



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)
Formerly the Leasehold Valuation
Tribunal**

Case Reference : LON/00AG/LSC/2016/0353

Property : 164 Camden Street, London. NW1
9PT

Applicant : Ground Rent Trading Limited

Representative : Mr George Mallett of Counsel
164 Camden Street (Freehold)
Limited

Respondents : Dr L. Davidson (Basement Flat)
Ms J. Gosh (Raised Ground Floor
Flat)
Mr I. Flynn & Mrs D. Flynn (2nd
Floor Flat)
164 Camden Street (Freehold)
Limited – No appearance

Representatives : Mr Andrew Keogh of Counsel (for
Dr Davidson)
Ms Gosh and Mr Flynn in person
Reasonableness of Service Charges
– Section 27A and 20C Landlord
and Tenant Act 1985, Schedule 11
Commonhold & Leasehold Reform
Act 2002

Type of Application : Reasonableness of Service Charges
– Section 27A and 20C Landlord
and Tenant Act 1985, Schedule 11
Commonhold & Leasehold Reform
Act 2002

Tribunal Members : Judge Lancelot Robson
Mr K. Ridgeway MRICS

**Hearing and
determination date** : 1st December 2016

Decision Date : 26th January 2017

DECISION

DECISION SUMMARY

- (1) The parties agreed the Section 27A application shortly before the hearing, and did not require a decision from the Tribunal.
- (2) The Respondent Ms Ghosh shall pay the Applicant the sum of £2,304 in full settlement of charges incurred relating to breaches of the covenants in paragraphs 1.7 and 1.23 of Schedule 5 of the Lease in connection with unauthorised works on a flat roof above the Basement Flat and demanded under the Lease (which are in fact an Administration Charges as defined by Paragraph 1 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002)
- (3) As no reference was made to the first named Respondent by the parties at the hearing, for completeness the Tribunal notes that it has made no order against 164 Camden Street (Freehold) Limited.
- (4) The Tribunal noted the concession made on behalf of the Applicant at the hearing that it would not oppose a Section 20C order being made. The Tribunal therefore made an order that no charges incurred by the Applicant in connection with this application shall be considered relevant costs for the purposes of Section 20C (and thus cannot be charged to the Respondents).
- (5) Reference was made to an application for costs in Dr Davidson's Statement of Case (in fact an application under Rule13(1)(b) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013). Any party may make such an application within 14 days of the date of publication of this decision to the parties, if so advised.

Background

1. By an application received on 27th September 2016, the Applicant sought a determination under section 27A of the LANDLORD AND TENANT ACT 1985 (as amended) of reasonableness and/or liability under a (specimen) lease dated 25th June 2007 (the Lease) to pay service charges for the service charge years commencing on 1st January 2013, 2014 and 2015, and estimated service charges for the service charge year commencing 1st January 2016.
2. Pursuant to Directions given (without a hearing) on 30th September 2016, the parties made statements of case. The Applicant's statement was prepared by Mr L. Freilich, a Director of the Applicant. Dr Davidson, Mr Flynn and Ms Ghosh all made statements dated 27th October 2016.

Hearing

3. At the start of the hearing, the Tribunal ascertained that the parties had reached agreement on all matters except the question of Ms Ghosh's liability for the Applicant's costs in connection with certain alleged works in breach of the Lease on the rear flat roof above the Basement flat. The

Tribunal noted that Dr Davidson had requested an order for costs against the Applicant. Mr Keogh had no instructions on that point. The Tribunal referred the parties to a recent decision giving guidance from the Upper Tribunal on Rule 13 applications, and decided to allow the parties 14 days after this decision is published to the parties to make any such application. The Tribunal notes that it gave its decision orally (without reasons) to the parties after the end of the hearing, at their request.

Administration Charges demanded of Ms Ghosh

4. Mr Mallett submitted that Ms Ghosh had constructed a roof terrace in or about 2010 on the flat roof above the basement flat without permission, caused damage to the roof of the Basement flat and breached health and safety legislation and the terms of Schedule 8, paras 1.7, 1.14, 1.15 and 5 of the Lease. The landlord had asked Ms Ghosh to remove the works, but in the end had had to use contractors, Leo Weir Building Services, to remove the works and repair the roof in accordance with its repairing obligations under the Lease. The amount claimed was the amount of the contractor's invoice, not including the surveyor's report. The Applicant had tried to make an appointment for the contractor to attend, and even offered visits at times to suit Ms Ghosh. There were photographs in the bundle, and also references to the works done by Ms Ghosh in Dr Davidson's statement (para 11(d)) when complaining about the Applicant. He submitted the evidence was overwhelming. In reply to questions from the Tribunal, he agreed that the roof area was not demised to Ms Ghosh by the Lease, and that it was the landlord's responsibility to repair it in any event (see Schedule 8, Part 1, para 1, and Schedule 5 paras 1.7, and 1.23). Mr Mallett submitted that the charge of £2,304 was in fact a service charge chargeable under the terms of Schedule 9 of the Lease, as the Landlord was entitled to alter the service charge percentage. It would be unfair to charge the other tenants. The payments from Ms Ghosh were made by Standing Order. She was in effect offering to pay £100 per month. At the time, Ms Ghosh owed approximately £4,500. It would have taken 45 months to pay off this sum, and the Applicant was entitled to refuse this offer of payment. The mediation was a free standing procedure. Mr Freilich had been unaware of the mediation appointment, although he accepted that the letter informing the Applicant had been sent to his solicitors, Moerans. However, Mr Mallett submitted that by that time (February 2016) the parties were so entrenched, he did not believe that mediation would have been successful). The existing roof covering had also been replaced by the Applicant as part of the works in dispute.
5. Ms Ghosh disputed that the sum claimed by the Applicant of £2,304 was justified submitted that the charge was unnecessary, and that no work had been done. She had only stored a few bits of loose timber on the roof. Nothing had been attached to it. The Applicant's representatives had failed to attend a mediation appointment set to deal with her dispute. The Applicant had also stopped accepting her monthly Direct Debit without explanation. In reply to questions, she agreed that people

had climbed on to the roof and had removed the timber without permission or request, which had annoyed her greatly. She denied that the timber stored on the roof had caused the leak. She had not had the opportunity to comment on the works, or obtain comparable quotes.

Decision

6. The Tribunal considered the evidence and submissions. The photographs in the bundle appeared to support the Applicant's submissions. They showed at pp. 341 - 344 of the Applicant's bundle, a considerable number decking planks laid across almost the whole roof to form a platform, and others stacked on end against a wall. There also appeared to be damage to the roof light of Dr Davidson's basement property. Whether or not the decking had been attached to the roof, it seemed clear from the evidence that the roof covering was of some age, and was likely to be easily damaged by resting heavy items or walking on the roof. The Tribunal did not accept Ms Ghosh's submission that what it could see in the photographs was only storage, and in any event the Lease did not demise the roof to her, nor give any right of access to her. In addition, there was a specific prohibition in the Lease on use of the roof by the Tenant in Schedule 7, Part III, paragraph 5, which also provided for a lessee who breached the provision to pay for the cost of any damage. There was also a requirement at Schedule 5, paras 1.14 and 1.15 to obtain permission for such work under the Planning Acts. It appeared none had been sought. The Tribunal decided that the charge of £2,304 (for removing the timber and renewing the roof covering) made by the Applicant was reasonable. However it did not accept that the Applicant was entitled to collect it as a service charge. It was in fact an administration charge reserved by the terms of the Lease. However it was clear to the Tribunal that there was power in the Lease (see above) to collect this sum as an administration charge, thus once the correct accompanying notice of the tenant's rights and obligations relating to an administration charge had been served, (if not already served) it was payable in full by Ms Ghosh.

Costs

Section 20C Order

7. The Applicant submitted that the Tribunal's decision on Ms Ghosh's Section 20C application should follow the Tribunal's decision on liability for the charges made to her. Ms Ghosh made no submission.
8. The Tribunal decided that the charge remaining in dispute had effectively been decided by its decision on the administration charge noted above. In view of the agreement between the parties on other matters, the Tribunal decided that the appropriate course was to make an order under Section 20C relating to any other of the Applicant's costs which might arguably be payable by Ms Ghosh. It decided that such costs were not relevant costs and thus not chargeable to the lessees or any of them.

Rule 13

9. As noted above, Any party may make an application (with full reasons) under Rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 within 14 days of the date of publication of this decision to the parties, if so advised, (assuming this issue has not been overtaken by the agreement reached by the parties). The Applicant shall send a Reply to the parties within a further 14 days. Thereafter the Tribunal will decide that matter.

Other matter

10. Mr Flynn was particularly concerned at the end of the hearing that the allegation that Mr and Mrs Flynn were in arrears would not be addressed in the decision. Mr Mallett was happy for the Tribunal to state in this decision that Mr and Mrs Flynn had either paid their service charges or had made satisfactory arrangements for payment. The Tribunal is happy to do so, as this seems implied by the agreement reached between the parties on the Section 27A application.

Issues arising after the Decision

11. The Tribunal, having made its decision, became aware immediately before publication of its reasons (stated above), that the parties were in further dispute over the effect of their agreement and this decision, and that the first and second named Respondents had asked the Tribunal to decide other matters than those put to the Tribunal at the hearing. Thus on 5th January 2017 it directed by an emailed letter that all parties should make formal comments to the Tribunal within 14 days, as to the terms of the agreement reached, what they wished the Tribunal to do, and on the Tribunal's provisional view that it had no further power to consider fresh matters. Two of the Respondents made submissions. Mr Flynn urged the Tribunal to decide certain costs issues in the Respondents' favour. Dr Davidson submitted that the Tribunal should make certain decisions relating to costs issues which had been raised in the original statements of case, by virtue of the Tribunal's jurisdiction under Section 20C, submitting that the Respondents' application still remained before it. The Applicant denied that neither it nor its solicitors had received the email and requested further time to consider its submissions.
12. The Tribunal decided that it would not allow the Applicant any further time to make submissions. The Applicant gave no evidence as to why the emails had failed to reach it, merely stating that they had not been received. Email correspondence has been frequently used by all parties and the Tribunal in this case. The Tribunal noted from its own files that the email addresses it used were the same as for other communications, and that the other parties had received the email in question. No warning of non-delivery had been received by the Tribunal. It also noted (see above) that a similar situation had occurred before relating to the abortive mediation procedure with Ms Ghosh. The Tribunal concluded that on the evidence and the balance of probabilities, the email had been received in the relevant offices.

13. The Tribunal did not accept the Respondents' submissions. It decided that no satisfactory evidence had been put to it that it was appropriate or desirable for it to go beyond the matters put to it at the hearing. Effectively the parties and their representatives had withdrawn the Section 27A and Section 20C issues from it at the hearing, with the sole exception of the problem on the flat roof relating to Ms Ghosh. The Tribunal considered evidence on only the issue put to it. In the Tribunal's view, in the interests of justice and fairness, the most expeditious way of dealing with the disputes which arose after the hearing (if they cannot be resolved by agreement) is by way of a further separate application giving all parties a reasonable opportunity to make full statements of case with supporting evidence, to be considered at a further hearing if required. Any party may make such an application.

Tribunal Judge: Lancelot Robson

26th January 2017

Appendix

Landlord & 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.

20 Limitation of service charges: consultation requirements

(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) a leasehold valuation 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 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.

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 leasehold valuation 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 a leasehold valuation tribunal;
 - (b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation 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

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 a leasehold valuation 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 a leasehold valuation 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)

- (7) Nothing in Section 168 affects the service of a notice under Section 146(1) of the Law of Property Act 1925 in respect of a failure to pay-
- (a) a service charge (within the meaning of section 18(1) of the 1985 Act), or
 - (b) an administration charge (within the meaning of Part 1 of Schedule 11 to this Act).

The Tribunal Procedure (First-tier Tribunal)(Property Chamber)
Rules 2013

13.-(1) The Tribunal may make an order in respect of costs only-

- (a) under Section 29(4) of the 2007 Act (wasted costs) and the costs incurred in applying for such costs;
 - (b) if a person has acted unreasonably in bringing, defending, or conducting proceedings in-
 - (i) an agricultural land and drainage case,
 - (ii) a residential property case, or
 - (iii) a leasehold case; or
 - (c) in a land registration case.
- (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 application or on its own initiative.