judgment in this claim was paid on 06.03.12. It is likely, in the tribunal's view, that a default judgment was also obtained in this claim which would deprive the tribunal of jurisdiction. If that is incorrect:
- (i) The tribunal does not, in any event, have jurisdiction to determine if ground rent is payable; and

(ii) The tribunal is not willing, in any event, to determine that the sum of £258 is not payable by the Respondent for agents' charges as she has not explained the basis of her challenge in her application or in her statement in reply.

22. As for (iii) this is the claim that has been transferred to the tribunal from the county court and in respect of which the tribunal has concluded that the county court only transferred to it the issue of the Respondent's obligation to pay the interim service charge. The tribunal does not consider that the effect of the Respondent's own application is to provide it with jurisdiction to determine the other sums claimed in this claim, namely the two sums of £540 which appear to be administration charges as stated above. This is because:

(i) The effect of the order of 07.04.14 is that the Respondent's liability to pay these sums is an issue that falls to be determined by the county court as part of the 'balance' of the claim; and

(ii) The only application made by the Respondent before the tribunal is an application for determination of her liability to pay, and the reasonableness of, service charges under s.27A of the 1985 Act. The tribunal has a separate application form relating to an application for a determination as to liability to pay an administration charge. No such application is before the tribunal.

23. The only issue for the tribunal to determine is, therefore, whether or not the interim service charge demand in the sum of £1,200 for the service charge year ending 31.12.12 is payable by the Respondent and if it is reasonable in amount.

24. Directions were issued by the tribunal on 02.05.14 [147] and 22.05.14 [150]. The directions note that the Respondent lives abroad and that the most suitable method of dealing with the application was for it to be dealt with on the papers. Both applications were determined on the papers and without a hearing or inspection.

The Issues, Decision and Reasons

25. The tribunal does not know the date on which the sum of £1,200 was demanded from the Respondent. The demand included in bundle is dated 27.06.14 [41]. It is very likely that that the date is a word-processing field and that this was the date the letter was re-printed. The Respondent has not, in any event, disputed that the sum was properly demanded and the tribunal proceeded on the basis that it was demanded on or about 25.03.12.

26. The sum relates to the interim service charge due on 25.03.12 for the service charge year ending 24.12.12. The sum is broken down in the budget [35] as follows:

Building Repairs	£500
Asbestos/Risk Assessment	£200
Insurance	£800
Management Fee	£720
Accounts fee	£180

Total £2,400

27. The Applicant asserts that the Respondent is liable to pay 50% of that sum under the terms of her lease and this apportionment is not disputed by the Respondent.

The Applicant's Case

28. It is the Applicant's contention that the sums budgeted for were appropriate and reasonable.

The Respondent's Case

29. The Respondent has not disputed that she is liable to pay towards an interim service charge under the provisions of her lease.
30. The only issue for the tribunal to determine is therefore whether or not the amount demanded was reasonable.
31. The Respondent makes no specific challenge to the items of estimated expenditure (as set out in the budget) in her own application. The only matters that she raises in her statement in reply emailed to the tribunal on 22.07.14 (relating to the budget) are as follows:
- (i) She asserts that the Applicant took no steps to maintain the Building until lessees told them that work was needed; and
 - (ii) She contends that no health and safety inspection has been ever undertaken.
 - (iii) She appears to have misunderstood the nature of an interim charge and asserts that the interim service charge should be no more than the management fee.

Decision and Reasons

32. The tribunal considers that the interim service charge demanded in the sum of £1,200 for the service charge year ending 31.12.12 is payable by the Respondent and that it is reasonable in amount.
33. Firstly, whilst the lessees acquired the Right to Manage the Building on 26.08.12 this charge appears to have been demanded on or about 31.03.12, prior to the lessees' acquisition. The Applicant was therefore entitled to demand the sum in dispute.
34. As to liability, the terms of clause 4(b) of the lease are clear. The Applicant covenants to pay one half of the Landlord's costs and expenses for those matters set out in the Fourth Schedule (which includes the costs of insurance; employing accountants, agents and other professionals as may be reasonably required for the carrying out of his obligations under the lease) and the fees of managing agents. In addition, under clause 4(b) she also covenants to pay

"on the Twenty fifth day of March in every year throughout the term to pay the Lessor such sum as the Lessor or its managing agent shall certify as being the reasonably anticipated expenditure for the current period of twelve months (from the

Twenty fifth day of December to the Twenty fourth day of December in each year”

35. The Respondent has made no substantive challenge to the heads of budgeted expenditure. It is the tribunal’s view that it was reasonable and appropriate for the Applicant to budget for the sum of £500 for building repairs that might have been needed throughout the course of the service charge year.
36. There is no evidence that it was unreasonable for the Applicant to budget for a risk assessment in the sum of £200. The Respondent’s contention that no health and safety inspection had been ever undertaken is not a reason for not budgeting for this sum. The sum is modest and as with all these heads of estimated expenditure if the budgeted cost is not actually expended the sum in question should be re-credited to the Applicant’s service charge account when the actual costs for the service charge year are calculated.
37. As for the costs of insurance, the Applicant’s uncontested evidence was that a broker tests the market every three years to determine which policies offer best value for money [50-54], that the cost of insurance for the 2011 financial period was £769.07 [39] and that the actual cost for the year under challenge was £807.87 [40] therefore very close to the budgeted sum. In the light of this evidence and no alternative quotes or any direct challenge to this item the tribunal considers that the sum in of £800 was a reasonable provision.
38. The management fee of £720 breaks down as £200 plus VAT per flat. The Applicant asserts in its statement of case that this charge covers several items set out at paragraph 2.4 of the Royal Institute of Chartered Surveyors guidance *Service Charge Residential Management Code, 2nd edition*. There is no evidence from the tenant that these costs were unreasonable and the tribunal is therefore not in a position to determine that this is the case. In any event, in the tribunal’s view the charges are reasonable given the likely level of management required for a building of this nature.
39. Similarly, in the absence of any evidence from the Respondent that it was not reasonable for the Applicant to budget for the sum of £180 for accountants fees the tribunal is not prepared to determine otherwise. In any event, the sum, which the Applicant states is based on a fixed fee agreement seems reasonable to the tribunal for the likely work involved.

The next steps

40. This matter should now be returned to the Brentford County Court for determination of:
 - (i) Whether or not the two administration charges of £540 each relating to a s.146 Notice and Agents Fees are payable by the Respondent and if they are reasonable in amount; and
 - (ii) The Respondent’s counterclaim.

Concluding Remarks

41. The tribunal's decision relates only to the interim charge for the year ending 24.12.12. It is unclear as to whether or not the actual costs for that year have been finalised and any deficit demanded from the Respondent (or any surplus re-credited to her service charge account).
42. The Applicant has the right to challenge the actual costs for that year to the tribunal if she wishes to do so but it would be in her best interests to ensure that any such challenge was properly focused and supported by evidence. The tribunal recognises that living abroad poses practical difficulties for her but it is important to recognise that the tribunal bases its determinations on the evidence before it.

Name: Amran Vance,
Tribunal Judge

Date: 11.08.14

Annex

Appendix of relevant legislation

Landlord and Tenant Act 1985

Section 18 - Meaning of “service charge” and “relevant costs”

- (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 – Limitation of service charges: reasonableness

- (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 – Liability to pay service charges: jurisdiction

- (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.

[.....]

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-