



12053

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

Case Reference : LON/00AZ/LSC/2016/0347

Property : 124B Lewisham Way London SE14
6PD

Applicant : Mr James Clegg

Representative : In person

Respondent : DFS Properties Limited

Representative : None

Type of Application : Liability to pay service charges
under section 27A Landlord and
tenant Act 1985

Tribunal Members : Charles Norman FRICS (Valuer
Chairman)

Date of Decision : 7 December 2016

Determination by Written Representations

DECISION

Decisions of the Tribunal

- (1) The Tribunal determines that the sum of £342.86 is payable by the Applicant in respect of the disputed surveyors' fees for the service charge year 2015.
- (2) The Tribunal finds that the solicitors' costs in seeking to recover the service charge were unreasonably incurred and disallows them.
- (3) The Tribunal disallows interest on the service charges claimed as being unreasonably claimed.
- (4) The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 that none of the landlord's costs of the Tribunal proceedings may be passed to the lessee through any service charge.
- (5) The Tribunal orders pursuant to rule 13 (2) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 that the application fee paid by the applicant to the Tribunal shall be reimbursed by the landlords within 28 days, unless within 14 days of this decision the respondent makes a submission to the contrary which the Tribunal will consider.

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 payability of a surveyor's fee of £617.14 for 2015 and a landlord's solicitor's fee of £219 in respect of 2016. In addition, the applicant challenges a claim of £19.42 in interest. The Tribunal has jurisdiction to consider this under Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act").
2. The relevant legal provisions are set out in the Appendix to this decision.

The background

3. The property which is the subject of this application is a block of seven flats in Lewisham, described by the applicant as three Victorian terraced houses on a main road [54]¹. Further the applicant stated in his initial form to the Tribunal that the landlord bought the three buildings to convert them into flats in 2009 and that major works are necessary costing up to £16,000 per flat. It is clear that there are seven flats in total.

¹ Page numbers in the bundle are shown in square brackets

4. The Tribunal did not consider that an inspection was necessary or proportionate to the issues in dispute.
5. The Applicant holds a long lease of the property (125 years from 31 July 2013) which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. There is no legal dispute that the landlord is entitled to claim surveyors' fees under the lease and it is therefore unnecessary to refer to relevant covenants. The lessee is liable for a "fair and reasonable proportion" and it is clear that this has been treated as one-seventh of expenditure.
6. Directions were issued on 27 September 2016. These required the landlord to send to the applicant by 18 October 2016 all relevant documents relating to the dispute. The tenant was then required by 8 November 2016 to serve its statement of case and bundle on the landlord. The landlord was required to serve its statement of case and bundle by 29 November 2016.
7. The tenant fully complied with the directions serving a correctly prepared statement of case and paginated bundle running to 89 pages. The landlord has failed to comply with the directions and not sent a bundle to the Tribunal. The Tribunal must make a determination based on the material before it.
8. The tenant has paid all the disputed amounts under protest.

The Landlord's Case

9. The only information before the Tribunal is as follows. First there are two invoices from Gould and Company Chartered Surveyors. The first is dated 27 August 2014 with the narrative "carrying out a detailed inspection of external areas and internal common parts with a view to providing a Report and 10 year Maintenance Plan ... Our report to you dated 26 August 2016 ... fee as agreed £1950 plus VAT, total £2340. The second dated 29 January 2015 is with a narrative "to producing a Schedule of Works for building defects identified between 2015 and 2018...our fee as agreed £1650 plus VAT, £1980 total."
10. Secondly, the landlord's agent stated in an email dated 21 May 2015 to Mr Clegg "we used the same surveyor to carry out condition surveys at various properties so we didn't get another quote for this property but the price was competitive due to the number of properties he did."
11. In addition the Tribunal has had regard to the matters at Para 3 above insofar as they assist the landlord, in that major works are proposed.

The Tenant's Case

12. The gist of the tenant's case (insofar as relevant to this application) was that the survey fees charged were unreasonably high. Mr Clegg obtained a quote (described as a ball-park estimate) dated 17 November 2015 from another firm of Chartered Surveyors Jenner Jones (operating in London Kent and East Sussex) which was included in the bundle [52-53]. That quote was for an initial report £800, schedule of works £825 and 10 year plan £375. The tenant has then added VAT giving at total of £2400. This he has indicated should be divided equally between leaseholders giving his one-seventh share as £342.86.
13. The tenant's case was that legal costs were unreasonably incurred and in light of the tribunal's decision on the surveyors' fees it is unnecessary to deal with the tenant's alternative argument. In the application the tenant also disputed interest on late payment.

Reasons for the Tribunal's decision

14. In light of the quotations provided the tenant has made a prima facie case that the surveyors' fees were unreasonable in amount. This required a detailed response from the landlord but none was provided. In particular, the Tribunal has not received copies of the reports provided by its surveyors. Nor is there any evidence as to why the cost was considered competitive by the landlord. For those reasons the Tribunal prefers the applicant's case, which it accepts.
15. It follows that the legal costs incurred in pursuing the tenant were unreasonably incurred as service charges.
16. For these reasons interest (technically an administration charge) is also disallowed.

Application under s.20C and Reimbursement of Application Fee

17. In the application form the Applicant applied for an order under section 20C of the 1985 Act. Taking into account the determinations above, the fact that the applicant paid all sums prior to this application, the full compliance by the tenant with directions and the failure of the landlord to comply with the directions, the Tribunal determines that none of the landlord's costs of this application shall be regarded as relevant costs to be passed onto the tenant through the service charge.

18. For the above reasons, the Tribunal also orders pursuant to rule 13 (2) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 that the application fee paid by the applicant to the Tribunal shall be reimbursed by the landlords within 28 days of this decision, unless within 14 days of this decision the respondent makes a submission to the contrary which the Tribunal will consider.

Name: C Norman FRICS

Date: 7 December 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.
- (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).