

12329



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

**Case Reference** : LON/00AZ/LSC/2017/0058

**Property** : 202b Verdant Lane, London SE6 1LJ

**Applicant** : Ms Insof Libon

**Representative** : Ms Insof Libon

**Respondent** : GM Property Investment Limited (1)  
Robert Irving Burns (RIB) Management  
Services Limited (2)

**Representative** :

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

**Tribunal Members** : Tribunal Judge Dutton  
Ms S Coughlin

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

**Date of Decision** : 7th August 2017

---

**DECISION**

---

*The Respondent accepts that the Applicant is entitled to set that sum off against her service charge liability reducing the same to £771.11.*

*The Respondent is also prepared to enter into an agreement providing for the County Court proceedings to be dismissed, subject to the Applicant agreeing to a similar order in respect of her counter claim (pleaded at £2,754). This is the proposal we made to the Applicants. We believe it to be more than reasonable given the documentation disclosed to us.*

*In order to save costs, the Respondents will not be in attendance on Thursday's hearing for which no disrespect is intended.*

*A copy of this letter has been provided to the Applicant.*

*Yours faithfully*

*Chandler Harris LLP*

The letter is dated 18<sup>th</sup> July. There are some anomalies in that the amount of the County Court claim issued on 17<sup>th</sup> February 2017, four days after the application was lodged with this Tribunal, the sum claimed is £3,188.39 including an administration fee of £624 and interest and costs.

5. We have no other information before us from the Respondents and must rely therefore on the original documents that they lodged, which we have noted.
6. Miss Libon was upset that the Respondents had produced their letter of 18<sup>th</sup> July as she said this followed from without prejudice correspondence. She also pointed out that her acceptance of the sum of £2,370.78 as unpaid service charges was before our decision on 22<sup>nd</sup> May.
7. She told us that she would be seeking reimbursement of half the roof costs which totalled £2,754. This would therefore be in the sum of £1,377 but she accepted that she had already been paid £500 towards this by the downstairs lessee and accordingly the total sum she would be seeking to recover in respect of her roof repair costs was £877. She understood that the ground floor tenant was dealing with the landlord in respect of any balance.
8. She then turned to the question of internal repair costs for which she could produce invoices totalling £1,349.67, a sum which now appears to be accepted by the Respondents as a set off.
9. Miss Libon then took us to the schedule which she had prepared reflecting our 22<sup>nd</sup> May decision. This showed the amended management fees in accordance with that decision and also the risk assessment reduction. The reduced payment on account for repairs and maintenance was shown but the anticipated fire risk and assessment figure had not been included and that, therefore, needed to be inserted to correct the figures. As a result of this, she accepted that the sums outstanding, excluding ground rent, were £3,253.73. To that should be added ground rent of £425, giving a total liability, therefore, before any allowances and payments of £3,678.73.

## FINDINGS

15. We have considered the chronology of this matter. It is quite clear from the various emails that have been produced in the bundles that Miss Libon raised the question of the leaking roof in November of 2014. A report was prepared by a roofer on behalf of the Respondents indicating costs of £7,330 plus VAT. In an email of 9<sup>th</sup> December 2014 reference is made to the need to apply for dispensation and requesting Miss Libon to make the decision as to whether or not dispensation should be sought. She responded on the same day asking whether this was the only quote and also whether or not insurance would cover it. Further chasing emails were sent and it appears that Miss Libon herself made arrangements for a surveyor to check over the roof who reported back on the various issues. Further prevarication arose from the agents, see for example the letter of 18<sup>th</sup> December indicating the costing issues. Eventually in January of 2015 it appears that M&J Group were intending to inspect and as late as March the Respondents appear to be again failing to address the issue and discussing possible section 20 procedures of dispensation. Eventually the initial notice under section 20 was sent out on 13<sup>th</sup> March 2015. There appears to be no indication that any application for dispensation was to be made. On 27<sup>th</sup> March, there appeared to be a change in the manager and in an email the final paragraph says *"At the moment I am fairly busy next week but the week after Easter is free, please do let me know when you'd like to meet with me and I will put it in the diary."*
16. There seem to follow from earlier emails from Miss Libon indicating that she was not prepared to wait any longer and that she would be proceeding with the works. This generated a further email from Mr Marcus Scott dated 31<sup>st</sup> March again putting up reasons as to why the works had not been started. In the end, Miss Libon went ahead with the works and the costs of same are known. She also instructed the Legal Advice Centre in Bethnal Green to write to the Respondents on 22<sup>nd</sup> May 2015 seeking reimbursement but that letter was not responded to until September apparently because it is said it did not reach the offices of the managing agents. We have seen also the comments made in RIB's witness statement.
17. Our finding is that the landlord has been dilatory in dealing with the water ingress to Miss Libon's flat. He was put on notice in November that there were problems and nothing positive had been done to correct that until Miss Libon took the matter into her own hands to resolve the problems with the leaking roof. We find, therefore, that there is negligence on behalf of the landlord through his managing agents and that the costs of repairs to the roof totalling £2,754 are reasonable and are payable. However, Miss Libon has quite properly accepted that she would have had to have met half this cost anyway and has also confirmed that the downstairs tenant has made a contribution of £500 towards the expenses that she has incurred. She, therefore, seeks to recover only the sum of £877 and we find that this is an appropriate sum to be paid by the Respondent to Miss Libon in respect of the roof repairs.
18. We recited above the letter from Chandler Harris of 18<sup>th</sup> July in which they appear to accept on behalf of their client that the works totalling £1,349.67, being the internal decoration, for which invoices are produced is appropriate and can



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

**Case Reference** : **LON/00AZ/LSC/2017/0058**

**Property** : **202b Verdant Lane, London SE6  
1LJ**

**Applicant** : **Ms Insof Libon**

**Representative** : **Ms Libon in person**

**Respondent** : **GM Property Investment Limited  
(1)  
Robert Irving Burns (RIB)  
Management Services Limited (2)**

**Representative** : **None**

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

**Tribunal Members** : **Tribunal Judge Dutton  
Ms S Coughlin**

**Date and venue of  
Hearing** : **8th May 2017 at 10 Alfred Place,  
London WC1E 7LR**

**Date of Decision** : **22nd May 2017**

---

**DECISION**

---

## **Decisions of the tribunal**

- (1) The tribunal makes the determinations as set out under the various headings in this Decision

## **The application**

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 (“the 1985 Act”) and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (“the 2002 Act”) as to the amount of service charges and (where applicable) administration charges payable by the Applicant in respect of the service charge years 2012/2013 to 2016/2017.
2. The relevant legal provisions are set out in the Appendix to this decision.

## **The hearing**

3. The Applicant appeared in person and the Respondent did not attend. Apparently the intended representative was abroad and his substitute was unwell. The Second Respondent confirmed this information by an email on the morning of the hearing but did not seek an adjournment.

## **The background**

4. The property which is the subject of this application is a flat on the first floor of a two story converted semi-detached house built around the turn of the 20th Century.
5. A photographs of the building was provided in the hearing bundle attached to a Fire Risk Assessment report.
6. The Applicant holds a long lease of the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease will be referred to below, where appropriate.

## **The issues**

7. At the start of the hearing the Applicant identified the relevant issues for determination as follows:
  - The payability and/or reasonableness of service charges for 2012-13, through to 2016-17 relating to matters set out below

- Accounting and audit charges for each year
  - management fees for each year
  - professional fees in the year 13-14
  - repairs and maintenance, budgeted for 15-16 and for the following year
  - roof works instigated by Ms Libon and paid for by her
  - costs of the Respondent
8. Having heard evidence and submissions from the Applicant and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

**Accounting/audit for all years**

9. Ms Libon disputed these because she said they were incorrect. There were discrepancies in the statements of account produced by Robert Irving Burns (RIB) the managing agents for the first respondent. Ms Libon told us that she had received confirmation when she completed the purchase of the flat that all service charges were paid up to date, and yet the Respondent has charged her for managing agent's fees predating her purchase. Indeed the Respondent's statement of case prepared by RIB and dated 27th April 2017 says at paragraph 3.14 *"The service charge accounts for the service charge paid for the period 1st October 2012 - 30th September 2013 was for the sum of £942. This sum was paid, along with all other charges, on 22nd October 2012 in the sum of £1,562.58 to clear all arrears upon the sale of the flat"*.
10. It is noted that at page 46 of the Respondent's bundle there is a statement of account showing that as at the 22nd October 2012 there is a credit of £275.35, which sum was paid back to the previous owner on 13th March 2014.
11. Ms Libon accepted that as at 25th March 2017 she owes £,2370.78 in unpaid service charges.
12. Copies of the accounts produced by Peter Edney & Co and later ES Partners, both chartered accountants were produced in the Respondent's bundle at pages 83 onwards. Ms Libon was not sure what the accountants were actually doing, but had no alternative quote.

### **The tribunal's decision**

13. The tribunal determines that the amount payable in respect of accounting is £120 for each year of the dispute.

### **Reasons for the tribunal's decision**

14. It is clear that the accountants do undertake accounting work to produce the accounts shown in the papers before us. They are limited but the report says that they have checked the schedules provided and the supporting documents given to them.
15. The lease does not require the auditing of the accounts. Indeed it is sufficient for an account to be given by the Lessor to the lessee (clauses 6, 8 and 10 of the lease). Moreover the accounts are extremely simple since there are very few heads of expenditure. In those circumstances it would seem to us the use of an accountant is not strictly speaking required. It is something that would usually fall within the managing agents remit and within the annual service charge for management fees and this is reflected in our decision in relation to managing agent's fees below.

### **Management fees for all years**

16. The Management fee charged is £400 plus VAT between the two flats, that is £240 per flat.
17. Ms Libon told us that there was no dedicated manager for the property. She said that there was a part time member, Mr Christou, when she originally acquired the flat. The company did not provide cover when he was absent, any queries had to wait until he returned. Now Marcus Scott is the relevant person, who took over in Jan/Feb 2015. Ms Libon told us that they are difficult to contact and provide no real assistance, highlighted by the problems she had with the roof. Whilst accepting that they did some work, it was very limited, arranging insurance and little else. She felt a fee of £50 plus VAT for each year would be fair.
18. The Respondent in the statement says that the management fee included a property manager for the property and an accountant; production of invoices, demands and letters; answering queries; liaising with contractors and reporting to the freeholder.
19. No copy of the management agreement was produced. For the years in dispute there does not appear to have been any works of repair to the property, other than the roof, about which more later (see para 34).

### **The tribunal's decision**

20. The tribunal determines that the amount payable in respect of the management fees is £240 (inclusive of VAT) for the first two years of the dispute rising to £360 (inclusive of VAT) for the remainder of the term. The applicant's liability is 50% of these figures.

### **Reasons for the tribunal's decision**

21. We were told that there was limited contact with the managing agents in the earlier years. Mr Christou, we were told, was part time and there were problems Ms Libon encountered in contacting the agents. Further we believe that the accounts charge was something of a duplication. RIB indicated in its statement that there was a client accountant, presumably those firms named above. The accounts are very simple and the lease does not require the use of an accountant. There are, after all, only two flats in the building. We find that the managing agents could and should have prepared the accounts as part of their fee and therefore disallow for each year £120 in respect of same, being the fee charged by the accountants and an additional sum of £80 to reflect the problems encountered by Ms Libon in the earlier years.

### **Professional fees**

21. In the years 2013-14 the Respondent sought to recover fees totalling £541.68 for the previous managing agents RMG. The invoices indicated that they were for periods prior to Ms Libon acquiring her interest in the flat and are all dated before 1st April 2010. It is said they should have been included under the management fee. They appear in the year end accounts for September 2014
22. Ms Libon said these were first brought to her attention sometime during 2014 or maybe later. She had no idea to what they related

### **The tribunal's decision**

23. These fees are not recoverable by reason of s20B of the 1985 Act. The amounts predate Ms Libon's ownership. The Respondent in its statement of case at paragraph 3.14 says all arrears had been cleared. The costs were incurred by 1st April 2010, or June of that year at the latest if these were on account payments. In any event the provisions of s20B apply as the costs were incurred more than 18 months before any demand was made of Ms Libon.



### **On account payments for general repairs and maintenance**

24. There is really nothing for us to decide for the year 2015 -16 as the costs of £375 relate to estimated charges which have not occurred. The Respondent has confirmed at paragraph 7.9 of the statement that once the accounts are finalised for September 2016 there will be a credit for Ms Libon.
25. As to the year 2016 -17 where another £750 has been sought for estimated costs we find that given no costs were incurred in the previous year that it would be appropriate to reduce the estimated demand to £500. Ms Libon was not aware that any maintenance or repairs has taken place this year.

### **Fire Risk assessment report both actual and estimated**

26. A report was commissioned from Marsh Fire & Security Services Limited in June 2014. A copy appears in the hearing bundle prepared by Ms Libon. There is also a copy of a report for 206 Verdant Lane, which is almost identical, both as to substance and dated. The only difference between the two reports appears to be the address and the external photograph. Both reports contain an identical internal photograph which Ms Libon told us was not a photograph of 202 Verdant Lane. None of the recommendations have been put into effect. Indeed the Tribunal considered that the recommendation in relation to an alarm system should be reviewed. These are two flats, now owner occupied with little in the way of common parts.
27. Ms Libon was not aware that there had been an inspection and had no alternative quote to offer.
28. The fee charged is £420.

### **The tribunal's decision and reasons**

29. Whilst we accept that such a report is a reasonable step to take it does seem to us that the cost is high. The more so as it would appear that at least one other property, in the row of 4, which we believe is owned by the first respondent was also inspected on the same day. This should have resulted in some saving. We find, taking the matter in the round that a fee of £300 would be reasonable.
30. There is an estimated charge for the current year for a further report. We doubt the need. There is no evidence that matters have changed at the subject property. There is no suggestion that such an inspection has taken place or a report undertaken. We do not propose to make any findings on the estimated charge but Ms Libon will be free to challenge if such a fee is levied for the year ending September 2017.

### **Administration charges**

31. We are told by the Respondent that these arose due to the chasing of Ms Libon for payment. It is said that she withheld payment for no good reason. The service charge included insurance, which is not in truth challenged. This failure to pay resulted in solicitors being instructed. The respondent relies on clause 1(13) of the lease, we think because the statement refers to clause 13, but there is no such clause.
32. This clause, that is to say 1(13) says as follows *"To pay all costs charges and expenses (including solicitors and surveyors fees) incurred by the Lessor for the purpose of or incidental to the preparation and service of any notice under section 146 and/or 147 of the Law of Property Act 1925 (notwithstanding forfeiture may be avoided otherwise than by relief by the Court)"*
32. We were made aware at the end of the hearing by Ms Libon, that proceedings had been commenced against her just after she made her application to this Tribunal. We do not know what the state of play in those proceedings may be. What can be said in these proceedings is that there is no evidence that the Respondents acted in contemplation of forfeiture proceedings. There does not appear to be any other provision in the lease allowing the recovery of legal costs. In those circumstances so far as this application is concerned we disallow the administration charge of £144.

### **Application under s.20C and refund of fees**

33. The application contains a request that an order under s20C of the 1985. We propose to leave this matter in abeyance until the question of the roofing works and any counterclaim has been determined. Directions were issued for this matter on 8th May, with a hearing on 20th July 2017.

### **The next steps**

34. Directions have been issued to deal with the counterclaim/set off raised by Ms Libon in respect of the roofing works. At the hearing she wished to include a claim for internal repairs. However, she had no information and it would have been inappropriate in any event to have proceeded in the absence of the Respondents and or their response to the claim.
35. Any tie in with the County Court action can be considered then.

**Name:** Tribunal judge Dutton      **Date:** 22nd May 2017

## 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.

### **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.

- (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).

### **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.