

11985



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

Case reference : **LON/00AY/LSC/2016/0242**

Property : **9 Deauville Court Elms Crescent
Lambeth SW4 8QH**

Applicant : **Ms. K. Newell**

Representative : **None**

Respondent : **London Borough Lambeth**

Representative : **Ms. C. McKearney of Counsel
Mr. J. Ajayi Leasehold Team
Leader**

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

Tribunal members : **Mr N. Martindale
Mr C. Piarroux**

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

Date of decision : **20 October 2016**

DECISION

Decisions of the Tribunal

- (1) The Tribunal determines that the sum of £49.54 is payable by the Applicant in respect of the service charges due for the subject property (the flat), for works to the Building; and £47.36 is payable by the Applicant in respect of the service charges for works to the Estate: For the period, 1 April 2013 to 31 March 2014. The Tribunal identified and determines that the total of the combined Building and Estate itemised charges for the same period, that had been challenged by the Applicant was £583.89. The old total sum of £583.89 is therefore replaced by the new total sum of £96.90.
- (2) The Tribunal determines that the sum of £296.08 is payable by the Applicant in respect of the service charges due for the subject property (the flat), for works to the Building; and £9.31 is payable by the Applicant in respect of the service charges for works to the Estate, for the period, 1 April 2014 to 31 March 2015. The Tribunal identified and determines that the total of the combined Building and Estate itemised charges that had been challenged by the Applicant was £183.38. The old total sum of £183.38 is therefore replaced by the new total sum of £305.39.
- (3) The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985. This prevents the Respondent from adding their dispute related costs of being added to subsequent service charges for the Building and Estate, in which this flat is located.

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 Respondent in respect of certain items of works in service charge years and periods, 1 April 2013 to 31 March 2014 and 1 April 2014 to 31 March 2015.
2. Directions were issued from this Tribunal, by Tribunal Judge Martynski, on 23 June 2016. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

3. The Directions provided for a half day hearing on 7 September 2016. Both parties substantially complied with the Directions. Though some additional papers were submitted by the parties on the day, it was without objection of the other, and these were accepted by the Tribunal.

The background

4. The property which is the subject of this application is a post war purpose built flat, located in a four level Building, containing 8 flats, two per floor, each apparently of the same size and accommodation. The Building itself formed part of a small terrace of similar Buildings, 5 in all, each containing 8 flats around a central stairwell, forming an Estate of some 40 near identical flats, all set on four levels. situated at Elms Crescent, Lambeth London SW4 8QH
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. The specific provisions of the lease and will be referred to below, where appropriate.

The issues

7. The single bundle prepared by the Respondent containing evidence and submissions from both parties, set out set out the heads of service charge; the amounts claimed against works and related items in each of two accounting years, 2013-14 and 2014-15; and the proportions due for Building and Estate based service charges.
8. The Applicant submitted that the Respondent, prior to the making of this application, had already agreed with the Applicant by correspondence that the cost of certain items of works carried out by the Respondent, to the common parts would not be charged to the Applicant. This, was said to be because these works costs (mainly to the roofs and windows) had only arisen owing to the inordinate delay on the part of the Respondent in undertaking the overdue wholesale repair/ replacement of major elements of the common parts, essentially the replacement of the original roofs and windows.
9. The Applicant evidenced the alleged concession by reference to a letter dated 27 March 2015, from Mr. Paul Webb of LB Lambeth sent to the Applicant stating that, *Lambeth would "look to reimburse any charges made in relation to repairs to your roof and/or windows during the period of delay."* The Applicant sought with LB Lambeth by a letter dated 13 April 2015, to confirm that it would; "include all areas covered by the major works e.g. any responsive repairs required to mechanical and electrical works, miscellaneous repairs – including repairs to brickwork and concrete including re-pointing etc." The Applicant also sought to dispute some duplicated works items and others which related to specific flats. or indeed elsewhere.

10. The Applicant stated that these matters had been raised with the Respondent in December 2015, progressing to a complaint, but that they had made no progress in settling any of them.
11. The Applicant did not challenge other items of the Service Charge or indeed or all of the listed works items in the schedules for each accounting year.

Service charge item & amount claimed

12. Although the Tribunal was presented with summaries and summaries of summaries, of the costs, by both parties, it preferred and with the agreement of both parties instead looked at the two long schedules containing the original works items, for each of the years in dispute. In this way the parties in turn mutually identified to the Tribunal those items disputed and those which were not. Of the former it was identified whether the works cost related to the Building and Estate of the subject flat; to another individual flat; to a different Building; to a different Estate; was a duplicate; or was otherwise simply unidentifiable.
13. Although the Applicant did not raise the issue, in the first paragraph of the statement of the Respondent's representative, Mr Ajayi, did. He drew the Tribunal's attention to the fact that the subject leasehold flat was one of 8 such flats in the Building: And at p.3 of his statement quoted the lease requirement for the leaseholder to pay "*a rateable or proportionate part of the reasonable expenses and outgoings incurred by the Respondent in the repair maintenance improvement renewal and insurance of the Building and the provision of services therein....*".
14. Despite this, it was clear to the Tribunal from the various schedules of items provided by the Respondent that the established practice was for the Respondent to bill each of the forty leaseholders 1/40th of the entire cost of works to all of the 5 Buildings in, and of the Estate. The Respondent clearly felt that each flat should be treated equally by this proportion.
15. This practice was clearly at odds with the lease and the point was raised by the Tribunal for submissions by both parties. Counsel for the Respondent whilst acknowledging the provision, submitted that many if not most of the works listed to any one Building, could also be caught under the wider lease provision for the cost of works to the Estate, to be billed across all 40 flats, as was the existing practice.
16. Although not determined by the Tribunal at that stage, in order to allow it to readily give effect to an allocation of cost between Building and Estate, both parties went through the schedules item by item. In this way the Tribunal was able to identify those items in dispute and to

enable a different allocation to be determinable, depending on its later decision, on the proper cost allocation between Building and Estate.

The Tribunal's decision

17. The Tribunal determines that the amounts payable in respect of the service charges in substitution of the amounts initially payable and disputed for the periods above; is as set out in detail at the head of this decision.

Reasons for the Tribunal's decision

18. The Tribunal reviewed a full copy of the letter dated 27 March 2015 from the Respondent and the undertaking to 'look to re-imburse'. From background material in the bundle about the planned major works to the Buildings and Estate it appeared that a first attempt at the statutory consultation with leaseholders in these Buildings had not been successfully completed, and that a further exercise had been or was currently underway. The exact reason for this delay was unclear and was not a matter for comment by the Tribunal. It was apparent that this failing had necessitated further interim works to the roofs of Buildings at this Estate and consequently additional costs to leaseholders.
19. Although the Tribunal had sympathy with the Applicant about this delay, it does not alter the general requirement on the leaseholders to meet the reasonable costs for works, arising, even in the delayed period. The Tribunal found the letter of 27 March 2015 to the Applicant inconclusive of any undertaking by the Respondent to repay any particular sums.
20. The Tribunal does however require the Applicant to correctly identify and allocate works; avoid duplications; avoid the allocation of costs to individual flats to the collective whole; and ensure that those who, under the lease are due to make contribution are properly billed. It was clear from the list of disputed items that many were simply not rechargeable to the Applicant, for one or more of the above reasons.
21. The Tribunal was disappointed at the continued practices of the mis-identification and mis-allocation, between Buildings and the Estate, as had been shown here. especially when the correct practice had already been clearly identified by the Respondent in their evidence to the Tribunal beforehand. Although the Tribunal noted the submission by Counsel for the Respondent in seeking to argue that all costs might be billed through the provision for Estate recharges, it was not persuaded
22. The Tribunal determined that for this application, 1/8th of the total cost of the works found by it to have been properly incurred by the

Respondent, to the Building; and 1/40th of the total cost of the works found by it, to have been properly incurred by the Respondent to the Estate; be reasonable and payable by the Applicant. The calculations for these two years being set out in the Decision above.

23. The Tribunal makes no determination about the major works. Such determination if and when required, would need to be the subject of a further application to the Tribunal by either the landlord or tenant.

Name: Neil Martindale

Date: 20 October 2016

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the Tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the Tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

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 20

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
- (a) complied with in relation to the works or agreement, or
 - (b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate Tribunal .
- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
- (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
 - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
 - (a) an amount prescribed by, or determined in accordance with, the regulations, and
 - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20B

- (1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.
- (2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

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).