



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

Case reference : **LON/00AZ/LSC/2015/0452**

Property : **51 Limes Grove, London SE13 6DD**

Applicant : **Mr J Hay-Arthur**

Representative : **Mr G Okines**

Respondents : **Mr T Armstead, Mr N Sack**

Representatives : **Mr N Sack (in person)**

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

Tribunal members : **Mr S Brilliant
Mr S Mason FRICS FCI Arb**

**Date and venue of
hearing** : **01 February 2016
10 Alfred Place, London WC1E 7LR**

Date of decision : **02 February 2016**

Decision of the tribunal

The tribunal determines that each Respondent is liable for his respective share of the following sums in respect of the service charges for the following years:

25 March 2012 - 24 March 2013	£2,187.00.
25 March 2013 – 31 December 2013	£944.00.
01 January 2014 - 31 December 2014	£4,169.00.
01 January 2015 - 31 December 2015	Two interim payments of £2,084.50 each.

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 Respondents in respect of the service charge periods ending 24 March 2013, 31 December 2013, 31 December 2014 and 31 December 2015.
2. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

3. The Applicant was represented by Mr G Okines, a director of Arko Property Management Ltd, the Applicant’s managing agent (“the managing agent”). Mr Sack appeared in person. Mr Armstead did not attend the hearing.

The background

4. The two properties which are the subject of this application are respectively the lower ground and ground floor flats in a semi-detached house built around 1860 (“the building”) converted into four flats. The four flats are situated on the lower ground, ground, first and second floors. Front steps lead up to the communal front door, and a ground floor corridor leads to the ground floor flat. There is a staircase leading to the upper two flats. There is a small communal front garden and a communal rear garden. The internal communal parts are lit by three or four bulbs controlled by push button timer switches.
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 Respondents hold long leases of their respective flats. We have been shown Mr Sack's lease dated 24 September 1979 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

7. The issues before us concern the reasonableness of and the liability to pay the service charges arising for the year commencing 25 March 2012, a truncated period 25 March 2013 – 31 December 2013, and the subsequent years commencing 1 January 2014 and 1 January 2015.
8. The service charges we are concerned with fall into seven categories, although not every category arises in every year:
 - (1) Electricity charges for the common parts.
 - (2) Management charges.
 - (3) Accountants' fees.
 - (4) Legal fees.
 - (5) Bank charges.
 - (6) Insurance premiums.
 - (7) Professional fees for the consultation procedure and project management.

The lease

9. The Applicant is under an obligation to keep the building insured. The Applicant is under an obligation to maintain and keep in good and substantial repair and condition, amongst other things, the main structure of building and the common parts. The Applicant is under an obligation to keep accounts of the service costs and render service charge statements. There are other obligations but these are the relevant ones.
10. The Applicant can recover by way of a service charge the amount it spends in carrying out its obligations under the lease. Each Respondent pays a share based on the one time rateable value of his flat.
11. In particular each Respondent has to pay his share of the cost of:

- (1) Insuring and keeping insured the building (clause 2(2)(a)(i)).
 - (2) Maintaining, repairing, redecorating and renewing, amongst other things, the structure of building and the common parts (clause 2(2)(a)(iii)(a)).
 - (3) Lighting the common parts (clause 2(2)(a)(iii)(c)).
 - (4) “The fees of the [Applicant’s managing agent] for the collection of the rents of the flats in [the building] and for the general management thereof” (clause 2(2)(a)(v)).
12. The Applicant is under an obligation to keep accounts of the service costs and render service charge statements. There are other obligations but these are the relevant ones.
 13. The machinery for collecting the service charge is as follows. The amount of the service charge is ascertained once each year on 31 December. An interim service charge is payable by equal instalments in advance on 25 March and 29 September in each year. This is not based on an anticipated expenditure for the year, but on the actual expenditure for the previous year. There is no power to demand amounts in advance to pay for major works.
 14. The lease contemplates that subsequent to the service of the interim service charge instalment in each year a final service charge statement will be sent and a balancing exercise carried out so that the appropriate demand can then be made or appropriate credit given.
 15. Arko Property Management Ltd became the managing agent on 24 August 2014. When it took over the service charge year was in practice running from 25 March - 24 March. In order to return to 1 January – 31 December, it drew up accounts for a truncated period 25 March 2013 – 31 December 2013.

Electricity

16. The cost of the supply of electricity to the common parts is recoverable by way of the service charge. The light bulbs in the common parts are the only services for which electricity is supplied. The utility company is EDF.
17. Mr Sack told us at the hearing that there is no challenge to the electricity charges.

Management charges

18. As set out in paragraph 11(4) above, the lease allows the fees of the managing agent for collecting the rents of the flats and generally managing the building to be recovered by way of the service charge.
19. The services provided by the managing agent consist of renewing the insurance policy each year, paying to the utility company the bill for the supply of electricity to the common parts, arranging for the accounts to be done and providing to the Respondents the statements of service costs referred to above.
20. The managing agent is also responsible for organising any major works and dealing with any routine maintenance problems which might arise.
21. Mr Okines submitted that the market rate for a management fee in London is between £200.00 and £250.00 plus VAT per unit.
22. In the year ending 24 March 2103 the managing agent charged £170.00 plus VAT per unit but mistakenly only charged for 9 months at that rate. In the nine months ending 31 December 2013 the managing agent charged £170.00 plus VAT per unit. In the year ending 31 December 2104 the managing agent charged £216.25 plus VAT per unit.
23. Mr Sack submitted that fees were too high, but he was unable to provide any comparables of his own.
24. We were impressed by Mr Okines as a witness and consider the management of the building to be of a conscientious and professional standard. We consider the management charges to be of a reasonable amount. The increase in 2014 was justified. It does not purport to be in line with inflation. The earlier charges were below the market rate.

Accountants' fees

25. The annual statement is checked and certified by independent accountants in accordance with best industry practice. Mr Sack told us at the hearing that there is no challenge to the liability to pay or the amount of these charges.

Legal fees

26. Mr Okines fairly accepted that the lease does not allow legal costs incurred by the Applicant in taking action against individual tenants to be recoverable through the service charges.

Bank charges

27. Mr Sack told us at the hearing that there is no challenge to the liability

to pay or the amount of these charges.

Insurance

28. Mr Sack told us at the hearing that there is no challenge to the amount of the insurance premiums paid.

Professional fees for the consultation procedure and project management

29. Mr Okines considers that the roof needs replacing. He has considerable experience in construction project management. He has inspected and photographed the roof. We accept his evidence in paragraphs 39-43 of the Applicant's statement of case that the roof needs replacing. The replacement of individual loose slates is not a feasible option.
30. Mr Okines prepared a notice of intention to carry out works dated 5 February 2104. Following the end of the consultation period Mr Okines obtained estimates from two roofing contractors, Mr Symes (£13,500.00 including VAT) and Mr Walker (£14,500.00, not VAT registered). We have no reason to find that there is anything untoward with these estimates or that the contractors failed to attend the site prior to tendering as Mr Sack maintains.
31. Mr Okines prepared a notice to accompany the estimates dated 10 July 2104. After the end of the consultation period another tenant procured a further estimate from "Renford Builders" (£10,200.00 not VAT registered). Mr Okines has been unable to obtain any response from the provider of this estimate.
32. Although Mr Sack originally opposed the renewal of the roof, we did not understand him to be persisting in this stance any longer. In any event, we are persuaded that Mr Okines is clearly right in what he is saying. We are satisfied the Applicant has complied with the consultation requirements and that it is reasonable to renew the roof and that the two estimates prepared for the applicant are reasonable in amount.
33. The managing agent charged the Applicant £864.00 including VAT for carrying out the statutory consultation process and obtaining the two estimates. We are satisfied that the amount charged to the Applicant is a reasonable fee, as it includes obtaining the two estimates. The Applicant has paid the managing agent this fee and it is recoverable through the service charge.
34. The managing agent has also charged the Applicant £480.00 including VAT in advance for project managing the renewal of the roof. We are satisfied that the amount charged to the Applicant is a reasonable,

indeed a modest, fee. The Applicant has paid the managing agent this fee and, again, it is recoverable through the service charge.

25 March 2012 - 24 March 2013

35. The amount claimed for the building for this year is £2,667.00, (said to be £2,666.00) comprising £69.00 for electricity, £240.00 for accountants' fees, £612.00 for management charges, £480.00 for legal fees, £35.00 for bank charges and £1,231.00 for insurance.
36. There is no challenge to the cost of electricity of £69.00.
37. There is no challenge to the accountants' fees of £240.00.
38. As to the management charges, we have stated above that we find the charge of £612.00 claimed is recoverable.
39. As to the legal fees, we have stated above that we find these to be irrecoverable.
40. There is no challenge to the bank charges of £35.00.
41. There is no challenge to the insurance premium of £1,231.00.
42. Accordingly, the total allowed for the building for this year is £2,187.00.

25 March 2013 – 31 December 2013

43. The amount claimed for the building for the nine month period is £950.00, comprising £47.00 for electricity, £240.00 for accountants' fees, £612.00 for management charges, £6.00 for legal fees, and £45.00 for bank charges.
44. There is no challenge to the cost of electricity of £47.00.
45. There is no challenge to the accountants' fees of £240.00.
46. As to the management charges, we have stated above that we find the charge of £612.00 claimed is recoverable.
47. As to the legal fees, we have stated above that we find these to be irrecoverable.
48. There is no challenge to the bank charges of £45.00.

49. Accordingly, the total allowed for the building for this nine month period is £944.00.

01 January 2014 - 31 December 2014

50. The amount claimed for the building for this year is £4,264.00, (comprising £119.00 for electricity, £1,344.00 for professional fees for the consultation procedure and project management, £300.00 for accountants' fees, £1,038.00 for management charges, £95.00 for legal fees, £35.00 for bank charges and £1,333.00 for insurance.

51. There is no challenge to the cost of electricity of £119.00.

52. As to the professional fees for the consultation procedure and project management, we have stated above that we find the charge of £1,344.00 claimed is recoverable.

53. There is no challenge to the accountants' fees of £300.00.

54. As to the management charges, we have stated above that we find the charge of £1,038.00 claimed is recoverable.

55. As to the legal fees, we have stated above that we find these to be irrecoverable.

56. There is no challenge to the bank charges of £35.00.

57. There is no challenge to the insurance premium of £1,333.00.

58. Accordingly, the total allowed for the building for this year is £4,169.00.

01 January 2015 - 31 December 2015

59. It was agreed that the two interim charges payable would each be 50% of the amount found due for the year ending 31 December 2014, namely £2,084.50.

60. Mr Okines informed the tribunal that the Applicant accepted that the issue fees and his costs of today were not charges that were recoverable through the service charge.

Name: Simon Brilliant

Date: 02 February 2016

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.