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

**Case reference** : **LON/00BD/LSC/2015/0263**

**Property** : **Flat 5, Walpole Court, Hampton  
Road, Twickenham, Middlesex  
TW2 5QH**

**Applicant** : **Rimex Investments Limited**

**Representative** : **Paul Letman instructed by Rice-  
Jones & Smiths, London EC1N 6RY**

**Respondent** : **Rebecca Rogerson**

**Representative** : **N/A**

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

**Tribunal members** : **Judge Hargreaves  
Michael Taylor FRICS  
Paul Clabburn**

**Date and venue of  
hearing** : **10 Alfred Place, London WC1E 7LR  
14<sup>th</sup> January 2015**

**Date of decision** : **18<sup>th</sup> January 2016**

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**DECISION**

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### **Decisions of the tribunal**

- (1) The Respondent is debarred from defending the proceedings save as to costs.
- (2) The Tribunal determines that the sum of £7,330.58 is payable by the Respondent for the reasons set out below.
- (3) For the avoidance of doubt, the Tribunal does not make an order under section 20C of the Landlord and Tenant Act.
- (4) By 5pm 25<sup>th</sup> January 2016 the Applicant must file and serve on the Respondent a schedule of the costs and disbursements incurred in bringing the proceedings before the Tribunal, having claimed costs pursuant to Tribunal Rule 13.
- (5) The Respondent has permission to file and serve a response to the costs application (both as to liability and quantum) by 5pm 1<sup>st</sup> February 2016 after which the Tribunal will decide the issue of costs.

### **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 the service charges for 31<sup>st</sup> December 2008- 31<sup>st</sup> December 2014, and the first quarter of 2015. The application was issued in the summer of 2015 and directions were given at a case management conference on 16<sup>th</sup> July 2015. This was attended by the Applicant's solicitor but not the Respondent whose involvement in these proceedings is notable for the fact that there has not been any engagement with the process whatsoever, save for sending the Tribunal an undated letter which was received on the 14<sup>th</sup> January and passed to the Tribunal after the hearing ended. It included a document dated 22<sup>nd</sup> December 2015 indicating that the Respondent was unable to attend the hearing, providing no explanation. The letter contains various comments on the amounts claimed, and a proposed schedule of payments. It arrived too late to be taken into account and no prejudice has been caused to the Respondent whose indebtedness is below the level she calculated. It is up to her to deal with how she intends to repay. The first hearing was listed for 26<sup>th</sup> October 2015 when the Applicant's solicitor attended. He applied for and was granted an adjournment when it became apparent that he would have some basic difficulties proving the Applicant's case. The Respondent did not appear and was not represented then.
2. The hearing was adjourned on the basis that further directions were given. The Respondent was warned that default might lead to the

imposition of sanctions. Given that she failed to comply with any directions (again) or appear at the reconvened hearing (see above), the Tribunal decided at the outset that she would be debarred from defending the application save as to costs pursuant to Tribunal Rule 8(2), though since she had not appeared, this made little difference in practical terms. Again, and for the avoidance of doubt, the Tribunal was satisfied that the conditions of Tribunal Rule 34 were fulfilled, and that it was appropriate to proceed in her absence, as before. Had the letter been read before the hearing started, the decision to proceed would have been the same.

3. The relevant legal provisions are set out in the Appendix to this decision.

### **The hearing**

4. The Applicant was represented by counsel, Paul Letman, at the hearing. He produced a very helpful skeleton argument and authorities which dealt with matters of construction of the lease, and provided a table calculating the arrears due. The figures referred to in this decision are largely based on that table which was corrected in certain respects during the hearing. In addition, the Applicant had been required to file and serve a statement of case, pleading out the facts and matters on which it relied. The Respondent could be under no illusions as to how the Applicant was now putting its case.

### **The background**

5. The property which is the subject of this application is a flat in a purpose built block of 22, over a parade of shops in Twickenham. Neither party requested an inspection and the Tribunal did not consider that one was necessary, nor would it have been proportionate to the issues to be resolved by the Tribunal.
6. The Respondent holds a long lease of the property (dated 23<sup>rd</sup> December 1996, for a term of 99 years less 10 days from 24<sup>th</sup> June 1946) which requires the Applicant to provide services and the Respondent 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. Page references refer to those in the second trial bundle.

### **The issues**

7. The practice has been to issue quarterly service charge demands in advance on the usual rent days, based on an estimate for the forthcoming year, based on a calendar year. These estimates are exhibited at Annex A to the statement of case, at pages 161-16s. The

relevant applications for payment (which are statutorily compliant) are at Annex B (page 16t onwards). The audited accounts for the relevant years are exhibited at pages 125-138 at the end of Annex C. The evidence is that this method of charging for the service charges is long established, and unchallenged and as a matter of construction in accordance with clause 4 (which refers to equal instalments – plural – on rent days – plural - in the Maintenance Year). The Tribunal accepts Mr Letman's submissions as to the construction of clause 4 in relation to the quarterly demands for service charges in advance. As the application depends on interim charges, the provisions of *s19(2) LTA 1985* apply. The Respondent is charged 5.23% of the overall service charge, based on the provisions of Part C Sixth Schedule to the lease.

8. The "Maintenance Year" and "Maintenance Contributions" are defined in clause 1(L)(M), and clause 4, read with the Sixth Schedule. Arrears on maintenance contributions (ie service charges) attract interest at 3% over Barclays Bank PLC base rate. As the interest is arguably not strictly a "maintenance contribution" as defined, and the interest charges have not been specifically claimed in the application, the Tribunal does not deal with the interest claim (as to which the respondent might have wished to make submissions), but we would point out that on the face of it, it is hard to see any realistic defence to the interest claimed by the Applicant as absolutely nothing has been paid by the Respondent since April 2008 and the contractual provisions of clause 4 are clear. However, to reiterate, that is not a matter for this Tribunal decision.
9. The method of computation of the annual maintenance contribution is set out in the provisions of Part I of the Fourth Schedule. The basic scheme is that charges are invoiced against estimates in advance, then the actual expenditure is calculated and set out in audited accounts, with a balancing charge or a refund at the end of the year. The Applicant accepts that the balancing charge exercise provided for by paragraph 4 Part I Fourth Schedule has not been carried out, but that what the Tribunal has to do is consider the reasonableness of the service charges pursuant to *s19(2)* in this case.
10. The Applicant correctly concedes that there is no contractual provision for setting aside funds to a reserve account, either in advance or at the end of an accounting year. Mr Letman's calculations (attached to this decision in the table format he provided to the Tribunal as corrected) have been calculated to remove any charge to a reserve fund from the service charges claimed from the Respondent (shown in the accounts for 2007-2010 at £500 pa).
11. In addition, for the purpose of this application only, the Applicant concedes (paragraph 12 of the skeleton argument) that bearing in mind the lack of demand on the Respondent for any deficit noted in the audited year end accounts, no more than the interim charge demanded

is recoverable for the relevant years (2008, 2009, 2011, 2013). Further (see paragraph 11), his calculations “allow” (his quotation marks) the Respondent credit for the excess demanded (ie where expenditure was below the amount estimated).

12. Oral evidence was given at the request of the Tribunal by Ms Marta Paul who is employed by Snellers, the managing agents, even though, as Mr Letman submitted (correctly), there was no challenge from the Respondent as to any item charged for or its reasonableness. Although she has worked for Snellers for a limited period of a year, she had been given the opportunity of taking instructions on points queried by the Tribunal, and answered its concerns competently and credibly. We accept her oral evidence, which was helpful.
13. In this case we should say at the outset that there is no doubt that all the items charged were properly the subject of service charges. However, in the absence of supporting documentation, the Tribunal was concerned to ensure that the charges claimed are actually reasonable. Having heard her explanations and evidence on the engagement of cleaners, and gardeners and their routines, works carried out to the lift over various years, and their own management charges, (as well as approach to insuring the block), the Tribunal is satisfied that both the estimates and the actual service charges are reasonable in amount. The Tribunal notes as significant the fact that there is not one item properly challenged by the Respondent, and the evidence is that none of the other tenants have challenged these charges.
14. 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 item & amount claimed**

15. Bearing in mind the explanations given above by Ms Paul, and the calculations prepared by Mr Letman, the Tribunal takes the figures in the latter’s table (attached) and concludes that the amount due by from the Respondent to the Applicant in respect of the following years is as set out in the table ie
  - 15.1 For 1<sup>st</sup> April -31<sup>st</sup> December 2008 - £719.12
  - 15.2 For the year ending 2009 - £967.55
  - 15.3 For the year ending 2010 - £842.19
  - 15.4 For the year ending 2011 - £1,150.60

- 15.5 For the year ending 2012 - £948.19
- 15.6 For the year ending 2013 - £1,385.96
- 15.7 For the year ending 2014 - £937.79
- 15.8 For the quarter ending 31<sup>st</sup> March 2015 - £379.18.
- 16. This amount totals £7,330.58, which is the amount payable by the Respondent in respect of service charges (excluding contractual interest).

**Application under s.20C and costs**

- 17. No s20c application was made. No s20C order is made.
- 18. The Tribunal considers this is a suitable case for making an order for costs in favour of the Applicant pursuant to Tribunal Rule 13. The Respondent has failed to defend the application (to the extent to which she was ultimately debarred from doing so), pay service charges since April 2008, or give any good reason for her failure to pay or participate in the process, despite plenty of opportunity to do so. Directions are therefore given to enable the Tribunal to deal with costs after giving the Respondent a further opportunity to make submissions on the point.

Judge Hargreaves

Michael Taylor FRICS

Paul Clabburn

14<sup>th</sup> January 2016

**SCHEDULE OF RECOVERABLE  
MAINTENANCE CONTRIBUTION  
IN RE FLAT 5, WALPOLE COURT**

SERVICE CHARGE YEAR	Estimate Total	Interim Demands Total	Actual Incurred	Surplus/ (Deficit)	Recoverable Sum (exc. Reserve and interest)
2008 (from 01/04/08)	19,000	993.72	20,228.56	(1,019.90)	719.12
2009	19,000	993.72	20,031.13	(1,019.33)	967.55
2010	20,650	1,080	16,603.06	4,052.45	842.19
2011	22,500	1,176.76	26,539.00	(4,032.00)	1,150.60
2012	23,500	1,229.04	18,130.00	5,374.00	948.19
2013	26,500	1,385.96	28,022.00	(1,517.00)	1,385.96
2014	35,300	1,846.20	17,931.00	17,378	937.79
2015 (to 31/3/15)	29,000	379.18	N/A	N/A	379.18
				Total due to 31/3/15	7,330.58

## **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).