

11962



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

Case Reference : LON/00AH/LSC/2016/0308

Property : 298 Old Lodge Lane, Purley, Surrey
CR8 4AQ

Applicant : M & J Partners

Representative : Mr Ben Doyle Counsel instructed
by Pimms & Co managing agents

Also in attendance : Ms T Elliston – Director of M& J
Ms Sharia Moone- Pims & Co

Respondents : Mr & Mrs Ajayi

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

Tribunal Members : Judge Daley
Mrs L West

**Date and venue of
Hearing** : 21 November 2016 at 10 am 10
Alfred Place, London WC1E 7LR

Date of Decision : 27 January 2017

DECISION

Decisions of the Tribunal

The tribunal makes the determinations as set out under paragraphs 43-50 onward in this decision.

The Application

1. The Applicant sought a determination under s.27A of the Landlord and Tenant Act 1985 (“the 1985 Act”) as to whether service charges are payable.
2. Directions were given on 9 September 2016, at the case management conference where it was stated.-: *“...The tenant must prepare a statement in reply to the claim together with a schedule (a Scott Schedule...) setting out those which of the service charges are disputes and why, and set out how much would be a reasonable amount for the service. The tenant should serve a copy of this schedule, statement and any other documents which are relied on the applicants...”*
3. The flat which was the subject of this application was a maisonette situated in a block of 18 flats.
4. The premises are subject to a lease dated 17 May 2006, which requires the Applicant to perform various obligations, and the Respondents to pay service charges. Details of the various covenants which are relevant to this matter are referred to below.

The Hearing

5. At the hearing the Applicant was represented by Mr Ben Doyle counsel. The Respondents were unrepresented. The Preliminary matters dealt with by counsel were apologies for Mr Ellis’ non-attendance, however Ms Elliston was in attendance on behalf of the Applicant as was Ms Moore on behalf of the managing agent, and they could answer any questions posed by the Respondent and the Tribunal. There was also the matter of a community protection notice, which the Tribunal would hear about, which was the reason why the Applicant had undertaken certain work at the property.

6. The service charges in issue are as follows:-
- For the period ending 1.5.2015- £1385.52(plus admin charges of £220.00
 - For the period ending 1.1.2016- £1766.91
 - For the period ending 31.12.2016 admin charges of £400.00
7. Counsel suggested that the Respondent should outline what their objection was to the service charges; this approach was accepted by the Tribunal.
8. The Legal fees were in the sum of £4000.00, this was payable by reference to clause 2 of the second schedule. The Tribunal noted that no specific complaint had been made about this sum in the Scott Schedule. Mr Ajayi stated that there were a number of items in the general repairs that were objected to. The Tribunal was referred to the General Repairs. The Tribunal was informed that the sum of £60.00 and the sum of £81.00 were for lock repairs; these items were not disputed. However the Applicant charged an arrangement fee whenever work was carried out, which was challenged.
9. Ms Moore for PIMS managing agents, stated that this was payable as PIMS had to source the contractors and then check that the work had been carried out to the appropriate standard. This was charged at 35%.
10. There was also an issue with the recently installed CCTV camera, Mr Ajayi was concerned that there were a number of separate charges for this, and also he was concerned about whether this charge was payable by reference to the terms of the lease.
11. The Tribunal was informed by the Applicant's representative that the local authority had served a Community Protection Notice on the Applicants, as there was an extensive problem with fly tipping. This had warned them that failure to address the problem would result in a £20,000 fine. Counsel stated that it was the Applicant's position that the installation of the camera was provided for under the lease by clauses 1 & 5 of the second schedule and the third schedule of the lease which dealt with the repairing covenants. Which stated as follows:- "*1 Maintaining and keeping in good and substantial repair and condition (i) the main structure of the Property including the foundations and the roof thereof with its gutters and rain pipes and balconies but excluding the window frames thereof*"... "*5. Keeping the common parts of the Property in clean condition and properly swept and lighted.*"

12. The Applicants in their response in the schedule also relied upon clause 3 of the third Schedule that stated:- “ *To pay all costs charges and expenses which may from time to time be incurred by the Lessor in abating nuisance caused by the lessee...in obedience to any notice served by any local or other authority..*”
13. Eight cameras had been installed which provided views of both the interior and exterior of the property. Ms Moore was asked whether the CCTV cameras had been effective in reducing the problem. She noted that there had been some reduction in fly tipping at the beginning of the period; however, it had not been as effective as the Applicant had hoped.
14. Mr Ajayi queried where the entry for the costs of the CCTV was shown in the budget, as he had noted that as well as a stand- alone charge for this item, there was a sum of £3500.00 in the general repairs budget
15. In reply Ms Moore stated that it had been necessary to build a housing cupboard for the CCTV camera, the invoice for which was in the sum of £1,050.00. There was an issue in that the CCTV cameras required monitoring and this was not possible given the lack of funds from the service charge accounts. Ms Moore stated that the Applicant had not charged for the cupboard.
16. Mr Ajayi stated that one of the issues was that there were no locks on the gates and doors so the property was not secure so as a result anyone could walk in. As a result he questioned the effectiveness of CCTV cameras and whether the fly-tipping was caused by tenants.
17. Mr Ajayi also stated that the ground floor had access to 4 gates. The Tribunal was referred to an invoice in respect of the garden gates and locks. Mr Ajayi stated that the fencing was owned by the landlord, he also asked why the Respondent on the first floor should pay for the costs of repairs to the gates and the costs of lock changes at the property, he stated that there were four doors at the property and the upstairs did not have access to all four doors. In answer to this, the Applicant pointed to the lease provisions which required all leaseholders to contribute to the service charges. Mr Ajayi stated that the leaseholders on the first floor had to pay 60% whereas the ground floor paid 40% of the service charges.
18. The Tribunal noted that it did not have a breakdown of the actual percentage contribution, or a copy of the ground floor lease. **It directed that the Applicant should provide a copy of the percentage contribution and a copy of the ground floor lease.** Counsel Mr Doyle stated that the ground floor lease percentage was 4.51% and the first floor was 6.19%, given this, the 60/40% split that Mr Ajayi referred to reflected the difference in percentage.

19. Mr Ajayi also queried the costs of the bin stall which was demolished and rebuilt. Mr Ajayi stated that it had not been maintained for the last 10 years, he queried why it had been rebuilt and had remained locked.
20. The Tribunal was informed that the reinstatement of the bin stall had been recommended by Environmental Health, as a result they had rebuilt the bin stall, however there was a dispute concerning planning permission, as a result it was decided that until the planning issues were resolved the bin stall would remain locked. The Tribunal noted that the sum of money involved would require section 20 consultation; as a result, the Tribunal requested copies of the section 20 consultation process.
21. The Applicant had also fitted a water pipe to the rear so that the bins stall could be kept clean in the sum of £480.00, the costs of this was not disputed by the Respondents.
22. Mr Ajayi stated that the Applicant had installed an additional 5 mail boxes, this meant that there was a total of 11 mail boxes. The Tribunal was also referred to an invoice for the installation of two light fittings “2D Bulkhead referred to page 149 which included the costs of installing new lights. The Applicant explained that this had been a repair and as such was different from the service charges for changing the lights. It was a more expensive repair than the minor replacement of bulbs.
23. Mr Ajayi referred to the costs of removal of bulk waste at a cost of £95.00. The Applicant explained that this was mandatory as a result of the Community Protection Notice. The removal was carried out by a contractor (“one man and a van”) on weekly basis.
24. Mr Ajayi disputed that the removal was carried out on a weekly basis, he stated that it was only when someone called or emailed to complain that rubbish was removed. In total there were 42 invoiced visits, however Mr Ajayi stated that in his estimation there had been fewer than 10 clearance visits.
25. *The costs of the cleaning-* Mr Ajayi stated that the standard of cleaning was poor. This was disputed on behalf of the Applicant. It was stated that the cleaning contract was with *Merry Maids* from March 2016; before this, it was with the Managing agent’s in-house contractor. Every 2 weeks all the communal parts were cleaned. Ms Moore stated that this involved cleaning the communal parts and the balcony. The cleaning was carried out by one person for 2 hours at a cost of £50.00 per visit.
26. Mr Ajayi wanted to know what was included in the communal areas cleaning schedule. Ms Moore stated that this involved the main

entrance floor, stairs, the balcony, Mopping and wiping banisters and high windows although these were not done every week.

27. Ms Moore stated that she had been at the premises prior to a clean when a clean was due, and accepted that the standard of overall cleanliness was poor, however she stated that she had seen the premises after cleaning and the standard was acceptable. She stated that there was a tick sheet which had been included in the bundle.
28. Mr Ajayi stated that the area in front of his door had not been cleaned, and he stated that between 15/4/2015 to Mid July 2016 one of the entrances had been locked, given this no cleaning had been carried out. He stated that as a result 1/3 of the costs of cleaning should be reduced.
29. The Applicant stated that there had been no reduction in the time taken to clean or in the costs and did not accept that the costs of the cleaning should be reduced in the manner put forward by Mr Ajayi.
30. Mr Ajayi indicated that he conceded certain service charge costs, he accepted that the costs of the electricity was reasonable, he also accepted the sums claimed for the pest control. He also accepted the costs of the light bulbs. Mr Ajayi also accepted the later items in the service charge accounts of Accountancy; he did not challenge the car park repairs or the reserve fund.
31. Mr Ajayi stated that although the management charge of £4140.00 did not appear to be unreasonable at £104.00 per flat, additional commission was charged, there was also the issue of whether the service provided by the Managers was reasonable given the standard of their performance. The Tribunal was referred to the service charge fees for management at pages 126,133, 134 and 135.
32. The Applicant provided further information concerning the management at the property. The Management was carried out by PIMS (Property Improvement Management Services). The Tribunal was informed that the freeholder company used PIMS to manage three other buildings, there was a written management agreement which governed the relationship between the Applicant and PIMS; however this contract had not been included in the bundle. The Tribunal was informed that the company had two departments, management and maintenance. Its role was to carry out overall property management, communicate with the leaseholders serve notices, issue demands and prepare the budget and ensure that maintenance was carried out at the building. The managing agent charged a 35% handling fee when they did not physically carry out the work through their maintenance company.

33. Ms Moore stated that the appointment of PIMS had been subject to consultation as it was a long term qualifying agreement. In answer to a question from the Respondent, Ms Moore accepted that both the Applicant Company and PIMS shared directors; The Accounts were prepared and audited by a separate firm of accountants which made for transparency.
34. Ms Moore was asked about the additional fees. She stated that the management of the property was time consuming as there was admin caused by an excessive amount of emails and other correspondence.
35. Mr Ajayi complained that as well as the management fees, there were other charges for data processing and reminder fees both of which were charged at £50.00 which meant that the overall management was excessive and poor value for money.
36. The Applicant provided an additional explanation relating to the other head of costs relating to the CCTV camera, the Tribunal heard that this was for the set up costs for maintenance, servicing, connectivity and the office and manning of the system.

Closing submissions

37. Counsel stated that the Applicant had operated from a budget, it was accepted that in some instances the figures did not tally, however this was the nature of a budget estimate which was subject to reconciliation. The issue was whether the service charges were reasonable and reasonably payable. Counsel referred to the case of *Forelux –v- Sweetman* which was authority for the proposition that the landlord did not need to accept the cheapest quote.
38. Counsel referred to *BM Samuels Finance Group 2013* an Upper Tribunal decision which stated that the leaseholder could be satisfied that they got value for money by referring to evidence of cheaper quotes. In this case the Respondent had failed to rely on such evidence.
39. In relation to the CCTV camera, this had been purchased to comply with the requirements of the council. Counsel submitted that the costs of this were payable under the lease, either by clause 5, or alternatively were payable by reference to the third clause of schedule 3.
40. Counsel noted that Mr Ajayi did not take issue with a number of the charges, despite this he had not paid. He should have paid and raised issue with the disputed charges. Counsel also submitted that the landlord was entitled to recover its costs, and accordingly resisted the making of a Section 20C order.

41. In reply Mr Ajayi stated that he had attempted to settle this matter, he referred to page 46 of the bundle. He noted that he had raised issues with the service with the Applicant and the managing agent. He had complained about the lack of cleaning and rubbish removal at the property, and had raised issues on the double charging on items such as the CCTV. He had also pointed out that certain bills could not be justified. He had been willing to enter into a dialogue with the Applicant; the Applicant had not facilitated this until the 10 August when they had met and as a result of the meeting he had thought that an agreement had been reached.
42. He had attempted to engage with the Applicant, and accordingly should not be liable for the costs incurred in relation to this hearing.

The Tribunal's Decision

43. The Tribunal have carefully considered the submissions of both parties and the documentary evidence. On 1 December 2016, the Applicant in response to the Tribunal's directions provided the following additional documents: a lease for 290 Old Lodge Lane, an email dated 23.11.16 together with a letter from Croydon Council recommending the implementation of CCTV. Invoices for the painting in the sum of £3,100 together with documentation relating to the section 20 Consultation concerning the bin stalls. The Tribunal considered the additional documents and makes the following findings -:
44. The Tribunal finds the sums challenged by the Respondent in respect of the costs of repairs for the lock changes at the property and the costs of the garden gate to be reasonable and payable. The Tribunal heard that the premises are occupied by a number of residential leaseholders and also by tenants of leaseholders, as a result there was an issue with security at the building as there was a turnover of occupants; accordingly this resulted in the need to change the locks and upgrade security. Accordingly subject to section 20 consultations having taken place the costs of this item are reasonable and payable.
45. With regards to the repairs to the water pipes and mail boxes, the Tribunal noted that there was no suggestion that this work had been unnecessary or had not been carried out to the required standard. The only issue was whether the landlord had consulted the Respondent in accordance with section 20. The Tribunal has heard nothing from the Respondent which undermines the necessity for this work and

accordingly the costs associated with this work are reasonable and payable.

46. With regards to the costs of the cleaning, the Tribunal noted the Respondent had provided evidence of the standard of cleanliness at the premises. The Tribunal accepts that there was an issue with the standard of the cleaning. Accordingly the Tribunal determines that the costs of the cleaning should be reduced by 1/3. The Tribunal also noted that the costs of cleaning included budgeted as well as actual sums. The Tribunal consider that in respect of the costs for the periods in dispute the costs should be capped at £50.00 per visit.
47. The Tribunal, having considered the provisions of the lease, is not satisfied that the costs of the CCTV are recoverable under the terms of the lease. The Tribunal considered the wording of the lease and in particular clause 3 of the third schedule. Although the Tribunal accepts that the Applicant may be able to charge to abate nuisance caused by the leaseholders, the Tribunal has heard little evidence that the fly-tipping was attributed to leaseholders. Further the Tribunal finds (if it is wrong about the fly-tipping) that the expense must be directly caused by the nuisance rather than a general measure such as installing CCTV in the hope that it would deter future nuisance.
48. The Tribunal noted that although redecoration was carried out at the premises, the full costs of the work were not evidenced at the hearing; accordingly the Tribunal finds that the recoverable costs are limited to the invoiced sums.
49. The Tribunal has noted the uplift to the management charge for arrangement fees relating to service charges. The Tribunal determines that this does not accord with the terms of the lease or with the *Service Charge Residential Management Code*. Accordingly the Tribunal finds that the additional 35% added to those items was not payable.

Application under s.20C and refund of fees

50. At the hearing, the Applicant opposed an order under section 20C of the 1985 Act. Having heard the submissions from the parties and taking into account the determinations above, the Tribunal determines that in all the circumstances, it is just and equitable for a limited order to be made under section 20C of the 1985 Act, so that the Applicant's recoverable costs should be limited to 60% of the costs incurred.

Name: Judge Daley

Date: 27 January 2017

ANNEX - RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.

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.

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.

Leasehold Valuation Tribunals (Fees) (England) Regulations 2003

Regulation 9

- (1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.
- (2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).

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 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).

Schedule 12, paragraph 10

- (1) A leasehold valuation tribunal may determine that a party to proceedings shall pay the costs incurred by another party in connection with the proceedings in any circumstances falling within sub-paragraph (2).
- (2) The circumstances are where—
- (a) he has made an application to the leasehold valuation tribunal which is dismissed in accordance with regulations made by virtue of paragraph 7, or
 - (b) he has, in the opinion of the leasehold valuation tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.
- (3) The amount which a party to proceedings may be ordered to pay in the proceedings by a determination under this paragraph shall not exceed—
- (a) £500, or
 - (b) such other amount as may be specified in procedure regulations.
- (4) A person shall not be required to pay costs incurred by another person in connection with proceedings before a leasehold valuation tribunal except by a determination under this paragraph or in accordance with provision made by any enactment other than this paragraph.