



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

**Case reference** : LON/00AH/LSC/2017/0371

**Property** : 235c Whitehorse Lane, London, SE25 6UU

**Applicant** : Mr David John Hayden

**Representative** : Mr Alan Jackson (Alan Jackson Building Surveyors and Engineers)

**Respondent** : Mr John Hesketh

**Representative** : In person

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

**Tribunal members** : Judge Robert Latham  
Mr Duncan Jagger MRICS

**Venue (paper determination)** : 10 Alfred Place, London WC1E 7LR

**Date of decision** : 24 January 2018

**DECISION**

**Decisions of the Tribunal**

(1) The Tribunal finds that the following sums are payable and reasonable:

(i) 2007: Insurance: £339.16; Management fees: £30; (ii) 2008: Insurance: £339.16; Management fees: £30; (iii) 2009: Insurance: £339.16; Management fees: £30; (iv) 2010: Insurance: £353.40; Management fees: £30; (v) 2011: Insurance: £353.40; Management

fees: £30; (vi) 2012: Insurance: £353.40; Management fees: £30; (vii) 2013: Insurance: £353.40; Management fees: £60; (viii) 2014: Insurance: £388.25; Management fees: £60; (ix) 2015: Insurance: £388.25; Management fees: £60; and (x) 2016: Insurance: £388.25; Management fees: £60. This is a total of £4,015.83.

(2) The Tribunal disallows the sums claimed in respect of the maintenance fund.

(3) The claim for ground rent is outside the jurisdiction of this Tribunal.

(4) The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge.

### **The Application**

1. On 27 September 2017, The Applicant tenant issued an application seeking a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the Act") in respect of the service charge years 2007 to 2016 in the sum of £11,003,24. The Applicant complained that his landlord had applied to his mortgagee demanding this sum without serving the tenant with any account, notice, itemised expenditure schedule or indeed anything at all. The Applicant also applied for an order pursuant to Section 20C of the Act. The Applicant lives abroad. On 2 August 2017, he granted a power of attorney to Alan Jackson of Alan Jackson Surveyors and Engineers. The Applicant stated that he was content for the Tribunal to deal with the case on the papers.
2. The application relates to 235C Whitehorse Lane, London, SE25 6UU ("the flat"). 235 Whitehorse Lane is a one bedroom flat in a four storey house which has been divided into four flats.
3. On 7 November, the Tribunal gave Directions at a Case Management Hearing ("CMH"). Mr Jackson attended on behalf of the Applicant. Mr Hesketh did not appear as he was abroad. Judge Mohibir noted that Mr Jackson contended that the tenant had not been served with any service charge demands for the relevant years until some 6-8 weeks previously. Mr Jackson confirmed that the insurance and management fees were agreed. The only cost in dispute was the maintenance fund for each year on the basis that it had not been reasonably incurred. The Judge noted that any claim for ground rent fell outside the jurisdiction of this Tribunal. The Judge gave directions for a paper determination.
4. The relevant legal provisions are set out in the Appendix to this decision.

## **The Submissions of the Parties**

5. On 1 December, pursuant to these Directions, the Respondent landlord sent his Statement of Case. Strictly, this should have been sent on 28 November, but this default does not render it inadmissible.
6. Mr Hesketh states that the Applicant acquired the leasehold interest in Flat C on 20 July 2006. The Applicant has made no payment towards the service charge. The three other tenants have now paid in full. The Applicant has let out his flat at a market rent.
7. Mr Hesketh has provided the invoice dated 14 January 2016, to which hand written amendments were made on 10 May 2017. This includes claims for ground rent which are outside the jurisdiction of this Tribunal. The Tribunal is required to determine whether the following sums are payable and reasonable:
  - (i) 2007: Insurance: £339.16; Maintenance Fund £500; Management fees: £30.
  - (ii) 2008: Insurance: £339.16; Maintenance Fund £500; Management fees: £30.
  - (iii) 2009: Insurance: £339.16; Maintenance Fund £500; Management fees: £30.
  - (iv) 2010: Insurance: £353.40; Maintenance Fund £500; Management fees: £30.
  - (v) 2011: Insurance: £353.40; Maintenance Fund £500; Management fees: £30.
  - (vi) 2012: Insurance: £353.40; Maintenance Fund £500; Management fees: £30.
  - (vii) 2013: Insurance: £353.40; Maintenance Fund £500; Management fees: £60.
  - (viii) 2014: Insurance: £388.25; Maintenance Fund £500; Management fees: £60.
  - (ix) 2015: Insurance: £388.25; Maintenance Fund £750; Management fees: £60.
  - (x) 2016: Insurance: £388.25; Maintenance Fund £750; Management fees: £60.

8. The Respondent has provided service charge demands for each of these years. Mr Hesketh states that these were sent to the Applicant both to the flat and to 115 Hazelwood Lane, N13 5HH, an address provided by the Land Registry.
9. Mr Hesketh states that the maintenance fund is required to assure insurers that they are not paying out on properties which are inadequately maintained or secured. The insurers have advised him that the fund should be at least 0.5% of the total value of the property, which currently stands at £1m, namely £5,000.
10. The service charge demands give a somewhat different explanation for the maintenance account. Thus the 2007 "Property Repair and Maintenance Account", dated 26 February 2008, is described in these terms:

"It was agreed to write off the small shortfall on this account and re-start at zero since several residents agreed to maintain the property in good condition once the underpinning and main grounds works for boundary fencing were carried this year at a cost of £15,000. Landlord agreed to finance and carry out this work and collect £500/yr from each flat for the next 8 years (producing £16,000 being £15,000 plus 8 yrs interest).

In that period whatever additional maintenance is required will be carried out and determine future maintenance and repair payments".

11. This wording has been cut and pasted into the "Property Repair and Maintenance Account" demands for the subsequent years. However, these demands also include additional maintenance and repair details such as "internal common areas upper floors painted", namely £600 for 2008, £500 for 2009, and £500 for 2010. There is no evidence of receipts to confirm that this is for actual as opposed to anticipated expenditure. Neither is there any evidence as to whether the Applicant is liable for 25% or 100% of these sums. These items are not consistent with the sums demanded in the invoice dated 14 January 2016.
12. On 15 December, the Mr Jackson provided the Applicant's Statement of Case. The Applicant does not dispute the right of the landlord to demand service charges. However he stated that "no sums are agreed". The Applicant states that he finds it difficult, if not impossible, to comment accurately on the amounts detailed in the Respondent's Case. He suggests that the method of calculating the amounts payable appear to be arbitrary. The Applicant contends that the landlord has failed to comply with the statutory requirements of Sections 20 and 20B of the Act. Mr Jackson adds that the Applicant does not wish to "dodge" any sums that are properly payable.

13. The Directions provided that the matter would be determined on the papers unless either side requested a hearing. Neither side has requested a hearing.

### **The Lease**

14. The lease is dated 12 May 1997. By Clause 7(1), the tenant covenants to pay 25% of the relevant service charges. These are set out in Part 1 of the Fifth Schedule. The landlord is entitled to recover the costs incurred in carrying out his obligations under Clause 5(a) of the lease and all other expenses incurred relating to the maintenance and proper and convenient management of the property. This would include the appointment of a manager. Where such contractors are not employed, paragraph 4 permits the landlord to charge his reasonable charges. By Clause 5(c)(v), the landlord covenants to insure the building.
15. Paragraph 3 requires the landlord to keep proper books of accounts which shall be available for inspection by the tenant. We have heard no submission on whether the lease entitles the landlord to establish a reserve fund. We have not been able to identify any provision that would permit him to do so.

### **Our Determination**

16. At the CMH, Judge Mohabir recorded that Mr Jackson had confirmed that the insurance costs and management fees were agreed. The Respondent prepared his Statement of Case on this basis. The Tribunal notes that Mr Jackson asserts that “no sums are agreed”. However, Mr Jackson has taken no steps to challenge the accuracy of what is recorded in the Directions. Further, the Tribunal is satisfied that the sums claimed are payable under the lease and reasonable.
17. The Tribunal therefore finds that the following sums are payable and reasonable:
  - (i) 2007: Insurance: £339.16; Management fees: £30.
  - (ii) 2008: Insurance: £339.16; Management fees: £30.
  - (iii) 2009: Insurance: £339.16; Management fees: £30.
  - (iv) 2010: Insurance: £353.40; Management fees: £30.
  - (v) 2011: Insurance: £353.40; Management fees: £30.
  - (vi) 2012: Insurance: £353.40; Management fees: £30.

(vii) 2013: Insurance: £353.40; Management fees: £60.

(viii) 2014: Insurance: £388.25; Management fees: £60.

(ix) 2015: Insurance: £388.25; Management fees: £630.

(x) 2016: Insurance: £388.25; Management fees: £60.

18. The Respondent has not satisfied us that any sum is payable by the Applicant in respect of the "maintenance fund". The sums demanded by the landlord are set out in the invoice, dated 14 January 2016. In his Statement of Case, the landlord describes the sums demanded as a reserve fund to be built up to satisfy his insurers. This is not how it is described in the service charge demands. These rather suggest that the sums demanded are referable to underpinning works executed in about 2007 at a cost of £15,000. If so, the landlord has adduced no evidence relating to these works. In particular, he has not satisfied us that these works were payable under the terms of the leases, that the costs were reasonable or that he had complied with the statutory duty to consult imposed by Section 20 of the Act.
19. The Tribunal has noted that some of these demands refer to specific items of work such as "internal common areas lower floors painted". However, in his Statement of Case, the landlord does not seek to address these works. Have these works actually been executed? If so, no invoices have been provided. If incurred, is this 100% of the cost or just the 25% share for which the tenant is liable? It is for the landlord to satisfy this Tribunal that these sums are payable. He has failed to do so.
20. The landlord states that he is now carrying out substantial works to the walls, foundations and damp-proofing of the basement flat. The cost of these works is not part of the claim that we are required to determine. Further, there is no evidence that the landlord has complied with his statutory duty to consult imposed by Section 20 of the Act. This applies where the cost of the works charged to any tenant would exceed £250.
21. The Respondent has also claimed interest of £2,500. No such claim was included in the invoice, dated 14 January 2016, which is the basis of this application. This Tribunal is only empowered to determine what interest is payable pursuant to the terms of the lease. This is restricted to "interest paid on any money borrowed by the lessor to defray any expenses incurred by him". There is no evidence that the landlord has had to borrow any money to fund the arrears or the interest charged.
22. We are satisfied that the landlord has done his utmost to manage the property himself and thereby minimise the costs passed on to his tenants through the service charge. However, we would urge him to take legal advice on the following matters:

- (i) the statutory duty to consult imposed by Section 20 of the 1985 Act;
- (ii) whether the Applicant's lease permits the landlord to establish a reserve fund;
- (iii) the obligation on the landlord to maintain proper books and accounts;
- (iv) the statutory requirements for a lawful demand of service charges and the summary of rights and obligations that must accompany any such demand.

It may be that he would be advised to appoint managing agents, albeit that this would increase the cost of managing the building. A landlord can only demand service charges where these are permitted by the lease and when he has complied with the requisite statutory requirements.

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

- 23. The Applicant has paid an application fee of £100. We are not minded to make any order for this to be refunded by the Respondent, albeit that the Applicant has succeeded on a significant part of the claim. We have regard to the fact that the Applicant has paid nothing towards his service charges over the past 10 years. We are also satisfied that numerous demands have been made for payment which were sent both to the flat and a second address.
- 24. In the application form, Applicant has applied for an order under section 20C of the 1985 Act. The landlord has indicated that he would wish to claim £600, namely £300 for himself and £300 for an accountant. We are not impressed by the manner in which the Respondent has prepared his Statement of Case. He has failed on the substantive issues in dispute. In all the circumstances, and having regard to our findings above, we are satisfied that it is just and equitable in the circumstances for an order to be made under section 20C of the Act, so that the Respondent may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge.

**Judge Robert Latham**

**24 January 2018**

## **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.

## **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 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.