



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

**Case reference** : **LON/00BD/LSC/2016/0492**

**Property** : **Flat 1, Cambridge Park Court,  
Cambridge Park, Twickenham  
Middx TW1 2JN**

**Applicant** : **Mr N Sanderson**

**Representative** : **In person**

**Respondent** : **Cambridge Park Court Residents  
Association Limited**

**Representative** : **Nightingale Chancellors –  
managing agents**

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

**Tribunal members** : **Judge O’Sullivan  
Mrs H Gyselynck MRICS**

**Venue** : **10 Alfred Place, London WC1E 7LR**

**Date of decision** : **29 March 2017**

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**DECISION**

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## **Decisions of the tribunal**

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”) as to the amount of service charges payable by the Applicant in respect of the service charge years 2014/15, 2015/16 and 2016/17. The total amount in dispute is £5008.
2. The relevant legal provisions are set out in the Appendix to this decision.

### **The background**

3. The property which is the subject of this application is described as a three bedroom flat known as Flat 1, Cambridge Park Court, Cambridge Park, Twickenham (the “Flat”). The Flat is contained within a 1930s purpose built block of 36 flats of varying sizes.
4. Neither party requested an inspection and the tribunal did not consider that one was necessary given the issues in dispute.
5. 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 and will be referred to below, where appropriate.
6. Directions were made in this matter dated 6 January 2017. These provided for this matter to be considered by way of a paper determination, that is, on the basis of written representations from the parties unless a request for a hearing was made. As no request for a hearing was made the application was considered on 27 February 2017.

### **The issues**

7. Put simply it is the tenant’s case that the Flat was disconnected from the communal heating and hot water system in March 2014 with permission from the landlord following problems with the supply of heating from the communal system. The tenant has since been charged the full contribution to the cost of the heating and hot water but says he should contribute only 5% to reflect the fact that he benefits from the heating to the common parts. The actual cost of the heating and hot water provision is not in dispute.

8. The issue therefore identified by the tribunal was whether the Applicant is liable to contribute towards the full cost of the heating and hot water provision or some lesser sum from March 2014, being the date when he installed his own gas boiler in the Flat, to the year ending 2016/17 in the total cost of £5008.
9. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

### **The Applicant's case**

10. The Applicant set out his case in a statement of case dated 30 January 2017.
11. He explains that he bought the Flat in 1994 for his parents. Communal hot water and heating were at that time provided by an oil fired boiler. A typical annual service charge for Flat 1 was said to be £3800 of which heating oil was £1800.
12. The landlord is a tenant management company and the leaseholders of all the 36 flats are shareholders.
13. In 2005 after the death of his father the Applicant let the Flat to tenants. The Applicant says that from October 2008 the communal heating only reached the Flat partially or intermittently. There was much communication with the landlord and many attempts to resolve the problem, but the heating did not improve. On 13 February 2010 the Applicant notified the landlord that if the problems could not be rectified an independent system would be installed in the Flat. On 10 March 2014 the Applicant says he wrote again to say he planned to disconnect from the communal system and to install an independent boiler for heat and hot water. Although comments were requested from the landlord none were said to have been received.
14. On 25 April 2014 the managing agent wrote to indicate the Respondent was minded to grant permission on condition that the Applicant continued to pay and not dispute the full service charge. By reply dated 27 April 2014 the Applicant confirmed that this condition would not be accepted. The Applicant was advised on 2 May 2014 that solicitors had advised that consent could not be refused and a quote from the landlord's engineers, DMG Delta, was received to disconnect the Flat from the communal system. Disconnection took place on 8 May 2014 with the work being carried out by DMG Delta.
15. The Applicant says that it was unreasonable to be required to pay a full contribution to fuel oil costs for the communal system to which the Flat is no longer connected. He also says that the lease makes "*no mention*

*lease and that the flats generally have received heating and hot water via this plant and have paid for this provision within their service charge percentage.”*

21. The landlord accepts that there have been periodic problems with the provision of both heating and hot water to most if not all of the flats and that there has been a persistent problem with the provision of heating to the radiators in the Flat.
22. The Respondent says that consideration has been given to the replacement of the existing communal heating and hot water but until recently no agreement could be reached. However it has now been agreed to transfer to individual boilers and decommission the plant. It is anticipated the transition will be completed by the end of 2017.
23. The Respondent denies that the Applicant was given permission to install an autonomous system. It is accepted that in 2014 the directors of the Respondent company were minded to grant consent on the basis there had been repeated attempts to reinstate the heating to the radiators in the Flat without success. However it is said that a requirement of giving consent was that the Applicant should continue to pay a full contribution towards the service charge. The Respondent says that this was considered essential as if any agreement was reached which would result in the Flat paying a reduced service charge there were no mechanics under the terms of the leases by which the shortfall could be recovered.
24. The Respondent also says that DMG Delta were instructed to inspect the work to ensure it was carried out satisfactorily as it was considered that individual flats being removed from the system could cause a problem.

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

25. The tribunal determines that the sum of £5008 is payable by the Applicant.

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

26. Both parties agree that the Original Lease makes no provision in relation to the supply of heating and hot water and that there is no obligation on the tenant to pay for such services. We are told and accept that all leases are in similar terms. We first considered therefore whether there is any obligation on the part of the Applicant to contribute towards the cost of the oil which is in dispute.
27. We agree that the Original Lease, Deed of Variation and subsequent Surrender and Re-grant are all silent on the issue of any obligation on

the part of the landlord to supply heating and hot water and the lessee's obligation to contribute to the cost of them. However it is understood that since the grant of the Original Lease there has been communal plant at the property and that heating and hot water has been provided by the landlord and has been indemnified for the cost thereof by the lessees. It is certainly the case that since the assignment to the Applicant in 1994 the cost of oil has been included in the service charge and the Applicant has contributed to it apparently without prior challenge. On the information before us there has been no dispute between the parties or in fact by any other lessees as to the obligation to contribute to the cost of the heating and hot water. Having therefore considered the conduct of the parties in our view the parties have interpreted the provisions of the Original Lease as to require the landlord to supply heating and hot water and for the lessees to reimburse the landlord in relation to that cost.

28. If we are wrong in relation to our conclusions in the above paragraph we consider that the Applicant would in any event be estopped from claiming that the Original Lease did not entitle the landlord to recover the cost of providing the heating and hot water given the circumstances of this case, the Applicant having contributed towards the cost since 1994 without disputing any liability under the terms of his lease.
29. We went on to consider whether the Applicant remained liable to contribute towards the costs of the heating and hot water after his disconnection from the communal system in March 2014.
30. Further to clause 3(a) of the Original Lease the Applicant covenants to pay the service charge costs. The percentage was varied by the Deed of Variation to 3.05%.
31. On requesting consent to install an individual boiler the Respondent confirmed that in principle it was willing to grant consent on the basis that the Applicant agreed to continue to pay his full service charge contribution. The Applicant rejected this request and there appears to have been no further correspondence in relation to any conditions to be attached to any consent. The Applicant then went on to install his boiler and DGD Delta, the landlord's agents, were involved in the disconnection of the system. It is unclear as to whether they are simply inspecting the works as submitted by the landlord or carry out the disconnection but the quotation in the bundle suggests the latter.
32. As there was no variation to the Deed of Surrender and Lease the Applicant remains liable to contribute to the service charge in the percentage rate set of 3.05%. The Applicant's percentage is clearly set out in that document and there is no mechanism by which that can be varied or by which any of the costs could be recouped from the other leaseholders. Had the Applicant been obliged to pay a reasonable proportion rather than a fixed percentage he may have succeeded in

arguing that it would not be reasonable to now pay towards the cost of the heating and hot water. However where fixed percentages are set out in a lease the tribunal does not have the jurisdiction to vary the amount payable as a fixed proportion under section 27A.

33. It may have been wise for the parties to have considered an application for a variation of the lease as at the date these works were carried out. In any event if the position is not regularised by independent boilers being installed in all flats the parties should consider whether an application for a lease variation is advisable.

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

34. There was no application under section 20C or for refund of fees before the tribunal.

**Name:** Sonya O'Sullivan

**Date:** 29 March 2017

#### **Rights of appeal**

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

## 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.