

11477



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

**Case Reference** : LON/00AF/LSC/2016/0055

**Property** : Flat 1, 127 Anerley Road, London,  
SE20 8AJ

**Applicant** : Mr Bryan Carnegie

**Representative** : In person

**Respondent** : Dr Mario Kyriazis

**Representative** : Ms Desely West of Urang Property  
Management Ltd

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

**Tribunal Members** : Judge L Rahman  
Mr Geddes RIBA  
Mrs Hart

**Date and venue of  
Hearing** : 16/5/16 at 10 Alfred Place, London  
WC1E 7LR

**Date of Decision** : 18/7/16

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**DECISION**

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### **Decisions of the tribunal**

- (1) The tribunal makes the determinations as set out under the various headings in this decision.
- (2) The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge.

### **The application**

1. 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 charges payable by the applicant in respect of the actual service charges for the service charge years ending 31st December of 2013, 2014, 2015, and the estimated service charge for the year ending 31st December 2016.
2. The relevant legal provisions are set out in the Appendix to this decision.

### **The hearing**

3. The applicant appeared in person and the respondent was represented by Ms Desely West.

### **The background**

4. The property which is the subject of this application is comprised of a basement flat occupied by the applicant, commercial unit on the ground level, and three flats above the commercial unit.
5. The applicant purchased his leasehold interest in September 2014 and has been residing there since.
6. Urang have been managing the property since September 2013 after the respondent purchased the freehold interest in August 2013.
7. The leaseholders of flats 3 and 4 have provided letters dated 28/4/16 and 6/5/16 supporting the applicants application. Flat 2 is owned by a third party.
8. 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.

9. The applicant 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. The specific provisions of the lease will be referred to below, where appropriate.

### **The issues**

10. The parties identified the relevant issues for determination as set out under each of the sub-headings below.
11. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

### **Service charge year ending 31st December 2013**

12. The applicant stated at the hearing that his only concern was to know what had happened to the end of year surplus.
13. The respondent explained, as demonstrated by the end of year accounts, that the total income for the year was £2,394.30 and the total expenditure was £1,834.44, resulting in a surplus of £559.86. The relevant accounts for the year ending 2014 show that the sum of £559.86 was "brought forward".
14. In view of the actual accounts that have been provided and which the tribunal had been referred to, the tribunal accepts that the end of year surplus had been accounted for and had properly been taken forward to the next service charge year.

### **Service charge year ending 31st December 2014**

15. There were only three items of expenditure for the year. The applicant agreed with the £360 accountancy fee and did not dispute the £34 contingency sum.
16. The applicant disagreed with the total management fee. The applicant also disagreed with the management fee for the service charge year ending 31st December 2015 for similar reasons. For practical reasons, the tribunal have dealt with the issue concerning the management fee for both years below.

### **Service charge year ending 31st December 2015**

17. The items of expenditure disputed by the applicant are as follows.

General repairs and maintenance £1,478.10

18. Ms West stated the relevant invoices were on pages 45, 48, 49, 50, 51, 52, and 54.
19. She agreed with the applicant that an insurance claim had been made concerning damage to flat 2 caused by a leak from flat 3. However, she stated that the insurance company refused to pay for the damage as it was claimed that the damage had been caused by the negligence of the lessee of flat 3 by failing to maintain tiles in the bathroom over a number of years which led to the leak.
20. The applicant stated that he had seen the relevant invoices but it was "new information" to him and he was not sure whether the plumbing work had been paid by the insurance company.
21. The tribunal noted that the invoice on page 45 in the sum of £168 was for the investigation of the communal electrics and the checking of the lights at flat 2 after the leaks. The tribunal accepts that works were carried out to the "communal electrics" and therefore the sum is recoverable as a service charge.
22. The tribunal noted that the invoice on page 48 in the sum of £24, for a bulb changed by the cleaners, concerned a communal bulb and accepts that the sum is recoverable as a service charge.
23. The tribunal noted that the invoice on page 49 in the sum of £156 was in relation to a "*deep clean of communal areas and the site exterior*" on 7/8/15 (£120 excluding tax) and for the "*replacement of one screw type 60W light bulb carried out by cleaning team on 7/8/15*" (£10 excluding tax). The invoice is detailed and specific. Ms West stated that the cleaners had access to the property as the cleaners had taken keys from Urang and it was not necessary for the applicant to provide entry to the cleaners. Whilst the tribunal notes the applicants evidence that he had not seen the cleaners, this does not necessarily mean that the cleaning work was not done. On balance, the tribunal accepts that the cleaning work had been carried out and a bulb was replaced therefore the sum is recoverable as a service charge.
24. The invoices on pages 50, 51, and 52, were for "plumbing work" in the sum of £96.00, "plumbing work Travel > Parking" in the sum of £242.50, and "plumbing work" in the sum of £192.00 respectively.
25. Ms West stated at the hearing that she did not know what this work was for and she was unable to state what specific leaks they may have related to.
26. In view of the evidence provided by Ms West, which is lacking in basic detail and which the tribunal reasonably expected her to know as the person in charge of the property and the respondents representative at

the hearing, the tribunal is not satisfied that the items of expenditure in the total sum of £530.50 are recoverable as a service charge and this sum is therefore disallowed.

27. The invoice on page 54 in the sum of £537.60 was not disputed by the applicant therefore the tribunal determine this sum to be recoverable as a service charge.

Communal cleaning £560.50 and window cleaning £138 totalling £698.50

28. Ms West stated the relevant invoices were on pages 38, 40, 43, and 44.
29. The tribunal noted that the invoice on page 38 in the sum of £156.00 related to a one off deep clean on 18/12/14. The invoice on page 40 related to the cleaning of internal stairwells twice a month for the sum of £125.00 and windows cleaned once a month for the sum of £92.00. The invoice on page 43 related to the cleaning of internal stairwells twice a month for the sum of £187.00. The invoice on page 44 related to the windows being cleaned once a month for the sum of £138. The tribunal noted that the actual accounts for the year ending 31st December 2015 are incorrect as according to the invoices referred to, the communal cleaning cost amounted to £468.50 and the window cleaning amounted to £230.00. However, the tribunal noted that the total sum for both items of expenditure was the same at £698.50.
30. Both parties agreed that there were two communal windows at the rear of the property and the property had an internal stairwell.
31. The applicant stated that whenever trades people came to the property he would allow them access. He is present in the building and had never seen or heard of any cleaners. The windows did not look clean and he and the other residents had cleaned the inside of the windows themselves. The communal area was smelly and dirty.
32. Ms West stated that when electricians had attended, it is correct that the applicant had allowed them access into the property. However, this was only because the applicant wanted to know what was going on. Urang have keys to the property and the cleaners would pick up and drop off the keys from Urang so that they could have access to the property.
33. Ms West stated that she asked the cleaners to provide a monthly report and that the cleaning had stopped after 2-3 cleans. Urang knew that the cleaning was taking place as the cleaners would pick up and drop off the keys to allow them access.

34. The applicant agreed that he had told the respondent that there was no need for a cleaning service as it was not required and he did not see any benefit to him. When referred to the cleaning invoices on pages 38, 40, 43, and 44, the applicant maintained he had not seen any evidence of any cleaning.
35. On balance, the tribunal accepts that the communal areas and windows were cleaned. The invoices are detailed and speak for themselves. Ms West stated that the cleaners would pick up and drop off the keys from Urang to enable them to have access to the property and that the cleaners provided a monthly report. Whilst the applicant may not have personally provided access to the cleaners and may not have seen any cleaning himself, the tribunal notes that the applicant occupies the basement flat and the fact that he may not have allowed access or seen any cleaning does not mean that any cleaning did not take place. The tribunal determines that the cleaning charges are payable.

#### Contingency £665

36. Ms West stated that the respondent collected a specified sum of money on account as a "contingency" rather than as a "reserve". The respondent had collected £500 on account but had actually spent £665. This related entirely to legal expenses incurred in collecting unpaid service charges from flat 4 and the relevant invoice from the solicitors was on page 36 of the respondents bundle.
37. Ms West stated at the hearing that she accepts that the legal fees incurred in collecting unpaid service charges from flat 4 were not recoverable as a service charge under the terms of the lease, in particular by virtue of the definition of "service charge" at paragraph (xi) of the First Schedule and the Lessor's Covenants set out under Part 1 of the Sixth Schedule. The sum of £665 is therefore disallowed.

#### Management Fee

38. The management fee for the service charge years ending 31st December 2014 and 2015 were £1,248 (inclusive of vat) and £1,344 (inclusive of vat) respectively.
39. The applicant stated there was no effective management during 2014 or indeed 2015, there was poor communication and lots of promises were made but not followed through, and Urang were not pursuing those lessees that had failed to pay their service charges.
40. Both parties agreed that the applicant had always paid his service charges and was up-to-date with his service charge payments. Flats 3 and 4 had not paid the relevant service charge for the current year and flat 2 had not paid any service charge for the previous three years.

41. The applicant stated that he accepts that Urang provided some services, for example arranging the insurance, nevertheless, there should be a deduction of 80% to reflect the poor service provided. Although he purchased his leasehold interest in September 2014, he stated that the management was poor from the start of the year. However, he agreed that since Ms West had been dealing with the property, she has been trying her best to communicate and explain things.
42. The respondent stated that the applicant had purchased his leasehold interest in September 2014 therefore 3/4 of the service charge year had already passed therefore he did not know what work had been done and a deduction of 80% for the whole year was unreasonable.
43. Ms West stated that the commercial unit did not contribute towards the management fee. The core services to be provided were listed in the Management Agreement. Ms West however agreed that not all the services that were listed were actually provided as they were not needed. For example, although the list included employing required portering and other staff and effecting appropriate supervision and management of such staff, this was not required as a portering service was not provided in the building. There was no communal electricity and there was no need to arrange for any gardening or cleaning of communal parts. The respondent agreed that most of Urang's work was restricted to dealing with maintenance, briefing accountants, arranging the insurance for the block, and dealing with enquiries by lessees. Ms West agreed that a substantial amount of Urang's time was involved in dealing with defaulting service charge payers. She stated that no action was taken against flat 2, which had not paid any service charges for three years, because she assumed that the respondent did not have any money to take action. She had telephoned and sent reminder letters to flats 3 and 4 to pay the current years service charges.
44. Ms West initially stated at the hearing that she has been dealing with the property for the last six months and she visited the property every 3-4 months. However, she later clarified that she had not been inside the property and only knew the property from the outside and any photographs she may have been shown. She agreed that she should have gone inside the property. When asked whether she had met any of the tenants at any time, Ms West stated that they were supposed to meet once but she did not know what happened and the meeting did not take place.
45. The tribunal notes the management fee charged for each flat is £260 plus vat and £280 plus vat for each service charge year ending 31st December of 2014 and 2015 respectively.
46. The tribunal notes the core services to be provided under the Management Agreement. However, the tribunal finds this document to be a "standard" document and does not reflect the actual service

provided by Urang. A lot of the "core services" referred to are simply not applicable to this block ( for example there is no portage service or communal electricity or gardening) or are not required (for example the cleaning service has now stopped by agreement). The tribunal accepts that Urang had organised cleaning for a limited period, organised repairs and maintenance works, obtained the necessary insurance for the building, and arranged for the relevant accounts to be prepared. The tribunal finds the fee charged by Urang, based upon the "standard" Management Agreement, is "mid range". But the actual service being provided is minimal compared to the core services set out in the Management Agreement. The tribunal also notes the poor tenant relations, as demonstrated for example by Ms West's failure to inspect the inside of the property or to meet any of the tenants at any time.

47. The tribunal therefore determines that there be a deduction to reflect the actual service provided. In view of the actual service provided as compared to the core services to be provided, the size of the property, the small number of flats, and using the tribunals accumulated knowledge and experience of such matters, the tribunal determines a management fee in the sum of £720 (inclusive of vat) for each of the years 2014 and 2015 to be reasonable and payable.

#### **Budget for the service charge year ending 31st December 2016**

48. Ms West stated that the budget for the year ending 31st December 2016 in the sum of £9,100.00 is based upon the actual expenditure for the service charge year ending 2015 and a further £3,000.00 for the reserve account. The lease allows for a reserve fund and each flat will only contribute about £750. The respondent had not previously requested any sums in reserve but is planning to carry out internal redecorations therefore it is prudent to have a reserve fund.
49. The applicant stated that he accepts repairs were needed to be done to the property but the budget should not include any cleaning costs.
50. Given that the respondent has based the budget for the service charge year ending 2016 upon the actual expenditure for the service charge year ending December 2015, the budget should be amended to reflect the following deductions made by the tribunal. Looking at the budget as set out on page 58 of the respondents bundle, the tribunal allows no amount for contingency, allows approximately £950 for general repairs and maintenance, does not allow any amount for general and window cleaning given it is accepted by agreement that the tenants themselves will carry out any necessary cleaning, allows no amount for electricity as it is accepted that there is no communal electricity, allows £400 for accountancy fee, allows £750 for management services, and allows £1,700 for buildings insurance, providing a total sum of £3,800.00.



51. The tribunal agrees that a further £3,000.00 be allowed for the reserve fund. The tribunal found the amount to be reasonable, the applicant accepts that works are required, the applicant accepts that the lease allows for contributions towards a reserve fund, and no such charge had been made previously. In the circumstances, the tribunal found it prudent to have a reserve fund.

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

52. The applicant stated at the hearing that he was not required to pay any fees as they had been waived.
53. The applicant applied for an order under section 20C of the 1985. Having heard the submissions from the parties and taking into account the determinations above, the tribunal determines the applicant acted reasonably in connection with the proceedings and was successful in significantly reducing his service charges, therefore it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act so that the respondent may not pass any costs incurred in connection with the proceedings before the tribunal through the service charge.

**Name:** Mr L Rahman

**Date:**18/7/16

## **ANNEX - RIGHTS OF APPEAL**

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.

## **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.