

12511



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

Case Reference : **LON/00AY/LSC/2017/0349**

Property : **Flat 6 Brittany Point, Lollard Street, London SE11 6UJ**

Applicant : **The Mayor and Burgesses of the London Borough of Lambeth**

Representative : **Mr M Tetstall, Counsel**

Respondent : **Miss M Njoku**

Representative : **In person**

Also present : **Ms R Curaj (Applicant's Collections Officer) and Ms G Smith (friend of Respondent and fellow leaseholder)**

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

Tribunal Members : **Judge P Korn
Mr K Ridgeway MRICS**

Date and venue of Hearing : **20th November 2017 at 10 Alfred Place, London WC1E 7LR**

Date of Decision : **12th December 2017**

DECISION

Decisions of the Tribunal

- (1) The estimated service charges of £1,926.46 for the 2016/17 service charge year are payable in full.
- (2) The Tribunal makes no cost orders.
- (3) The case is transferred back to the County Court for final disposal. For the avoidance of doubt, nothing in this determination is intended to fetter the discretion of the County Court in relation to County Court interest or County Court fees.

Background (including details of claim)

1. The Applicant seeks and, following a transfer from the County Court, the Tribunal is required to make a determination pursuant to section 27A of the Landlord and Tenant Act 1985 as to the reasonableness and payability of certain service charges charged by the Applicant to the Respondent.
2. The amount claimed in the County Court proceedings (excluding interest and costs) amounts to £1,926.46. The Particulars of Claim do not themselves state to which service charge period these charges relate and nor do they state whether the service charges in question are actual or estimated charges. At the hearing the Respondent stated quite emphatically that there was confusion as to what the claim related to.
3. However, the Applicant's written statement of case states that the claim is for unpaid estimated service charges of £1,926.46 for the 2016/17 service charge year. In addition, the hearing bundle includes copies of (a) service charge statements dated 20th May 2016 and 20th June 2017 which list (amongst other items) the sum of £1,926.46 as being the estimated service charge for 2016/17, (b) an itemised summary dated 1st June 2016 of the estimated service charge for 2016/17 totalling £1,926.46, (c) a service charge reminder dated 20th September 2016 listing (amongst other items) the sum of £1,926.46 as the estimated service charge for 2016/17 and (d) a service charge final demand dated 8th November 2016 listing (amongst other items) the sum of £1,926.46 as the estimated service charge for 2016/17.
4. The relevant statutory provisions are set out in the Appendix to this decision. The Respondent's lease ("**the Lease**") is dated 19th December 2005 and was entered into between the Applicant (1) and the Respondent (2).

Respondent's position

5. At the hearing the Respondent said that the Applicant had not fully complied with the Tribunal's directions as these required the Applicant (amongst other things) to provide copies of all invoices, receipts and other documents to support the amounts claimed. She also disagreed that the claim related to the estimated service charge for 2016/17. On this point, the Tribunal Chair said (a) that it was for the Applicant to substantiate its own claim, not for the Respondent to decide what the claim was for, (b) that on the basis of the documentation referred to in paragraph 3 above the Tribunal was satisfied that the claim did indeed relate to the estimated service charge for 2016/17 and (c) that copy invoices and receipts were not needed in order to assess the reasonableness or otherwise of estimated service charges. Accordingly, the Tribunal Chair invited the Respondent to present her arguments in response to the actual claim and therefore to limit herself to arguments relevant to the reasonableness of the estimated service charge for 2016/17.
6. At the hearing, the Respondent said that the concierge charges were disputed on the basis that the charges used to be lower and that previously there were 9 people employed to do the work but now there were only 3. The estimated charge was £330.68 and she felt that a reasonable estimate would instead be £100.00. In addition, in her written defence to the original County Court claim she quoted a previous Tribunal case (Ref: LON/00AY/LSC/2016/0103) in which it was decided that the London Borough of Lambeth had overcharged the leaseholder in that case for concierge services, and she felt that this should also be applied to her own concierge charges.
7. In the Respondent's view the estimated boiler repairs and maintenance charges should not be more than £50.00, the estimated hot water charges should also not be more than £50.00, the estimated heating charges should not be more than between £100.00 and £150.00, the estimated communal electricity charges for the block and for the estate should not be more than £10.00 each, the estimated disinfestation charges should also not be more than £10.00, and the estimated door entry system charges should also not be more than £10.00.
8. The estimated management charge should only be 10% as, in the Respondent's view, this was what the Lease said. There should be no estimated charge for communal water quality, communal ventilation maintenance or communal window cleaning as, in the Respondent's submission, these services had never been provided. As regards the charge for cleaning the estate, the Respondent said that the Property was not part of an estate.

Applicant's case and response to Respondent's arguments

9. In relation to all of the disputed charges, Mr Tetstall said that they were either similar to the previous year's actual charge or represented a slight increase (but even then the charge was, in some cases, lower than the previous year). Exceptions were the hot water and heating charges, the cost of which fluctuated from year to year, and therefore it was difficult to come up with an estimate which precisely tracked the actual cost.
10. As regards the management charge, paragraph 1 of Part 2 of the Fourth Schedule to the Lease allowed the Applicant to recover "*the reasonable costs incurred by [it] in the management of the Estate including all fees and costs incurred in respect of the annual certificate of account and of accounts kept and audits made for the purpose thereof such management costs being not less than 10% of the total Service Charge*". In Mr Tetstall's submission, this did not limit the management charge to 10% of the total service charge but instead meant that it should be at least 10% and could be more.
11. As regards the services which the Respondent was alleging had never been provided, this was disputed by the Applicant. In any event, this was not a sound basis for disputing an estimated charge, as the estimate was predicated on the assumption that the service would be provided in the following year.
12. As regards whether the Property formed part of an estate, the Respondent had not raised the point prior to the hearing and had not offered any evidence on the point, but Mr Tetstall's instructions were that the Property did form part of an estate.
13. In written submissions the Applicant stated that the estimated costs were calculated accurately and reasonably and that the Applicant ensured that these costs were drawn up carefully.

Tribunal's determination

14. For the reasons already stated above, we are satisfied that the claim relates to the estimated service charges for 2016/17. As explained at the hearing, the estimated service charge is an estimate of what the service charge is anticipated to be for the year in question and therefore the Respondent's request for proof of reasonableness through production of copy invoices is misplaced. No invoices are available because the costs have not yet been incurred, which is why the charge is an estimate.
15. We are also satisfied that the service charge provisions in the Lease are wide enough to cover each head of estimated service charge in the

Applicant's itemised budget in the absence of any specific challenge on this point.

16. As regards the Respondent's specific challenges, she has suggested that certain estimated charges should be lower but (subject as noted below) has offered no evidence in support of this assertion. It therefore remains a mere assertion and one which she has no apparent basis for making. On the basis of the information that is before the Tribunal, the relevant estimated costs seem within the parameters of what is normal and are sufficiently consistent with previous years not to represent an aberration, and there is no credible basis for the Tribunal to reduce them.
17. In relation to the services which the Respondent claims have not previously been provided, we accept that it is hard for the Respondent to prove non-provision of services, although we are a little sceptical about the assertion that the windows have never been cleaned. However, the main point is that the disputed charges are estimated charges, and they are set on the assumption that the relevant services will be provided. If a service is in practice not provided then when preparing the accounts for the actual service charges for that year the Applicant should obviously not include a charge for that service at that stage, and if such a charge were to be included as an actual charge then it would be open to challenge. Therefore, in conclusion on this point, this is not a valid basis on which the Respondent can challenge these estimated charges.
18. In relation to the management charge, the Respondent states that, according to the Lease, the charge may not be more than 10% of the total service charge, but this is clearly incorrect. The Lease states that it is to be **not less** than 10% of the total service charge. Therefore, again, this is not a valid basis on which the Respondent can challenge this estimated charge.
19. In relation to the concierge charge, the fact that it may been lower several years ago does not by itself demonstrate that the estimated charge is unreasonable. As regards the previous Tribunal case on concierge charges referred to by the Respondent, that case related to a property at 86 Elkington Point. It is unclear, in the absence of any further information having been supplied by the parties, whether the concierge service for the two properties is or should be comparable. In addition, in the Elkington Point case it is striking that, for whatever reason, the Council did not give any evidence. Furthermore, in that case the charge was reduced to £394.04 for 2014/15 and to £394.83 for 2015/16. There is no information as to what percentage of the total was payable by the relevant leaseholder in the 86 Elkington Point case, and in any event as the disputed estimated charge in the present case is £330.68 it is very hard to see on what possible basis the Tribunal could reduce this. Therefore, it is payable in full.

Cost Applications

20. No cost applications have been made.

Name: Judge P Korn

Date: 12th December 2017

RIGHTS OF APPEAL

- A. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) a written application for permission must be made to the First-tier Tribunal at the regional office dealing with the case.
- B. 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.
- C. If the application is not made within the 28 day time limit, such application must include a request for extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
- D. 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 (as amended)

Section 18

- (1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
 - (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
 - (b) the whole or part of which varies or may vary according to the relevant costs.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose -
 - (a) "costs" includes overheads, and
 - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
 - (a) only to the extent that they are reasonably incurred, and
 - (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;and the amount payable shall be limited accordingly.
- (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

- (1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to -
 - (a) the person by whom it is payable,
 - (b) the person to whom it is payable,
 - (c) the amount which is payable,

- (d) the date at or by which it is payable, and
 - (e) the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
- (a) the person by whom it would be payable,
 - (b) the person to whom it would be payable,
 - (c) the amount which would be payable,
 - (d) the date at or by which it would be payable, and
 - (e) the manner in which it would be payable.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which -
- (a) has been agreed or admitted by the tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
 - (c) has been the subject of determination by a court, or
 - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.