



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

Case Reference	:	LON/00AC/LSC/2017/0158
Property	:	Various flats at Premier House, 112 Station Road, Edgware HA8 7AF
Applicants	:	Mr Lee and 10 others
Representative	:	Mr Lee
Respondent	:	Premier House Ltd
Representative	:	Mr Galliers of BLR Property Management, Managing Agents
Type of Application	:	For the determination of the reasonableness of and the liability to pay a service charge
Tribunal Members	:	Judge Abebrese, Ms Krisco(Professional Member), Mr Taylor(Lay Member)
Date and venue of Hearing	:	22 August 2017, 10 Alfred Place, London WC1E 7LR
Date of Decision	:	19 September 2017

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the sum of £400 per annum is payable by each of the applicants in respect of insurance for the years 2016/2017.
- (2) The tribunal determines that the sum of £1,169.40 is payable by the applicants in respect of service charges for the lifts for the year 2016 and service charges of £4,000 (estimated) for 2017 are also payable. Tribunal notes that the cost for the service contract is £3,324.
- (3) The tribunal determines that the sum of £5,899 is payable by the applicants in respect of service charges for repairs and maintenance for year 2016. The tribunal also determines that the sum of £15,000 (estimate) for the year 2017 is also payable.
- (4) The tribunal determines that the sum of £17,849.70 is payable by the applicants for the year 2016 and the sum of 30,000 for the year 2017 is also payable.
- (5) The tribunal makes the determinations as set out under the various headings in this Decision
- (6) The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge.

The application

1. The Applicants seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") to the amount of service charges payable by the Applicant in respect of the service charge years 2016 and 2017.
2. This application is brought by the applicants stated above however, the tribunal notes that the property comprises of 121 flats over 5 shops and that there are other leaseholders who have an interest in the outcome of this application.
3. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

4. The applicants were represented at the hearing by Mr Colin Lee and Mr Gaik Sui Lee, who are also both leaseholders of the flats. The respondent was represented by Mr Galliers at the hearing.
5. The applicants made an application to the tribunal for an adjournment of the proceedings on the grounds that they had not been provided with sufficient time to deal with the respondent's case and the issues which were to be determined by the tribunal. The tribunal permitted both parties to make detailed representations and after careful consideration concluded that both the applicant and the respondent had provided the tribunal with adequate documentation to determine the issues. At this stage of the proceedings the tribunal informed the parties that we would permit additional evidence to be provided by both parties for further consideration. The tribunal note that no further information has been provided by either party to the proceedings for further consideration.
6. The applicants also raised other issues with regard to the building which after careful consideration by the tribunal it was determined that they were not relevant to the matters raised in the application.

The background

7. The property which is the subject of this application is known as Premier House and may be described as a former office block which has recently been converted into 121 residential flats with commercial premises on the ground floor. The leases were entered into in 2016.
8. 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.
9. The applicants hold long leases of the property which require the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. Clause 7 of the lease deals with the insurance and clause 8 deals with service charges, the tribunal were referred to clause 7 and 8 of the lease and they have both been taken into consideration in our determination of the issues.

The issues

10. At the start of the hearing the parties identified the relevant issues for determination as follows:

(i) The payability and/or reasonableness of service charges for 2016 and 2017 relating to:

- The insurance
- The lifts
- The intercom
- Repairs and maintenance
- The porter
- The fire alarm system
- The Management fees
- Whether the cost of the works are reasonable in particular the nature of the works, the contract price and the supervision and management fee
- Whether an order under Section 20c of the 1985 Act should be made
- Whether an order for reimbursement of the application/hearing fees should be made

11. The following items from the above list were identified by both parties not to be in dispute. The intercom has been included as a budget item but will not be charged. In any event the respondent confirmed that this is a dispute between vendor and purchaser. The fire alarm was no longer being challenged by the applicants. The cost of the fob was also not in dispute. The porter's wages for 2016 of £28,704 was not challenged. The applicants also during the course of the hearing accepted the estimated figure of £35,000 for porter's wages. The respondent however is to provide to the applicants and the tribunal a copy of the contracts for the porter and the management of the facilities.

12. 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.

Insurance sums claimed £14,153 and £30,000 for 2016 and 2017 respectively

13. The applicants in their evidence make the following points. They have spent a period exceeding 6 months chasing the property owners insurance without much success, and they have only managed to obtain information on this issue after the issuing of proceedings in the tribunal. They are of the view that BLR have concealed the details of the insurance brokers thereby making it difficult for them to obtain further details. They assert that BLR have not acted in their interest.
14. The applicants contend that it is debateable whether the amounts are chargeable, or in any event reasonable. The applicants add that there is a discrepancy in the premiums of the policies for 2016 and 2017. The applicants further informed the tribunal that they had not been able to provide the tribunal with comparable insurance quotes because of the difficulties that they have had in obtaining information from the respondents. The freehold was sold to Better Pride and a new insurance policy would have been put in place. The premiums have risen significantly and they would like to see apportionment and breakdown of the cost.
15. The respondents provided a copy of the insurance policy which on perusal by the tribunal appeared to contain all the relevant clauses regarding conditions and terms, the tribunal noted that this document had only been emailed yesterday and applicant informed the tribunal that they had not had sight of the document prior to the hearing. Under the terms of the lease the respondents should have provided the applicants with any requested information within 21 days.
16. The respondents claim that the liability of the applicants arises from clause 7.2.1 of the lease. The premium payable in 2016 was £24,139.73 for the period 1st July 2016 to 31st May 2017. The service account runs from to 31st December the cost was apportioned from 1st June 2016 to 31st December 2016 at £14,153.16.
17. The respondent's state that the sum insured on 2016 policy was £22,000 but this was not increased when the freehold was sold and the new policy was instigated by Better Pride. The sum insured was reduced to £21,000. The budgeted amount for 2017 was based on the premium for the previous year plus an allowance for the claims history which included a fire damage claim. The policy they maintain only covers the residential flats as the commercial units are insured separately.

The tribunal's decision

18. The tribunal determines that the amount payable in respect of insurance is £400 per flat because the insurance is charged at a rate of 1%. In the case of Mr Colin Lee he is charged at a percentage rate of 1.074 and he is liable for the sum of £408 per year.

Reasons for the tribunal's decision

19. The tribunal finds that clause 7.2.1 of the lease does impose a liability on the leaseholders to pay insurance in respect of the property. The tribunal whilst taking into full consideration the case of the applicants find that the sum claimed of £14,153.16 is reasonable and the respondents have provided a reasonable explanation as to how the sum was derived at.
20. The tribunal also find that the sum being claimed for 2017 of £30,000 which is an estimate is reasonable as it is based on the premiums for the previous year plus an allowance for the claims history.

The lifts and the claim of £1,169.40 (2016) and £4,000 (estimate) 2017

21. There are two lifts one is old and the other new. The applicants maintain that the lifts have been subjected to vandalism and this should be covered under the warranty and should therefore not be passed on to the leaseholders. The applicants claimed that there are problems with both lifts. The respondents on the other hand submitted that the sum of £1,169.40 was a one off charge for a call out to repair damage and it is therefore reasonable.
22. The charge for 2017 is an estimate of £4,000. The new lift does have a guarantee and the service contract charge is £3,324. During the course of the hearing the applicants accepted the 2016 claim of £1,169.40 and was therefore no longer an issue before the tribunal, this left the tribunal to determine the estimated charges for 2017.

The tribunal's decision

23. The tribunal determines that the amount payable in respect of 2017 estimated charges to be reasonable. The tribunal noted that there is a service contract in place at cost of £3,324.

Reasons for the tribunal's decision

24. The tribunal accepts the evidence of the respondent that there is obligation to on the part of the applicant leaseholders to pay service charges under clause 8 of the lease.
25. The tribunal also accepts the respondent's claim that the estimated cost of service charges is based on the annual maintenance contract price from Schindler of £3,324 plus an allowance for any contractual repairs.
26. The tribunal also made an order that the respondent is to provide the applicant and the tribunal with a copy of the service contract and the guarantee. Furthermore, that the respondents are to provide the applicants with a copy of the finalised account, the accounts were to be completed within 4 weeks as at the date of the hearing.
27. The tribunal also note that there is presently no sinking fund in place and it is also apparent from the information before us that there are issues between managing agents and the freeholders with regards to the providing information being requested from them.

Management fee £17,849.70 (2016), £30,500 (2017) estimate

27. The applicants claim that the amount being claimed is not claimable and or reasonable. They are of the view that there has been a large increase of management fees (over 28%) and it is not clear why there needed to be an increase. The applicants also claim that there is an additional sum of £713.70 which has been added to the charges and has not been explained.
28. The respondent in response states that the fees have been charged in accordance with the agreed budget at £23,800 inclusive of VAT. The discrepancy highlighted by the applicants is indeed a mathematical error which is accepted.
29. The respondents add further that the increased figure was negotiated with the new owners, however the fees still average at approximately £200 per unit charge which they add is at the lower end of management fees in the area.

The tribunal's decision

30. The tribunal concluded that the management fees are chargeable and reasonable at £210 plus VAT per unit.

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,

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- (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—

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- (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.

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- (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).