



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

Case Reference : **LON/00BJ/LSC/2014/0213**

Property : **Flat 2, Park Court, 14 Balham Park Road, London SW12 8DS**

Applicant : **Henry Sutton**

Respondent : **Darren Gidden**

Type of Application : **Payability of service charges**

Tribunal : **Judge Nicol**

Date of Decision : **27th June 2014**

DECISION

Decision of the Tribunal

The Tribunal determines that the Respondent is liable to pay to the Applicant advance contributions to the service charge of £750 on each of 25th March 2014 and 29th September 2014.

The application

1. The Applicant is the freeholder of a purpose-built block of 20 flats. The Respondent is the lessee of the subject property which is one of the flats in the block. The lease provides under clause 2(a) for the payment of advance contributions to the service charge, payable in two half-yearly instalments. The Applicant has set the advance charge for the current year at £1,500, payable in two instalments of £750 each on 25th March and 29th September 2014. The Respondent has queried these charges and failed yet to pay them. Therefore, the Applicant has applied for a determination as to their payability under section 27A of the Landlord

and Tenant Act 1985 (the relevant legislation is set out in the Appendix to this decision).

2. The parties were due to mediate their dispute but the Respondent couldn't attend and further decided not to contest the application – see his letter dated 22nd May 2014.
3. The Applicant has provided extracts from the previous five years' service charge accounts prepared by his agents, HML Andertons. They show typical annual expenditure of just over £20,000 on "routine" items and further expenditure "from the reserve fund" of around £100,000. The accounts do not show contributions to the reserve fund within the annual sum of £20,000 so there is no double-counting. Each lessee contributes one-twentieth of this cost. These sums produce an annual average for each lessee of just over £2,000.
4. In these circumstances, asking each lessee to pay advance service charges of £1,500 per year seems reasonable and the Tribunal is satisfied that the sums so far demanded are payable.
5. The Applicant also sought a determination for future years but the Tribunal does not make hypothetical determinations. Unless and until advance service charges have been properly budgeted and demanded, there is nothing for the Tribunal to determine as nothing is yet payable.

Name: NK Nicol

Date: 27th 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.