



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

Case Reference : LON/00AN/LSC/2014/0489

Property : Flat E, 215 Uxbridge Road London
W12 9DH

Applicant : Ground Rent (Regis) Limited

Representatives : Mr David Robert Foulds - Solicitor

Respondent : Mr Haider Abd Ali Shehab

Representative : In person

Type of Application : Reasonableness of and liability for
service charges and administration
charges under the Landlord and
Tenant Act 1985 (Section
27A)/Commonhold and Leasehold
Reform Act 2002 (Schedule 11)

Tribunal Members : Prof Robert M. Abbey (Solicitor)
Mr Trevor Sennett (Professional
Member)

**Date and venue of
Hearing** : 6th March 2015 at 10 Alfred Place,
London WC1E 7LR

Date of Decision : 23th March 2015

DECISION

Decisions of the tribunal

1. The Tribunal determines that as at 12 June 2014 when the court proceedings were issued there was payable by the respondent to the applicant:

Service charges

2012 full year charge	£ 197.50
2013 full charge	£ 361.50

Administration charges

Administration fees	£ 180.00
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Total payable **£739.00**

2. The file shall be returned to the County Court Money Claims Centre at Salford for the determination of the following claims which this tribunal does not have jurisdiction to determine:
 - o Court fee and
 - o Costs

3. The reasons for our decisions are set out below. Later reference in this Decision to a number in square brackets ([]) is a reference to the page number of the hearing bundle/file provided to the Tribunal for use at the hearing.

The application and procedural background

4. On 12 June 2014 the applicant landlord commenced legal proceedings against the respondent as proprietor of a long lease [013] of the subject property [137].
5. The respondent did file a defence [122] which asserted that the Respondent was not liable for the service charges claimed because he says no services had been provided at the property and that the residents carry out cleaning, redecoration and minor works themselves. He also says that until recently the landlord did not have an entrance key and therefore could not undertake those services. He says that the management fee is too high and has increased without any clear justification.
6. The applicant's claim concerning the determination of service charges referenced A46YM850 was transferred to this Tribunal by order of Deputy District Judge Wright from the County Court Money Claims Centre Salford. The date of the order was 18 September 2014. The claim made in the County court was for unpaid maintenance charges and the administration costs of their collection.

1. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

2. The applicant was represented at the hearing by Mr David Foulds, their solicitor and the respondent appeared in person.
3. The tribunal had before it an agreed bundle of documents prepared by the applicant. Both parties were allowed to adduce further evidence, namely, copies of the freehold title, additional clauses from the lease of the subject premises and in particular schedule eight thereof and copy invoices from the respondent.

The background

4. The property which is the subject of this application is one of eight leasehold flats laid out over several storeys within a converted terraced property. The respondent occupies 215E, a first floor flat. Each lessee is liable for 12.5% of the total service charge expenditure incurred by the landlord.
5. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.
6. The respondent holds a long lease 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.
7. The landlord applicant claimed arrears of service charges for 2012 where the total for the building shown in the accounts [094] was in the sum of £1776. The sums claimed for 2013 were also shown in accounts [071] where the total for the building shown in those accounts was in the sum of £3108. It was accepted by the parties that the respondent had paid the 2014 service charge and that as such there was nothing for the tribunal to consider in this respect. An administration costs claim of £180 was also included in the County Court particulars of claim.

The service charges claimed

8. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal determines the issue as follows.

9. Dealing first with the 2012 service charges, the service charge expenditure listed [94] was

○ Health and safety and fire risk	£480
○ Management fees	£800
○ Accountancy	£400
○ Bank charges	£48
○ Legal expenses	£48
Total =	£1776

10. Accordingly the tenant respondent was originally required to pay 12.5% being £222. The tribunal was able to see a health and safety report [79] that gave rise to the health and safety charge. The tribunal also saw managing agents accounts [97]. However, it was confirmed by the Applicant that in fact the accountancy fees were only £300 and that as such the fees shown in the accounts were wrong. Furthermore the tribunal took the view that the separate items for bank charges and postage were inappropriate and unreasonable bearing in mind that these are items that are generally included within the management fees. Accordingly the Tribunal decided that the service charges should reasonably be reduced by £196 giving a reduced total of £1580. If this total is then divided among the lessees then the 12.5% payable by the respondent amounts to £197.50. The tribunal therefore decided that the 2012 service charge for this flat should be in the sum of £197.50.

11. Dealing secondly with the 2013 service charges, the service charge expenditure listed in the accounts was

○ Health and safety and fire risk	£480
○ Management fees	£2112
○ Accountancy	£400
○ Bank charges	£48
○ Legal expenses	£48
Total =	£3108

12. However the respondent was required to pay monies on the basis of a statement of anticipated service charge expenditure. The amounts listed were

○ Health and safety and fire risk	£300
○ Management fees	£2112
○ Accountancy	£300
○ Cleaning –communal areas	£500
○ Gardening	£500
○ Asbestos report	£270
○ Repairs and renewals	£400
Total =	£4382

13. Accordingly the tenant respondent was originally required to pay 12.5% being £547.75. The tribunal was able to see a health and safety report [55] that gave rise to the health and safety charge. The tribunal also saw managing agents accounts [74]. However, it was confirmed by the Applicant that in fact the accountancy fees were only £300 and that as such the fees shown in the accounts were wrong. Furthermore the tribunal took the view that the separate items for bank charges and postage were inappropriate bearing in mind that these are items that are generally included within the management fees. Accordingly the Tribunal decided that the service charges should reasonably be reduced by £216.
14. Not all the works listed in the anticipated service charges expenditure schedule were actually incurred. Consequently, the actual total from the accounts was £3108, a much lower sum than shown on the estimated total. This being so 12.5% of £3108 amounts to £388.50. However, that total of £3108 should now be reduced by the amount mentioned above in the sum of £216, giving a reduced total of £2892. If this total is then divided among the lessees then the 12.5% payable by the respondent amounts to £361.50. The tribunal therefore decided that the 2013 service charge for this flat should be in the sum of £361.50.
15. With regard to the administration fees the tribunal was satisfied that these were reasonable and proportionate given the nature of the claim and the dispute. The tribunal therefore decided that the administration charges of £180 were payable by the Respondent.

Transfer back to the county court

16. There were some claims made in the court proceedings which we do not have jurisdiction to determine. We have therefore transferred the file back to the county court so that these claims may be pursued if the applicant wishes to do so.

Name: Judge Professor Robert
M. Abbey

Date: 23.March.2015

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 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.

Commonhold and Leasehold Reform Act 2002

Schedule 11

Administration charges

Part 1 Reasonableness of administration charges

Meaning of "administration charge"

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.

Reasonableness of administration charges

2 A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

3(1) Any party to a lease of a dwelling may apply to a leasehold valuation tribunal for an order varying the lease in such manner as is specified in the application on the grounds that—

- (a) any administration charge specified in the lease is unreasonable, or
- (b) any formula specified in the lease in accordance with which any administration charge is calculated is unreasonable.

- (2) If the grounds on which the application was made are established to the satisfaction of the tribunal, it may make an order varying the lease in such manner as is specified in the order.
- (3) The variation specified in the order may be—
- (a) the variation specified in the application, or
 - (b) such other variation as the tribunal thinks fit.
- (4) The tribunal may, instead of making an order varying the lease in such manner as is specified in the order, make an order directing the parties to the lease to vary it in such manner as is so specified.
- (5) The tribunal may by order direct that a memorandum of any variation of a lease effected by virtue of this paragraph be endorsed on such documents as are specified in the order.
- (6) Any such variation of a lease shall be binding not only on the parties to the lease for the time being but also on other persons (including any predecessors in title), whether or not they were parties to the proceedings in which the order was made.

Notice in connection with demands for administration charges

- 4(1) A demand for the payment of an administration charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to administration charges.
- (2) The appropriate national authority may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.
- (3) A tenant may withhold payment of an administration charge which has been demanded from him if sub-paragraph (1) is not complied with in relation to the demand.
- (4) Where a tenant withholds an administration charge under this paragraph, any provisions of the lease relating to non-payment or late payment of administration charges do not have effect in relation to the period for which he so withholds it.

Liability to pay administration charges

- 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 subparagraph (1).