



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

Case Reference : LON/00BE/LVL/2016/0005

Property : 28 Dighton Court, John Ruskin Street, London SE5 0PR

Applicant : London Borough of Southwark

Representative : In house

Respondent : Shirley Eileen Willis

Representative : In person

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

Tribunal Members : Judge Dickie
Mr S Mason, FRICS

Date and venue of Hearing : 21 April 2016, 10 Alfred Place, London WC1E 7LR

Date of Decision : 21 April 2016

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the balance of £196.76 is payable by the Respondent in respect of the first two quarterly estimated service charge payments for the year 2014/15.
- (2) The tribunal determines that the Respondent shall pay the Applicant £235 within 28 days of this Decision, in respect of the reimbursement of the tribunal fees paid by the Applicant.

- (3) Since the tribunal has no jurisdiction over county court costs and fees, this matter should now be referred back to the County Court sitting at Lambeth.

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 service charge years 2012/13, 2013/14 and 2014/15.
2. Proceedings were originally issued in the County Court Money Claims Centre under claim no. A31YP590. The claim was transferred to the County Court sitting at Lambeth and then in turn transferred to this tribunal, by order of District Judge Zimmels 7 November 2014.
3. The relevant legal provisions are set out in the Appendix to this decision. The lease terms were not in dispute, and require the Respondent to pay by way of a service charge a "fair proportion" of costs and expenses incurred in the provision of certain services.

The hearing

4. The Applicant was represented at the hearing by Ms C. Dowding, Enforcement Officer, and the Respondent appeared in person, accompanied by her daughter Ms S Willis.

The background

5. The property which is the subject of this application is a self contained three bedroom maisonette within a purpose built block. Neither party requested an inspection and the tribunal did not consider that one was necessary or proportionate to the issues in dispute. The block known as Dighton Court is served by a communal boiler which provides hot water and central heating. Some properties enjoy full central supplied by this boiler and some (including the Respondent's maisonette) enjoy only partial central heating.
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 terms of the lease entered into on 14 August 1989 did not require the Applicant to provide central heating and hot water to the Respondent's property, and in turn did not require the Respondent to pay a service charge for their provision and maintenance.

7. In previous proceedings before the Leasehold Valuation Tribunal (case number LON/00BE/LVL/2010/0017) between the same parties, brought by the council under s.35(1) of the Landlord and Tenant Act 1987, the Tribunal determined in a decision dated 27 January 2011 that there should be a variation of the terms of the lease. The Tribunal directed the council to file and serve the draft terms of variation.
8. In the same proceedings the council also brought an application under s.27A of the Landlord and Tenant Act 1985 in respect of service charges payable for the years 2004/05 to 2010/11. The tribunal determined in that same decision that the service charges for heating and hot water needed recalculating, as the Respondent's heating charges should be calculated on the basis of a weighting of 2.5 for partial central heating rather than 4.52 for full central heating. It should be said that, in the knowledge of the terms of her lease, the Respondent has never challenged her responsibility to pay a service charge for the partial heating and hot water service which she has received.
9. In a final decision dated 25 January 2012 in respect of those applications, the Tribunal ordered a variation of the terms of the lease such that "partial central heating" and "hot water provision to the kitchen and lower bathroom" were included in the definition of "services" the landlord has the obligation to provide and in respect of which the tenant is liable to pay a service charge. The Tribunal also found that the council had produced "satisfactory" evidence of the appropriate recalculation and credit to the Respondent for heating charges, in the sum of £434.72 for the years 2004/05 – 2010/11.

The issues

10. At the start of the hearing the parties identified the relevant issues for determination as follows:
 - (i) The Applicant confirmed that it had conceded the Respondent's case in respect of the years 2012/13 and 2013/14. It would not seek further payment from the Respondent in addition to that already made by her for those years. The Applicant also confirmed that it would not seek payment of any additional balance from the Respondent for her heating and hot water charge for the year 2011/12 (though that is not a year which is the subject of the present proceedings).
 - (ii) The only year in dispute therefore in these proceedings is 2014/15. The service charge year beginning on 1 April, the varied lease terms apply to all service charges for this year.
 - (iii) The proceedings issued in the County Court and transferred to the First Tier Tribunal relate to the first two quarterly payments

of the estimated service charge only for the year 2014/15. Any adjustment as a result of the end of year accounts is not the subject of this decision of the Tribunal.

(iv) The Respondent having made part payment of £780 in respect of the two quarterly payments towards the annual estimate of £1953.52, the balance outstanding in respect of which the Applicant sought a determination is therefore £196.76

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.

The tribunal's decision and reasons

12. The Respondent disputed the accuracy of the Applicant's calculation of her service charge for heating and hot water. She relied on the decision of the previous Tribunal that she should pay service charges according to a weighting of 2.5 for partial heating and hot water, rather than 4.52 for full central heating and hot water. She was firmly of the view that the Applicant had not complied with this decision and had in error applied a different factor to calculate her charge (which she claimed represents a weighting of 4.0 and was clearly wrong).

13. However the Tribunal rejects the Respondent's argument, having considered the documents available and having heard the evidence of Ms D. Lupulesc, Revenue Service Charge Officer for the Applicant, as to the method used for calculating the heating and hot water charges. It considers that she has misunderstood the council's methodology.

14. Ms Lupulesc gave evidence that the council, since 2004/05, had apportioned service charges by applying a "bed weighting factor" which increased to reflect the number of bedrooms in a property. In respect of communal heating and hot water charges (other than associated repairs to the building as defined by the lease – which in the case of the Respondent's lease is 17-38 Dighton Court only), it also applied a "boiler weighting factor". This is to reflect the level of service enjoyed – a factor of 4.52 for full central heating or 2.5 for partial central heating.

15. The Tribunal observes that the Respondent had calculated her contribution using only the heating factor of 2.5 to reach what she considered to be the correct proportion of expenditure on heating and hot water payable by her. However, that is not the approach which the council uses, since in allocating those costs it applies both the bed and boiler weighting factors to the expenditure.

16. Thus, in the case of the Respondent's property, the bed weighting is 7 (a base figure of 4 plus 3 for the number of bedrooms) and the boiler

weighting is 2.5 for partial central heating. Multiplying those together an overall “bed-boiler weighting” of 17.5% is reached.

17. The proportion of total charges the Respondent has to pay is calculated by totalling all of the “bed-boiler weighting” figures for the properties that are serviced by the Dighton Court boiler (other than repair charges to “the building” that is 17-38 Dighton Court). That total, the Tribunal is satisfied on the evidence produced by Ms Lupulesc, is 1440. Therefore, the correct proportion of heating charges payable by the Respondent other than for building repairs is 17.5/1440.
18. The Applicant's bed weighting methodology has been approved by previous tribunals, and this Tribunal is satisfied that the formula described by Ms Lupulesc is fair and reasonable and that sums calculated in accordance with this are payable under the terms of the Respondent's lease. The historic problems with the miscalculation of the Respondent's heating charges have been resolved as a result of the decision of the previous Tribunal. Though the Respondent was not happy to accept the figure for the credit in that decision, she did not appeal it. The reason why her credit as set out in the 2012 Tribunal decision was modest in size is because the wrong boiler weighting figure had been applied to many other properties in Dighton Court. After the Tribunal's 2011 decision, the Applicant carried out a full audit of all 78 properties connected to the Dighton Court boiler and identified that 70 of them also had only partial central heating and thus the wrong boiler weighting had been applied in respect of them.

Application under s.20C and refund of fees

19. At the end of the hearing, the Applicant made an application for a refund of the fees of £45 and £190 that it had paid to the Tribunal in respect of the application and hearing respectively¹. Having heard the submissions from the parties and taking into account the determinations above, the tribunal orders the Respondent to refund £235 in fees paid by the Applicant within 28 days of the date of this decision.

The next steps

20. The tribunal has no jurisdiction over county court costs. This matter should now be returned to the County Court sitting at Lambeth.

¹ The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 SI 2013 No 1169

Name: F. Dickie

Date: 21 April 2016

Appendix of relevant legislation

Landlord and Tenant Act 1985

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 a leasehold valuation 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 a leasehold valuation 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.

The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. Rule 13(2)

(2) The Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor.

(3) The Tribunal may make an order under this rule on an application or on its own initiative.