12267

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00BB/LSC/2017/0110**
Property	:	**Ground floor maisonette, 361 Church Road, London E12 6HT**
Applicant	:	**Mr Adil Jamil**
Representative	:	**In person**
Respondent	:	**Ground Rents (Regis) Ltd**
Representative	:	**Pier Management Limited**
Type of Application	:	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal Members	:	**Judge L Rahman** **Mrs Helen Gyselynck**
Date and venue of Hearing	:	**12th June 2017 at 10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**16/6/17**

DECISION

Decisions of the tribunal

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

(2) The tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985.

(3) The tribunal determines that the respondent shall not reimburse any tribunal fees paid by the applicant.

The application

1. The applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the applicant in respect of the service charge years 2013-2017.

2. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

3. Mr B Stimmler of counsel attended for the respondent. The applicant did not appear at the hearing. No messages were received from the applicant for his non attendance and at 10:15am the case officer telephoned the applicant on the number provided in the application form. The phone rang but there was no answer and the case officer left a message informing the applicant about the hearing and for him to contact the tribunal.

4. As at 10:40am there was still no response from the applicant. The tribunal noted the applicant had been sent a copy of the tribunal's directions dated 27th of March 2017 listing this matter for a one day hearing at 10 AM on Monday 12 June 2017. The hearing had been listed taking into account the applicants dates to avoid as provided in his application. The tribunal notes the applicant had acknowledged in his defence submitted at the County Court (page 197 of the respondents bundle) that the hearing at the tribunal was listed for 12 June 2017. The tribunal notes the tribunal had issued further directions on 9 May 2017 confirming the date of hearing. Finally, the respondent had sent to the applicant a copy of its bundle on 25 May 2017 again confirming the date of hearing. In the circumstances the tribunal was satisfied that the applicant had been given reasonable notice of the time and place of the hearing and it was in the interests of justice to proceed with the hearing in the applicant's absence.

5. Mr Stimmler submitted that the application be struck out. However, given that the respondent had provided a comprehensive bundle and to avoid any satellite litigation, the tribunal determined it was in the interests of justice to consider making a decision on the merits of the case.

6. At the conclusion of the hearing, after Mr Stimmler had left the hearing, the case officer informed the tribunal that the applicant had telephoned and left a message at 1120am and the case officer returned the call at approximately 11:22am. The applicant informed the case officer that he did not realise that he needed to attend the hearing because the directions issued on 27 March 2017 referred to him as the applicant and in relation to whether he had a representative it stated "None - In Person" which he understood meant that he was not required to attend. He further stated that he had sent to the tribunal his statement of case, although he did not state when this was sent.

7. The tribunal did not find the applicants explanation persuasive. The directions dated 27 March 2017 and all the other correspondence referred to by the tribunal in the preceding paragraphs clearly stated that the matter was to be listed for a one day hearing. There was nothing to suggest that the applicants attendance was not required. Valuable tribunal time had been set aside, the respondent had instructed counsel to attend, the tribunal had considered the evidence and submissions made on behalf of the respondent, and the tribunal notes that the applicant did not state to the case officer that he wanted the tribunal to consider adjourning this matter. Despite the tribunal's directions dated 27 March 2017 and the further directions issued on 9 May 2017, that the applicant shall provide a statement of case and all documents to be relied upon, the applicant had failed to comply with those directions. In the circumstances, the tribunal determined it was in the interests of justice to determine the matter based upon the evidence put before the tribunal.

The background

8. The property which is the subject of this application is a ground floor property in a semi-detached maisonette comprising four flats. All the flats are held on long leases. Mr Stimmler is not aware of any of the other leaseholders challenging the service charges.

9. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.

10. 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

11. The total claim concerns the sum of £10,268-01. This is made up of the major works totalling £9,720-19p, the management fee in the sum of £95-94 (x3), and various administration charges (as set out on pages 26-28 of the respondents bundle).

12. Having considered the papers in the respondents 217 page bundle, in particular the application form dated 20/3/17, the applicants handwritten letter dated 13/3/17, and the defence submitted by the applicant at the County Court dated 8/5/17, and having heard submissions from Mr Stimmler, the tribunal identified the relevant issues for determination as follows:

    (i) The payability of service charges for 2013-2017 relating to the management fee.

    (ii) Whether the respondent had followed the section 20 consultation process in relation to the roof repair.

    (iii) Whether the cost of the roof repair was reasonable in amount.

13. Having heard submissions on behalf of the respondent and considered all of the documents provided, the tribunal has made determinations on the issues as follows.

Management fee

14. The applicants evidence, as set out in his application, his county court defence dated 8 May 2017, and his handwritten letter dated 13 March 2017 addressed to the respondents legal representative (page 25 of the respondents bundle), can be summarised as follows.

15. He bought his flat in 2007. The freeholder was Grangewar limited and he was not charged any annual management fee. He was only charged a ground rent and annual building insurance. The respondent purchased the freehold interest in December 2011 and appointed Pier Management Ltd as its managing agent. They did not charge any annual management fee for the year 2012 – 2013. They introduced this fee in 2013 – 2014. The applicant paid the fee without checking the invoice. However, when they asked for the management fee in 2014 – 2015 the applicant refused to pay.

16. The respondent is requesting an annual management fee of £95.94p. However, Pier Management Ltd is not the applicants managing agent and they have no access to the applicants property. Therefore, they are not managing the property for the applicant and are not providing any

service for the applicant. They only send an invoice for the ground rent and the buildings insurance which the applicant pays annually.

17. The applicant has studied the lease and has been advised by the "leaseholder advisory services" not to pay these charges as he is not receiving any service from the freeholder or the managing agent. The property is a ground floor flat and there are no common areas to be looked after or managed.

18. The respondent's evidence can be summarised as follows. Pier Management Ltd has been appointed as the respondents managing agent and on behalf of the respondent organises the buildings insurance, monitors, maintains, and repairs where necessary the structure of the building, monitors any works undertaken, deals with the consultation process, and collects the rent. For example, the managing agent organised the health and safety survey report on page 173 of the respondents bundle, to "monitor" the state of the building.

19. The management fee is modest and the applicant has not challenged the amount as being excessive. The applicant's challenge is as to whether a management fee is recoverable under the terms of the lease.

20. The lease sets out payments to be made by the lessee. The relevant part of the lease (page 202 of the respondents bundle) states "*AND SECONDLY such proportion of the total cost to the lessor of the expense outgoing's and matters mentioned in clause 5(2) and (3) hereof...and which sum shall be paid on demand following...a notice certifying the aforesaid amount...*"

21. Clauses 5(2) and (3) on page 208 of the respondents bundle state:

"*(2) Except in so far as the lessee shall be liable therefor under the terms hereof and subject to the payment by the lessee of 50% of the cost thereof to keep and maintain the main structure and the exterior of the demised premises and the building of which it forms part...*"

"*(3) At all times during the said term...insure and keep insured the said building...*"

22. This amounted to a covenant by the tenant to pay the total cost of providing the services specified in clauses 5(2) and (3). The relevant clause includes the cost of employing managing agents to organise and supervise the provision of the services specified in clauses 5(2) and (3).

23. The tribunal finds as follows. The applicant's understanding of what amounts to a management service is misconstrued. It is not necessary for the managing agent to provide a direct service to the applicant. The managing agent is clearly providing a service to the respondent. The

question is whether that cost is recoverable under the terms of the lease. The applicant has not explained the relevant provision of the lease upon which he relies. The applicant has not made any submissions on how any relevant part of the lease is to be construed. The tribunal accepts that the relevant parts of the lease (as set out in the preceding paragraphs) allows the respondent to recover the cost of employing a managing agent to organise and supervise the cost of keeping and maintaining the main structure of the exterior of the building and to arrange the buildings insurance. The applicant has not argued that the cost is unreasonable in amount. The tribunal therefore finds the management fee is reasonable and payable.

Section 20 consultation

24. The applicant's evidence can be summarised as follows. The applicant made no mention of the consultation process in his application other than simply referring to "roof repair work" for which payment had been demanded. The applicant stated in his handwritten letter dated 13 March 2017 addressed to the respondents legal representative "... *I believe the amount £10,122.7p you asking me is not a service charge. It's the cost of roof repairs. I have no cash to pay roof repair, I did tell Pier Management to generate the funds for roof repairs from my lender*". The applicant stated in his county court defence dated 8 May 2017 "*I know the roof condition is very bad and I discussed about so many times to my neighbour... Because it's the responsibility of both of us. He told me he want to do this with the loft conversion. I believe in this case they (landlord) not follow the section 20 of consultation and head lease*".

25. The respondents evidence can be summarised as follows. The relevant works have not been carried out and will only be carried out once payments have been made by the lessees. Clause 5(2) (referred to above) allows for advance payments for relevant works.

26. The respondent has complied with the consultation process. The "notice of intention to carry out work" was sent to the applicant together with a cover letter dated 23 August 2016 explaining the consultation process (pages 34 – 36).

27. The "statement of estimates in relation to proposed major works" was sent to the applicant together with a cover letter dated 4 October 2016 (pages 38 – 40).

28. The respondent's representative at the hearing was unable to state whether other lessees had made any observations but was able to confirm that the applicant did not make any observations.

29. The tribunal notes the applicant has failed to explain in what way the consultation process had not been complied with. The tribunal notes the applicant did not raise any issues about the consultation process in either his application or his handwritten letter sent to the respondent's solicitors in March 2017. If anything, the handwritten letter suggests the applicant was happy for the works to proceed and had instructed for the relevant funds to be obtained from his lender. The tribunal has been referred to copies of the relevant notices the respondent claims to have sent to the applicant. In the circumstances, the tribunal is satisfied that the relevant section 20 consultation process had been complied with.

Cost of the roof repair

30. The applicant's evidence can be summarised as follows. The applicant made no criticism of the cost of the roof repair in his application other than stating "... *and now they add up some roof repair work so total now they demanding me is £10,770.07p...*" The applicant made no criticism of the cost of the roof repair in his handwritten letter dated 13 March 2017. The applicant stated in his county court defence dated 8 May 2017 "*They amount they asking is much high. I did get the estimates of independent builders which is quite reasonable with 10/20 years of guarantee work*".

31. The respondents evidence can be summarised as follows. The applicant has failed to provide copies of any alternative quotes obtained by him. The respondent had chosen the lowest of three estimates following a tendering process in which seven contractors were invited to tender and the respondent considered a surveyor's report ("Tender Analysis Report") analysing the various quotes that had been provided (pages 40 and 50 of the respondents bundle). The applicant had not challenged the cost of the roof repair in either his application or his handwritten letter.

32. The tribunal notes the lack of any evidence from the applicant to show that the cost is unreasonable in amount. The applicant has not provided any alternative quotes. The applicant did not challenge the cost of the roof works in either his application or his handwritten letter. If anything, the handwritten letter suggests the applicant was happy for the works to proceed and had instructed for the relevant funds to be obtained from his lender. The respondent had chosen the lowest of three estimates following a tendering process and consideration of a "Tender Analysis Report" by surveyors. In the circumstances, the tribunal is satisfied the cost of the roof works is reasonable and payable.

Application under s.20C and refund of fees

33. Taking into account the determinations above, the tribunal determines the respondent acted reasonably in connection with the proceedings and was successful on all the disputed issues, therefore the tribunal

decline to make an order under section 20C or to order the reimbursement of any fees paid by the applicant.

Name: Mr L Rahman **Date:**16/6/17

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 (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 20

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
(a) complied with in relation to the works or agreement, or
(b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .

(2) In this section "relevant contribution", in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

(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 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.