



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

**Case reference** : **LON/00BC/LSC/2014/0552**

**Property** : **Flats 5, 6 & 7 Harrison House, 211  
Westwood Road, IG3 8SE**

**Applicant** : **Mr Harjit Singh**

**Representative** : **Hexagon Property Management**

**Respondent** : **Mr Walli Uddin**

**Representative** : **None**

**Type of application** : **For the determination of the  
reasonableness of and the liability  
to pay a service charge**

**Tribunal members** : **Mrs S O'Sullivan  
Mr S Mason  
Mr O Miller**

**Venue** : **10 Alfred Place, London WC1E 7LR**

**Date of decision** : **31 July 2015**

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**DECISION**

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### **Decisions of the tribunal**

- (1) The tribunal determines that the sum of **£8,231.22** is payable by the Respondent in respect of the service charges for the years 2012, 2013 and 2014
- (2) The tribunal makes does not make an order under section 20C of the Landlord and Tenant Act 1985
- (3) The tribunal determines that the Respondent shall pay the Applicant £440 within 28 days of this Decision, in respect of the reimbursement of the tribunal fees paid by the Applicant in respect of both the application and hearing fees.

### **The application**

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") as to the amount of service charges and administration charges payable by the Respondent in respect of the service charge years 2012, 2013 and 2014.
2. The relevant legal provisions are set out in the Appendix to this decision.

### **The hearing**

3. The Applicant was represented by Mr Ali and Ms Hunjan, both of Hexagon Property Management Limited, at the hearing. The Respondent did not appear and had sent in a request for a postponement (see below). A friend of the Respondent, Ms Berkers, attended at the tribunal to hand in some papers for the tribunal and was present at the hearing whilst the tribunal considered the application for an adjournment. She left before the tribunal considered the substantive application.

### **The background**

4. The property which is the subject of this application is a building containing seven flats.
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 Applicant is the freehold owner of 211 Westwood Road, Ilford, Essex IG3 8SE which is a property divided into seven flats. It appears On the leasehold official copy entries dated 20 November 2014 it is stated that the Respondent is the leasehold owner of Flats 5, 6 and 7, 211 Westwood Road, Ilford.
7. At a case management conference on 20 December 2014 a preliminary issue was identified as to whether the County Court had made an order in relation to the Respondent's liability which ousted the jurisdiction of the tribunal. The Respondent's case as set out in a brief document was that notwithstanding his registration as leasehold owner he was not in fact the leasehold owner of any of the flats. There were suggestions that he had had been tricked by the former owner. The tribunal issued its decision in relation to the preliminary matter on 6 February 2015 in which it concluded that the tribunal did have jurisdiction to consider the application.
8. A further case management conference took place on 12 March 2015 and directions were issued of the same date. These set out the issues between the parties and steps to be taken. This included a provision that the Respondent set out his case fully in a statement of case and attached schedule setting out each service charge item in dispute. A hearing date of 4 June 2015 was set.
9. The Respondent then made an application to appeal the tribunal's decision on its jurisdiction. This was considered by way of a decision dated 15 April 2015 in which the tribunal found that the decision did not require reconsideration and the tribunal was satisfied that the appeal did not have a reasonable prospect of success. Permission to appeal was therefore refused.
10. By letter dated 21 April 2015 the Respondent then made a request for the proceedings to be stayed to allow for an appeal to the Upper tribunal. This was refused by a decision dated 22 April 2015. The Respondent subsequently confirmed that he did not intend to make an application to the Upper Tribunal.
11. By letters dated 5 and 6 May 2015 the Respondent made a further request for a variation of the directions/postponement of the hearing on the grounds that he needed time to prepare for the hearing. By a decision dated 7 May 2015 this request was granted to allow the parties sufficient time to prepare for the hearing. The directions were re-issued and a new hearing date of 30 July 2015 was set in accordance with the Respondent's availability.
12. By a letter dated 27 July 2015 the Respondent requested a postponement of the re-listed hearing of 30 July 2015 on the grounds of ill-health. He relied on a letter from his General Practitioner dated 27 July 2015 which confirmed a diagnosis of acute abdominal pain and

vomiting and went on to say that “*it is difficult to predict as to when he will make a full recovery*”. By a decision dated 28 July 2015 this request was refused on various grounds including that the Respondent had no produced any evidence to show that he was unfit to attend a tribunal hearing.

### **Further application for an adjournment**

13. By a letter dated 29 July 2015 the Respondent made a further request for an adjournment of the hearing. This was placed before the tribunal by the clerk shortly before commencement of the hearing on 30 July 2015. The Respondent explained his condition in a covering letter in which he confirmed that he had suffered from the condition since he was 10 and that this was a condition which was outside of his control. He attached general information from the NHS website. He also relied on discharge information from St Thomas’ Hospital dating back to a one night hospital admission in early March 2015. Lastly he relied upon a further letter from his General Practitioner dated 29 July 2015 which confirmed that he was “*not fit to attend court on 30/7/15*”.
  
14. Pursuant to rule 6 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 and having regard to the overriding objective contained in rule 3 the tribunal refused the application for the following reasons;
  - i) This case has been listed as long ago as November 2014. After a preliminary hearing this case was listed for hearing on 4 June 2015.
  
  - ii) It has already previously been adjourned at the Respondent’s request from 4 June 2015 to 30 July 2015 to allow the Respondent sufficient time to prepare
  
  - iii) The Applicant would be prejudiced by an adjournment because arrangements have already been made for attendance
  
  - iv) A tribunal has been booked to consider the case and a postponement at this stage would result in an unjustifiable waste of the tribunal’s resources.
  
  - v) The Respondent’s medical evidence confirms that it is not known when the Respondent will be able to attend a hearing and it is not clear if he will ever be in a position to attend. Thus were a further postponement to be granted there is a high risk of further postponements and unjustifiable wastes of costs.
  
  - vi) In any event the Respondent has failed to comply with directions in that he has not prepared a statement of case identifying the

items in dispute. Instead he has sought to continue to argue the issue of jurisdiction although the tribunal has already made a ruling on this point. He was aware of the requirement to make a full statement of case having attended two previous case management conferences. He has not engaged with the tribunal and it is likely that, even if the application for a postponement is successful, he will fail to do so.

15. Having refused the application for a postponement the tribunal went on to consider the substantive application.
16. As stated previously the Respondent had failed to set out his challenges to the various service charge categories as directed by the tribunal. The tribunal therefore did the best it could having regard to the issues in dispute summarised at the case management conference.
17. The tribunal noted that buildings insurance was not in issue as recorded at the case management conference.
18. The tribunal also noted that although the issue of a reserve fund was raised at the case management conference this has not been pursued by the Applicant and is not included in the amounts before the tribunal.

#### **Apportionment of service charges**

19. An issue had been contained in the directions as to whether the correct apportionment for each flat was 1/7<sup>th</sup> or 1/9<sup>th</sup>. Mr Ali explained that historically there had been some confusion as to whether the building contained seven or nine units. The tribunal had regard to clause 1.16 of each lease which clearly states that the apportionment is 1/7<sup>th</sup> of the total service charge. The tribunal therefore concluded that the service charges should be apportioned as to 1/7<sup>th</sup> per flat.

#### **Service charge accounts 2012**

20. The evidence heard and the tribunal's decision in relation to each category is as follows;

- (i) Fire risk assessment £300

The tribunal had sight of the assessment and the invoice. It was satisfied that this was a recoverable charge under the lease and that the amount was reasonable. It allowed the cost in full.

- (ii) Health and safety assessment £300

The tribunal had sight of the assessment and the invoice. It was satisfied that this was a recoverable charge under the lease and that the amount was reasonable. It allowed the cost in full.

(iii) Maintenance expenses £1250

The tribunal was provided with an invoice in respect of these works which related to issues requiring action raised in the fire and health and safety assessments. It allowed the costs in full.

(iv) Administration fees £558

The tribunal was provided with copies of invoices in relation to sums demanded by way of administration charges. This related to all three flats with each flat being charged £186. It was heard to relate to the cost of letters before action before legal proceedings were issued which were sent by the legal department at Hexagon. As an administration charge this was not passed through the general service charge. The tribunal was satisfied that this was a recoverable charge under each lease and that the amount was reasonable. It allowed the cost in full.

(v) Accountancy fees £450

The tribunal was provided with a copy of the invoice and was satisfied this was a reasonable sum for the preparation of accounts and allowed the cost in full.

(vi) Management fees

The tribunal heard that the sum charged per unit was £200 plus Vat. Mr Ali had made a statement setting out the duties covered by the managing agents. The tribunal was satisfied this was a reasonable fee and allowed the cost in full.

### **Service Charges 2013**

21. The evidence heard and the tribunal's decision in relation to each category is as follows;

i) Maintenance expenses £1250

The tribunal was provided with an invoice in respect of these works which related to various drainage works required at the property and allowed the costs in full.

ii) Cleaning £1631

Mr Ali set out the position in relation to cleaning in the Applicant's statement of case. This explained that monthly cleaning was carried out by Bishop and Baron Contractors Limited. The cleaning is carried out to the external communal area which consists of three landings. The tribunal was also provided with a witness statement from the director of the cleaning company, Abrar Khalid dated 11 June 2015 which confirmed that the work was carried out consistently from January 2013. The work included brushing the balcony including the staircase and downstairs and outside all of the flats including the forecourt. Litter is also picked together with garden waste and any waste and rubbish around the building. Exterior window cleaning is also included. The tribunal was satisfied the costs were reasonable and allowed them in full.

iii) Accountancy fees £450

The tribunal was provided with a copy of the invoice and was satisfied this was a reasonable sum for the preparation of accounts and allowed the cost in full.

iv) Management fees

The fee was allowed at £200 plus Vat per flat as above.

v) Bookkeeping & reconciliation fees

This sum was conceded for 2013 on the basis that there may have been duplication with matters covered in the general managing agent's fees.

**Service charges 2014**

22. The evidence heard and the tribunal's decision in relation to each category is as follows;

i. Cleaning £1631

The tribunal was satisfied the costs were reasonable and allowed them in full as above.

ii. Accountancy fees £450

The tribunal was provided with a copy of the invoice and was satisfied this was a reasonable sum for the preparation of accounts and allowed the cost in full.

iii. Management fees

The fee was allowed at £200 plus Vat per flat as above.

- iv. Bookkeeping & reconciliation fees £168

This sum was conceded for 2014 on the basis that there may have been duplication with matters covered in the general managing agent's fees.

### **Summary of decision**

23. The tribunal therefore summarises the amounts allowed as set out below in respect of each flat. The parties are asked to note that the total differs slightly from the amounts shown on the statements of account produced to the tribunal at the hearing. This is due in part to the bookkeeping charges being conceded. The figures allowed were confirmed to us at the hearing.

2012 – the amounts allowed were as followed per each flat (inclusive of Vat where appropriate)

• Insurance	£144
• FRA	£42.86
• H & S	£42.86
• Maintenance	£178.57
• Accounting	£64.29
• Management	£240
• Administration charges	£186.00
<b>Total</b>	<b>£898.58</b>

24. 2013 – the amounts allowed were as follows per each flat

• Insurance	£144.86
• Excess	£14.29
• Maintenance	£433.86
• Cleaning	£233.00



• Accounting	£64.29
• Management	£240.00
<b>Total</b>	<b>£1130</b>

25. 2014 – the amounts allowed were as follows per flat

• Insurance	£177.57
• Cleaning	£233.00
• Accountancy	£64.29
• Management	£240.00
<b>Total</b>	<b>£714.86</b>

The total therefore allowed in respect of all three flats for the three year period is **£8,231.22**.

### **Application under s.20C and refund of fees**

26. At the end of the hearing, the Applicant made an application for a refund of the fees that had been paid in respect of the application/hearing<sup>1</sup>. Having heard the submissions and taking into account the determinations above, the tribunal orders the Respondent to refund the fees paid by the Applicant in the sum of £440 within 28 days of the date of this decision.

27. In the application form the Respondent applied for an order under section 20C of the 1985 Act. Having heard the submissions from the Applicant and taking into account the determinations above, the tribunal declines to make any order under section 20C of the 1985 Act, so that the Applicant may (subject to the provisions of the leases) pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge.

**Name:** S O'Sullivan

**Date:** 31 July 2015

<sup>1</sup> The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 SI 2013 No 1169

## **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, 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 the appropriate 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 the appropriate 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).