



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

Case reference : LON/00AB/LSC/2016/0051

Property : 18 Pavilion Court, Goresbrook Road, Dagenham RM6 6XH

Applicant : Castle and Pavilion Court (Dagenham) Management Company Ltd

Representative : Mr N Spurrier, in-house solicitor at Aston Rose (managing agents)

Respondent : Adedotun Adegbite

Representative : The Respondent was not represented and not present at the hearing

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

Tribunal members : Judge P Korn
Ms S Coughlin MCIEH

Date and venue of hearing : 5th May 2016 at 10 Alfred Place, London WC1E 7LR

Date of decision : 6th May 2016

DECISION

6. The tribunal has not inspected the Property or the block as an inspection was not considered necessary and neither party requested an inspection.

Applicant's case

7. At the hearing Mr Spurrier said that the Respondent had paid some of the arrears of the service charges which were the subject of the application but had not accepted that they were properly payable in full.
8. Mr Spurrier, at the tribunal's request, took the tribunal through the background to the dispute and went through the relevant provisions of the Lease and related these to the various heads of charge. He also answered questions posed by the tribunal on certain of the heads of charge and on the paperwork supplied as part of the Applicant's written submissions.

Respondent's case

9. The Respondent has made no written representations and did not attend the hearing.

Tribunal's analysis

10. In relation to each head of estimated service charge we accept that the Lease is sufficiently widely worded to allow for recovery of each head of charge, subject to the amount of the charge being reasonable. In the absence of any specific challenge by the Respondent it is not considered necessary to set out in this decision which clauses or paragraphs of the Lease are relevant to each individual head of charge.
11. Having considered the estimated charges and raised questions on them with Mr Spurrier we are also satisfied, in the absence of any specific challenge, that each estimated charge is reasonable in amount.
12. In relation to the debt recovery fee of £150.00, Mr Spurrier was unable to point to a provision which allowed for this to be recovered from the tenant under the Lease and in our view it is not payable as a matter of interpretation of the Lease.

Cost applications

13. The Applicant has applied for an order pursuant to paragraph 13(1)(b) of the Tribunal Rules for the Respondent to reimburse to the Applicant costs incurred by it in connection with these proceedings. Such an order can only be made if the Respondent has "acted unreasonably in defending or conducting proceedings".

APPENDIX

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,

- (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.