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

**Case Reference** : **LON/00AC/LSC/2018/0028**

**Property** : **4 Grosvenor Road, London N3 1EX**

**Applicant** : **Mr A Peart**

**Representative** : **N/A**

**Respondents** : **Mrs G Alexander-Passe**

**Representative** : **N/A**

**Type of Application** : **Liability to pay service charges**

**Tribunal Members** : **Judge W Hansen (chairman)  
Mr S Mason BSc FRICS FCI Arb**

**Date and venue of Hearing** : **Determined on the papers**

**Date of Decision** : **10 October 2018**

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**DECISION**

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## Decisions of the Tribunal

- (1) The Tribunal has jurisdiction to determine this dispute as it relates to liability to pay service charges within the meaning of section 18 of the Landlord and Tenant Act 1985.
- (2) The Applicant is not liable to pay any of the sums demanded in the demand dated 23 November 2017 or the further sum of £2100 demanded in the Respondent's letter dated 19 July 2018.
- (3) The Tribunal makes an order under s.20C of the Landlord and Tenant Act 1985 to the effect that the Respondent shall not be entitled to add the costs incurred in connection with these proceedings to the service charge.

## The Application

1. By an application dated 20 June 2018 the Applicant seeks a determination of his liability to pay "service charges" in the sum of £5974.50. The Applicant is the long-leaseholder of the Ground Floor Flat, 4 Grosvenor Road, London N3 1EX. The Respondent is lessee of the First Floor Flat and has recently become the freeholder.
2. The dispute relates to what purports to be service charges in the sum of £5,974.50. The Applicant says this sum was first demanded in December 2017 but relates back to invoices from 2014 in respect of work allegedly done at that time. The Applicant says that "*The demand was received in December 2017. The submitted invoices date back to 2014 for alleged works and it is unknown if/when any works took place. There was no notification or information of any potential shared works received. There was no consultation or estimates received*".
3. By directions made on 26 June 2018 the Tribunal indicated that it would deal with the application on the papers unless either party requested an oral hearing by 6 August 2018.
4. Neither party requested an oral hearing and we therefore now determine the application on the papers.

## Background

5. According to the Applicant, the sum claimed is based on 5 invoices as follows:

(i)	Invoice DB3486 dated 10 Feb 2014	£354.00
(ii)	Invoice DB3487 dated 13 Feb 2014	£3158.00
(iii)	Invoice DB3572 dated 3 April 2014	£3642.00
(iv)	Invoice DI-1044 dated 2 May 2014	£4464.00
(v)	Quote No.55 dated 25 August 2017	£330.00

6. The total of the above is £11,949 and relates to various works to the roof, walls, brickwork, communal areas, including the erection of a scaffold. The Applicant is alleged to be liable for 50% which produces the Applicant's figure claimed of £5974.50. The Respondent's letter of 19 July 2018 refers to an additional item described as "Email option 2" dated 26 October 2015 in the sum of £2100 for the demolition of a wall and the installation of a new footpath. This produces a revised total of £14,049 and a revised 50% share of £7,024.50.

7. The Applicant is the assignee of a term of years dated 13 March 1980 ("the Lease"). The reversion expectant on that term is now vested in the Respondent who is also the lessee of the First Floor Flat. Clause 3(iii) of the Lease contains a tenant's covenant with the Lessor and "*with and for the benefit and protection of the owners tenants and occupiers for the time being of the other flat ... to pay and contribute a due proportion of all costs charges and expenses incurred in respect of making repairing maintaining rebuilding and cleansing all ways and in particular the roof of the building the common entrance hall and porch and all party walls structures sewers ... and other things used or capable of being used in common by the flat or any part thereof and the upper flat*".

8. Clause 4 provides as follows: "*PROVIDED ALWAYS AND IT IS HEREBY AGREED AND DECLARED that (a) the items mentioned in Clause 3(iii) hereof (other than the roof) shall be deemed to be maintained and repaired by and at the joint expense of the Lessee and the lessee for the time being of the upper flat and (b) the foundations roof and common entrance hall and*

*porch shall be maintained and repaired at the joint expenses of the Lessee and the lessee for the time being of the upper flat”.*

9. The Respondent relies on this clause to contend that the Tribunal has no jurisdiction in this matter. The material part of her letter to the Applicant of 19 July 2018, which is essentially her defence, reads as follows:

*“You have a contractual obligation in accordance with the lease to pay the above to me. As previously advised, you are mistaking the basis on which the sum of £7,024.50 is being sought; the monies are due pursuant to contract being covenants as between tenants (which is what were at the time AND in fact remain) and are not being sought in my capacity as landlord (by way of service charge recovery) which you appear to think is the case.*

*Therefore and as a result the other issues raised are irrelevant as indeed is the application before the Tribunal which I maintain has no jurisdiction to determine the contractual dispute between us. Jurisdiction lies with the County Court to which I intend to refer matters in due course.”*

10. It seems that the sum of £5974.50 was first demanded of the Applicant in a letter from the Respondent’s solicitors dated 23 November 2017 which the Applicant says he received in December 2017, presumably at the beginning of that month. The Respondent says in a letter dated 16 May 2018 that she emailed the Applicant’s father who is said to have been the tenant at the time and that invoices were forwarded to Panos Karatzoglou *“which he said he would forward to your father”*. The Applicant responded to that letter on 30 May 2018; the material part of his response was as follows:

*1.0 No notification of any potential and/or estimated shared repairs, minor or major, had been received.*

*1.2 At the suggested time, my late father ... was in the latter stages of terminal cancer. He never held an email account as suggested and he had not received any information regarding the first floor flat.*

*...*

*1.4 What was passed on from Mr Panagiotis Karatzoglou was during the first floor flat water leak down into the ground floor flat and was a telephone number of a gentleman by the name of Rafael/Raphael to obtain your telephone number. There was no mention of any potential shared works...*

2.0 *The invoices were submitted more than 47 months after alleged works took place.*

2.1 *There was no notification received of any potential works required. There were no estimates received of any potential work required.*

11. The Applicant has subsequently completed his part of a Scott Schedule which confirms his case that the first demand was received in December 2017 accompanied by the invoices dated 2014.
12. The Respondent has not completed her part of the Scott Schedule on the basis that the Tribunal has no jurisdiction.

#### Discussion and Determination

13. The first and fundamental question is whether we have jurisdiction to entertain this application. This depends on whether the sums in issue constitute service charges within the meaning of section 18 of the Landlord and Tenant 1985 ("LTA 1985"). The relevant parts of the LTA 1985 are contained in the Appendix to this decision.
14. If they are service charges, the Tribunal has jurisdiction under s.27A of the LTA 1985. That jurisdiction extends to making determinations in respect of all sums that fall within the definition of service charge provided by s.18 LTA 1985.
15. Section 18 LTA 1985 provides as follows:

*(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, improvement 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 cost 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 the purpose –*

*(a) Costs include overheads, and*

*(b) Cost 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.*

16. By virtue of s.30 "landlord" includes any person who has a right to enforce payment of a service charge.

17. We have set out above the relevant provisions in the Lease: Clauses 3(iii) and 4.

18. There would be no doubt about our jurisdiction if Clause 3(iii) was the only relevant provision. We would clearly have jurisdiction. It is an ordinary tenant's covenant with, among others, the Lessor by which the tenant covenants to pay a variable service charge in respect of costs incurred by the landlord in relation to repairs and the like. The question is whether Clause 4 compels a different conclusion on the basis that it appears to qualify Clause 3(iii) significantly. This depends on the meaning of Clause 4 and whether the combined effect of Clause 3(iii) and Clause 4 is such as to give rise to an obligation to pay service charge as defined or rather, as the Respondent contends, it gives rise to an obligation to pay something that does not constitute service charge as defined in the 1985 Act.

19. In our view, the Lease is not well drafted. It is not clear what the draftsman intended or how Clauses 3(iii) and 4 were intended to operate. We note that Clause 4(a) appears to exempt the roof from the operation of Clause 4 but then the roof is included in Clause 4(b). We do not understand the logic of the deeming provision in Clause 4(a), which we note is absent from Clause 4(b). We say no more about the construction of the Lease, because even taking the Respondent's case as to the proper construction of the Lease at its highest, we

are satisfied that we are here dealing with a service charge within the meaning of s.18 LTA 1985.

20. We have set out above the relevant parts of section 18. As Chadwick LJ observed in *Cinnamon Ltd v. Morgan* [2001] EWCA Civ 1616 at [15]:

*“There is, I think, some circularity in the definitions of ‘service charge’, ‘relevant costs’ and ‘landlord’ respectively contained in ss 18(1), 18(2) and 30 of the Act. ‘Service charge’ means an amount which varies according to the relevant cost; ‘relevant costs’ are costs incurred by the landlord; and ‘landlord’ includes any person who has a right to enforce payment of a service charge. So, in order to know whether a person (other than the lessor under the lease) is a landlord, it must first be ascertained whether the charge, payment of which that person is entitled to enforce, is a service charge; and in order to know whether the charge is a service charge, it is necessary to know whether it varies according to relevant costs – that is to say, costs incurred by the landlord. But it seems to me sufficiently plain that the legislature intended that a person who has a right under a lease to enforce a charge for services, repairs and maintenance which varies according to the costs incurred by that person in providing those services under the lease is a ‘landlord’ for the purposes of the Act relating to service charges”.*

21. Applying that case and the statutory language to the present facts, it seems to us that we are here dealing with a service charge for the purposes of s.18 of the 1985 Act. The Respondent claims to be entitled under the lease to enforce a charge for services, repairs and maintenance which varies according to the costs incurred and she therefore falls to be treated as a landlord for the purposes of the Act. The fact that she purports to advance such claim as a tenant does not materially alter the analysis. The definition of ‘service charge’ in s.18 is a broad one and we consider that the charges claimed in the present case were service charges as defined. It would be anomalous and contrary to the intention of the legislature if charges of the kind claimed in this case were outside the statutory regime of control over residential service charges.
22. It follows that we are satisfied as to our jurisdiction because we are satisfied that the sums at issue in this application constitute service charges as defined in s.18 of the LTA 1985. Certain consequences flow from this finding. Firstly, it seems to us based on the facts and chronology set out above that all the sums demanded (including the additional sum of £2100 referred to in the Respondent’s letter dated 19 July 2018) apart from the figure of £330.00 were demanded significantly more than 18 months after the relevant costs were

incurred. We find as a fact that these sums were first demanded in the above-mentioned letter of 23 November 2017 or, in the case of the additional sum of £2100, on 19 July 2018. We do not accept that there was any earlier demand or any demand within the requisite period of 18 months. They are therefore not recoverable by virtue of section 20B of the Landlord and Tenant Act 1985. In any event, there has been no consultation as required under s.20 of the Act in respect of these qualifying works and no application to dispense with the consultation requirements and therefore the tenant's liability would be limited to £250, even if he were liable, but he is not. As regards the demand for £330, which is in time, we reject this claim. The tenant's comments in the Scott Schedule include the following under the heading "*Reasonable in amount/ standard*" – "*Unknown if or when alleged works occurred or if shared or its nature*". We have nothing before us beyond the bare quotation. In the circumstances we are not satisfied from the very limited evidence before us that the charges for this work were reasonably incurred or that the work was done to a reasonable standard.

23. The tenant applied for an Order under s.20C of the 1985 Act. The Tribunal has a discretion in the matter which must be exercised having regard to what is just and equitable in all the circumstances: *Tenants of Langford Court v. Doren Ltd* (LRX/37/2000). In the circumstances, and having regard to our conclusions, we consider just and equitable to make such an order.

24. There were no other applications.

**Name:** Judge W Hansen

**Date:** 10 October 2018



## **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 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 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 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.