



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

**Case Reference** : **LON/00AP/LSC/2018/0437**

**Property** : **Flat 17, Mimosa Court, 29 Avenue Road, London N15 5JF**

**Applicant** : **Crownbell Investments Ltd (Landlord)**

**Representative** : **Sterling Estates Management**

**Respondent** : **Savvas Toufexis (Leaseholder)**

**Representative** : **-**

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

**Tribunal Members** : **P M J Casey MRICS  
M Taylor FRICS**

**Date and venue of Hearing** : **4 April 2019  
10 Alfred Place, London WC1E 7LR**

**Date of Decision** : **7 June 2019**

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**DECISION**

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## **Decisions of the tribunal**

- (1) The tribunal determines that the amount of the arrears of service charges owed by the respondent as at 14 June 2017 is the sum of £744.60.
- (2) The tribunal makes the determinations as set out below.
- (3) Since the tribunal's only jurisdiction in this case related to the reasonableness of service charges this matter should now be referred back to the County Court at Central London.

## **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 administration charges payable by the respondent in respect of the service charge years 2014-2016.
2. Proceedings were originally issued on 14 June 2017 in the County Court Business Centre under claim no. D3A75X45. The claim was transferred to the Central London County Court and then in turn transferred to this tribunal, by order of District Judge Lightman on 12 November 2018.
3. The tribunal first issued directions for the conduct of the case on 12 December 2018 which provided for the application to be determined on the papers directed to be submitted by a tribunal in the week commencing 1<sup>st</sup> April 2019 with an oral hearing instead on 4 April 2019 if requested by either of the parties. The Directions invited the parties to consider mediation and both agreed to this but in the result no agreement could be reached. Further Directions given by the tribunal on 21 December 2018, following a request from the applicant, confirmed that an oral hearing would take place on 4 April if no resolution had been reached prior to that date and yet further Directions varying the compliance dates for intermediate stages following the respondent's failure to comply with the original dates were given on 5 February 2019.
4. The relevant legal provisions are set out in the Appendix to this decision.
5. The applicant was represented by Mr Carty and Mr Sherread of Sterling Estates Management (SEM) at the hearing and the Respondent appeared in person.

6. At the start of the hearing the applicant handed in further documents, namely a schedule of the contractual costs it wished to claim against the respondent. The tribunal pointed out that Judge Lightman's Order had only transferred to the tribunal the determination of the reasonableness of the service charges claimed and this was accordingly the extent of our jurisdiction. For the same reason we could not consider the respondent's claim for set off in respect of the damage he claims was caused to the interior of the flat in the course of external works carried out by the applicant.

### **The background**

7. The property which is the subject of this application is a purpose built third floor flat in a three storey block built in the mid-1970s containing some 23 flats in all.
8. Photographs of the building were provided in the hearing bundle. 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.
9. The respondent 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 lease is dated 15 March 1974 and is a tripartite lease between the then lessor, the then lessee and the then maintenance company. By Clause 2 of the lease the lessee covenants with the lessor and as a separate covenant with the company to repair and maintain, paint the exterior of and the interior of the demised premises (Clause 2(5), (6) and (7)) as well as jointly with the other lessees to maintain the gardens and grounds and the roof and foundations (Clause 2(8) and (9)) as well as to pay a rateable or due proportion of the expense of making, repairing, maintaining etc all roads ways passageways, pathways, sewers drains et used in common with other lessees (Clause 2(10)). By Clause 2(33) the lessee covenants to pay to the company within 14 days of 24 June and 25 December in every year on being required to do so a sum representing a reasonable proportion of the amount expended by the company in performance of its covenants for each half yearly period including 10% for administration expenses. The lessee also agreed at Clause 2(34) to deposit £25 with the company for it to retain as a reserve towards making good any default by the lessee in making payments the unexpended part to be returned on determination of the lease. For its part the company, in consideration of the lessee's covenants in Clause 2 and with a view to relieving the lessee of his obligations under sub-clauses (5)(6)(8)(9) and (10) covenants in Clause 5 to maintain repair etc the exterior of the demised flat and the structure and common parts of the building and grounds. It also covenants in Clause 5(3) to keep necessary books of account and to prepare half yearly accounts to 24 June and 25 December in each year. By Clause 6(6) it is agreed and

declared by the parties that should the company go into liquidation the lessor, on giving notice, shall be entitled to undertake those obligations and recover from the lessee the monies agreed to be paid to the company. The company has been wound up and the lessor undertakes its obligations.

### **The issues**

10. The relevant issues for the tribunal's determination is the reasonableness of the allegedly unpaid service charges forming part of the applicant's claim in the County Court in the total sum of £5,835.68 (which now apparently has been reduced to £5,433.68).
11. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made its determinations as set out below.

### **The hearing**

12. We heard little or no evidence as such at the hearing, no witness statements had been provided but we had the documents relied on by the parties and their submissions as well as a helpful skeleton argument prepared by Mr Carty on behalf of the applicant. Mr Carty complained that the respondent's failure to adequately comply with the directions particularly in his completion of the Scott Schedule included in those directions had made it difficult for them to identify what aspects of the service charges they claimed were in arrears were disputed and why. The applicant had complied as far as they could with disclosure but as they only took on the management in early 2015 and some of the alleged arrears predated this they were limited in the information they had. The only service charge item clearly identified by the respondent as disputed was an amount of £10,025.33 included in the half year to 20 June 2014 statement of service expenditure dated 28 July 2014 and prepared by Ord Carmel & Kritzler (OCK) the then managing agents. This appeared under the heading Internal and External Repairs and Decorations and was he said in respect of OCK's fees in connection with the major works it was proposed to undertake and in respect of which there had been a full S20 consultation in 2012 (pages 73 and 76 of the bundle).
13. For the rest of the alleged arrears the applicant relies on the service charge accounts disclosed and the statements of account showing sums demanded and paid and the lessee covenants in the lease. The applicant through SEM had made great efforts with the respondent to reconcile his service charge account giving precise information about the sums demanded and the payments received as shown by the e-mail correspondence in the bundle and had agreed to take part in the ultimately unsuccessful mediation. Mr Carty says at point 10 of his skeleton argument that "if a cost is not clearly recoverable under the

clause then the tenant will not have to pay. It is the Applicant's contention that this is not the case here and the service charges are rightfully due".

14. The respondent in his statement of case which he enlarged on at the hearing explained that the flat had from his purchase of it been registered in his sister's name though he paid all the bills. Sometime in 2016/17 he had the title transferred into his own name and the landlord wanted an exorbitant amount to register the change (billed 20 April 2017 £150). He had other problems with the landlord regarding registration of a "new lease" agreed in 1997 which his then solicitor had failed to register at that time and with proposals to build additional flats above his which had involved negotiations regarding a lease variation to permit the development to take place and compensation to be paid in return. These discussions took place in 2012 to 2014 but this proposal did not happen and he thought the OCK fees related to this and not works to the original building which also did not happen at the time. He included in his bundle a letter dated 29 April 2015 from Sterling Estates Management enclosing a further stage 1 consultation notice relating to the works of repair and redecoration of the building and thought this would entail repeating whatever OCK had done. Works had gone ahead in 2016 which involved damage in August to the flat which he reported to SEM but in the absence of any response from them he paid to have repaired in November.
15. Mr Toufexis did not raise any issues with the billing of the service charge, with his flat's share of total service charge expenditure at 1/23<sup>rd</sup>, with the consultation in respect of the major works or their cost or the standard to which they were carried out (save the damage to his own flat). We took him through the half yearly accounts provided for the years from which the alleged arrears are said to arise namely the statement of service expenditure for 1<sup>st</sup> January 2014 to 30 June 2014 prepared by OCK, that for the six months to 25 December 2014 prepared by SEM and dated 10 April 2015, and those for the following six month periods ending 30 June 2015, 25 December 2015, 30 June 2016 and 24 December 2016, the latter dated 8 May 2017 being the last before the issue of the claim in the County Court. The respondent confirmed that save for the OCK fee he did not dispute the amount shown under the various headings in the statements as the sums expended on matters for which he was to pay a service charge.
16. However we did raise with Mr Carty some issues arising out of those statements of service charge expenditure. The first concerned the OCK fee for professional services in connection with the proposed redecoration and repair of the block (the major works) and whether these had been wasted and further fees charged for a revised specification, etc or whether the work carried out by OCK had been utilized by SEM when they subsequently had the works undertaken. Mr Carty thought the latter but promised to confirm when he made further written submissions (see below).

17. The other matters we raised concerned the inclusion of a reserve fund of £5,000 in the statement of expenditure to 30 June 2015 and the major works reserve fund of £97,800 included in that to 30 June 2016. From the statement of account relating to flat 17 the lessee's share of the major works anticipated cost had already been separately billed to the respondent's sister on 8 October 2015 in the sum of £4,254.30 which forms the major part of the arrears owed by Mr Toufexis. We asked if the reserve fund contributions and the payment in advance of the major works taking place were permitted under the provisions of the lease. As these had not been issues directly raised by the respondent Mr Carty did not feel he could adequately answer these questions there and then and we accordingly decided to give him seven days to make written submissions on the points with a further seven days for the respondent to reply if he so wished.
18. Mr Carty's submissions are dated 12 April 2019. In them he firstly confirmed that the OCK specification, etc had been used for the major works with SEM charging a further £950 for supervision and administration. On the other issues he argues that the lease implies the creation of and collection for a reserve fund indeed clause 2(34) specifically refers to a £25 deposit as a reserve. In the alternative he suggests that s.20 itself implies that a landlord having consulted with leaseholders on its proposals to fulfil its repairing, etc obligations and indicated the expected costs of doing so the landlord is by implication entitled to collect the funds necessary to do those works. He referred to *Holding & Management (Solitaire) v Sherwin (2010)UKUT412(LC)*. Mr Carty also raised the question of the tribunal's jurisdiction in respect of matters not raised by the respondent who by his failure to raise such points when given the opportunity to do so can be taken to have agreed them. He referred to *Marlborough Park Services Ltd v Leitner (2018)UKUT230(LC)*. In his submission it would be impossible for a block such as this to be effectively managed, repaired and redecorated without being able to call on lessees to contribute to making funds available so that such could be undertaken.
19. Mr Toufexis sent in a brief reply dated 14April. He had not previously been aware of the lease issues raised by the tribunal but thought the lease did not allow payments in advance. He did not think the major works carried out under SEM included what OCK had specified. He also admitted he may have overlooked paying the service charge relating to the OCK expenditure statement as that had been addressed to all lessees.

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

20. The only service charge item clearly challenged by the respondent is OCK's fee in connection with the major works. We are satisfied this was utilized in carrying out the major works when they eventuated in 2016/17. There is no evidence before us that those works differed

significantly from OCK's proposals. On 26 November 2012 OCK sent the Stage 2 s.20 Consultation Notice to leaseholders giving details of the two tenders received, one at a cost of £130,512 the other £137,960. The notice also advised that professional fees would be charged at 11.5% plus VAT a perfectly reasonable fee level for the work involved. OCK did not however commission the works or supervise them but the fee charged of £10,025.33 (presumably including VAT) together with SEM's subsequent charge of £950 plus VAT is eminently reasonable for the professional services provided. Thus the service charges for the six months to 30 June 2014 are in our determination reasonable and reasonably incurred and the respondent is liable for the £915.33 service charge resulting therefrom.

21. Turning to Mr Carty's submissions regarding the tribunal's jurisdiction in respect of issues not raised by the respondent we would agree that it is not in general the tribunal's role to make a party's case for it when it fails to do so itself but it certainly cannot be said that the respondent has agreed matters when his alleged failure to pay sums due clearly shows he has not done so. The applicant pleads the lease in its case for claiming the sums it does, the lease is in evidence and it must be part and parcel of the tribunal's role in determining the reasonableness of the service charges to ensure that those charges are permitted to be made under the provisions of the lease.
22. The lease clearly provides for the collection of a sum in respect of service charges every six months on the dates given "representing (a) a reasonable proportion of the amount expended by the Company ... for the half year to 24 June or 25 December ...". There is no provision in the lease for carrying forward or repaying excess amounts paid in advance by a lessee or for making further demands if there were a shortfall in such amounts. The lease clearly only allows for the demand of service charge payments in respect of amounts already expended by the company or lessor.
23. There is no provision in the lease to demand monies to go towards a reserve or sinking fund to provide a source of funds for future payments nor to make one off demands on dates other than those given in the lease to pre-fund major works. A lessor who brings County Court proceedings to recover debts allegedly owed under the provisions of a lease must first ensure the amounts claimed are actually payable under the lease especially when the threat of forfeiture is present. In Mr Carty's own words in his skeleton argument at point 10 "if a cost is not clearly recoverable under the clause then the tenant will not have to pay".
24. We accordingly determine the service charges for the period 25 December 2014 as reasonable and reasonably incurred, for the period 30 June 2015 we disallow as unreasonable the £5,000 included for a reserve fund (of which the respondent's 1/23<sup>rd</sup> share would be

£217.39) but the remainder reasonable and reasonably incurred. We make the same finding in respect of the half year to 25 December 2015 which again included a £5,000 reserve fund contribution. The service charge expenditure statement for the period to 30 June 2016 included the sum of £97,800 as major works reserve fund which we again disallow as unreasonable as not permitted by the lease but the other items in that statement are approved as reasonable and reasonably incurred. Thus we disallow the £4,254.30 billed on 8 October 2015 as the lessee's contribution. This sum was not owed by the respondent at that time or at the time of the issue of the County Court proceedings on 14 June 2017. The sums shown in the six monthly statement to 24 December 2016 dated 8 May 2017 the last available before the Court reference are also approved as reasonable and reasonably incurred. The respondent is of course liable to pay his share of the cost of the major works as and when those costs have been incurred and included in a six monthly period statement.

25. There was no evidence of demands as such before the tribunal or evidence of payments made by the respondent and disputed by SEM and we do not propose to go into that matter. When the claim was issued in the County Court the alleged amount owing in service charge arrears was £5,433.68. Our decision reduces this to £744.60.
26. Mr Carty drew our attention to the difficulty of effectively managing the block if the lease did not allow payments in advance or the provision of a reserve fund and how this might require them to seek a variation of the lease. The lessor is of course free at any time to make such an application for a variation of the leases at any time provided of course the statutory requirements are met.

**Name:** P M J Casey

**Date:** 7 June 2019



## **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 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).