

9321



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

Case References : **LON/00AD/LSC/2013/0400**

Properties : **Flats 1, 3 and 5
Elm Court, Elm Court Road
Erith DA8 2NN**

Applicant : **S C Estates Limited**

Representative : **Blue Property Management UK Ltd**

Respondent : **Mrs I O Omatayo**

Representative : **In person**

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

Tribunal Members : **Miss J E Guest (Judge)
Mr M Cairns MCIEH (Professional
member)
Mr L G Packer (Lay member)**

**Date and venue of
Hearing** : **09/09/2013
10 Alfred Place, London WC1E 7LR**

Date of Decision : **26/09/2013**

DECISION

Decisions of the tribunal

- (1) The tribunal determined that the service charges payable in respect of the service charge year 2012/13 amount to £6,385.00 (or £1,277.00 per flat).
- (2) The tribunal determined that the estimated service charges for the service charge year 2013/14 of £6,050.00 (or £1,200.00 per flat) are reasonable.
- (3) The tribunal determined that there should be no order in respect of the Respondent's application under section 20C of the Landlord and Tenant Act 1985.
- (4) The tribunal decided that the Respondent shall reimburse the Applicant for the application fee of £350.00 and the hearing fee of £150.00. The total sum of £500.00 must be paid by the Respondent to the Applicant within 28 days of the date of this decision.
- (5) The tribunal made 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") and as to the amount of service charges payable by the Respondent in respect of Flats 1, 3 and 5 for the service charge years 2005/6, 2006/7, 2007/8, 2008/9, 2009/10, 2010/11, 2011/12, 2012/13 and the budget estimated for 2013/14.
2. A pre-trial review hearing ("*PTR*") took place on 04/07/2012 that was attended by both parties. Given that a previous determination made by the tribunal in respect of Flat 3 (in respect of the service charge years 2005/6, 2006/7, 2007/8, 2008/9, 2009/10 and 2010/11) came to light at the PTR, it was directed that the issues to be determined by the tribunal would be limited to the years 2012/13 and 2013/14. This was directed on the basis that the Applicant made various concessions at the PTR as set out in the decision notice. The Applicant, however, subsequently stated in its statement of case that the directions order did not, in fact, reflect the discussions that had taken place at the PTR. The Applicant, however, accepted that it should have sought clarification or made an application in advance of the hearing. Given this, the Applicant agreed to only seek determinations in respect of 2012/13 and 2013/14 in line with the directions order, although it reserved the right to make an application for the earlier years at a later date if it wished to do so.

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

The hearing

4. The Applicant was represented by Mr P Evans of Blue Property Management UK Ltd. Also present on behalf of the Applicant was Mr J Popplewell also of Blue Property Management UK Ltd.
5. At about 4.45pm on Friday 6 September 2013, the tribunal received a letter from the Respondent sent by fax requesting a postponement of the hearing due to commence on Monday 9 September 2013 at 10am. Given the lateness of the request, the tribunal contacted the Respondent on receipt of the fax and informed the Respondent that she must attend the hearing on 09/09/2013 to make an application for an adjournment in person as it was too late for any Judge to consider her request.
6. The Respondent did not attend the hearing on 09/09/2013 and she did not make further contact with the tribunal. The tribunal considered the issues raised by the Respondent in her letter of 06/09/2013. The tribunal decided not to exercise its discretion to adjourn the hearing. In reaching this decision, the tribunal had regard to the overriding objective set out at Rule 2 of The Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013. It was noted, in particular, that the Respondent had failed to co-operate with the tribunal. The Respondent was present at the pre-trial review hearing when various directions were ordered and the application set down for a final hearing on 09/09/2013. Despite this, the Respondent did not comply with the directions, she did not make contact with the tribunal until 4.45pm on 06/09/2013 and she did not attend the hearing on 09/09/2013 as advised. The Applicant had complied with the directions ordered at the PTR and it was in a position to proceed. The tribunal is required under Rule 2 to deal with cases fairly and justly and this includes avoiding delay. The tribunal, therefore, proceeded to hear the application in the Respondent's absence having regard to Rule 34. The tribunal was satisfied that (a) the Respondent had been notified of the hearing of the hearing and (b) it was in the interests of justice to proceed.
7. The tribunal considered the relevant documents contained in a bundle prepared by the Applicant. In addition to the bundle, the tribunal also considered further corroborating documentary evidence that was submitted by the Applicant at the hearing, namely service charge statements for Flats 1, 3 and 5 dated 11/07/2013, fire risk and risk assessments both dated 05/03/2013, certificates of insurance effective on 01/02/2012 and 01/02/2013 and the budget calculation for the year 2013/14.

The background

8. The property which is the subject of this application is a two storey block of flats consisting of 5 two-bedroom flats – there are two flats on each floor and another in the roof space. The building was constructed in about 2005. There is a small car park with designated parking spaces for each flat and an additional car parking space for a visitor. There is a bin store located in a fenced off area to the front of the building and grassed areas of about 100m² to the sides and rear. The building has one communal entrance with an entryphone system and one communal hallway and staircase. The property has been managed by Blue Property Management UK Ltd since 1 August 2008. Prior to their management, the Applicant had set up a company, Elm Court Residents Management Company Ltd, to administer the service charge account. Blue Property has continued to use this company for the administration of the service charges.
9. The leases for all flats are identical. Each lease is for a term of 125 years and requires each lessee to contribute 1/5th towards the expenditure incurred by the lessor in carrying out its obligations under Clause 4 of the lease (see Clause 3(1)(b)). Clause 3(1)(a) obliges each lessee to pay their contribution by two equal instalments payable in advance on 31 March and 30 September each year.
10. The bundle included service charge demands issued in relation to Flats 1, 3 and 5 in respect of the service charge year 2012/13, which had been served with a summary of tenant's rights and obligations in compliance with section 21B of the Landlord and Tenant Act 1985.
11. 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.
12. Having heard evidence, the Applicant's submissions and considered all the relevant documents, the tribunal made determinations on the various issues as follows:
 - A. **SERVICE CHARGE YEAR 2012/13**
 - (1) **Insurance costs - £1,168**
13. The Applicant relied upon Clause 4(5) of the lease that requires the building to be insured to its full reinstatement value. The relevant certificate of insurance was produced at the hearing. No evidence of any alternative insurance or objections had been put forward by the Respondent.

Tribunal's decision

14. The tribunal allowed the sum of £960.00.

Reasons for the tribunal's decision

14. The tribunal disallowed the sum of £208.00 as this related to 'Directors and Officers liability'. This is not a risk that is part of the Applicant's insurance obligations as set out at Clause 4. The Applicant may only recover the expenditure set out in Clause 4. Therefore, the sum of £208.00 was disallowed. The tribunal considered that the remainder was reasonable and payable.

(2) Accountancy - £340

15. The Applicant relied upon Clause 4(7) that requires it to keep a proper book of accounts of all costs charges and expenses and to prepare annual accounts. No evidence of any alternative costs or objections was put forward by the Respondent.

The tribunal's decision

16. The tribunal allowed the sum in full.

Reasons for the tribunal's decision

17. The expenditure incurred was considered to be reasonable given the number of flats and the nature of the accounts. The accounts were prepared in respect of Elm Court Resident Management Company Ltd. Although the lease does not include any provision to recover the expenditure for the preparation of company accounts, the tribunal took a pragmatic approach given that very similar accounts for the service charge account would be prepared in any event.

(3) Cleaning/caretaking - £720

18. The Applicant relied upon Clause 4(4) of the lease that obliges it to keep the internal communal areas clean and lighted and to keep the common exterior areas in a good and tidy condition. The tribunal was informed that the property has an allocated caretaker who attends every fortnight for a period of 2-3 hours. The caretaker is employed by Blue Property Maintenance UK Ltd who then invoices the managing agents, Blue Property Management UK Ltd. The managing agents are charged £50.00 per month (plus VAT).

Tribunal's decision

19. The sum of £720 was allowed in full.

Reasons for tribunal's decision

20. The sum claimed was reasonable and it is recoverable under the terms of the lease.

(4) Management charges - £1,763

21. The Applicant relied upon Clause 4(6) of the lease that entitles it to appoint managing agents. The tribunal was informed that the managing agent's agreement with the freeholder provides for a fix fee that includes the provision of an emergency call out service '24/7'.

Tribunal's decision

22. The sum of £1,763 was allowed in full.

Reasons for tribunal's decision

23. The lease provides that a managing agent may be appointed. Whilst the tribunal considered the management fees claimed at the higher end of scale of what would be reasonable for a building of this nature/type, the tribunal nevertheless considered the sum to be reasonable.

(5) Repairs/general maintenance - £745

24. The Applicant relied upon Clauses 4(1) and (6) that require it to repair and maintain the building and produced documentary evidence supporting the sum claimed.

Tribunal's decision

25. The sum of £745 was allowed in full.

Reasons for tribunal's decision

26. The tribunal considered that the sums claimed were reasonable.

(6) Electricity - £71

27. The Applicant relied upon Clause 4(4) that obliges it to keep the internal communal areas lighted. The cost of electricity is paid by

monthly direct debit. The Applicant produced corroborating documentary evidence.

Tribunal's decision

28. The sum of £71 was allowed in full.

Reasons for tribunal's decision

29. The tribunal considered the sum was recoverable and reasonable.

(7) Gardening - £1,152

30. The Applicant relied upon Clause 4(1)(c) that requires it to maintain and keep in good condition the external areas. The work is carried out by Blue Property Maintenance UK Ltd who invoice the freeholder. The tribunal was told that there are 21 site visits in total per year and that each visit is for a period of 2-3 hours. The work involves grass cutting, weeding, sweeping, etc and the cost includes materials, the provision of equipment, etc. The tribunal was also told that litter quickly accumulates in the external areas as it is situated on a main road close to a school and the building is occupied by tenants who have limited interest in keeping the exterior areas clean and tidy. The Applicant also produced a quote from an alternative company who quoted a charge of £75.00 plus VAT for each visit.

Tribunal's decision

31. The sum of £1,152 was allowed in full.

Reasons for tribunal's decision

32. The fee charged was considered to be recoverable under the terms of the lease and reasonable.

(8) Window cleaning - £152

33. The Applicant relied upon the sweeping up clause, Clause 4(6), which requires it do such works as may be necessary or advisable for the proper maintenance, safety and administration of the building. The tribunal was informed that the building has about 20 windows which are cleaned every 3 months. The sums claimed were corroborated by supporting documentary evidence.

Tribunal decision

34. The sum of £152 was allowed in full.

Reasons for the tribunal's decision

35. The sum is recoverable under the lease and reasonable.

(9) Fire Risk assessment £240 and Health & safety assessment £240

36. The Applicant relied upon the provisions of the sweeping up clause, Clause 4(6). The assessments were undertaken by D V Warren of Blue Risk Management UK Ltd during one site visit that took place on 05/03/2012. Blue Risk then invoiced the freeholder on 06/03/2012.

Tribunal's decision

37. The tribunal allowed the sum of £360.

Reasons for the tribunal's decision

38. The tribunal considered that the sum charged for each assessment was excessive given that the assessments were undertaken during one site visit and involved only updating a standard pro forma. There was also no information as to the qualifications of the person who undertook the assessments.

(10) Bank charges - £120

39. The Applicant relied upon Clause 4(6) and also 4(7). The service charge fund is held in a separate client account. The cost was lower than the previous year when bank charges had been incurred when there were insufficient funds to honour the direct debit for electricity in view of the non-payment of service charges by lessees.

Tribunal's decision

40. The sum of £120 was allowed in full.

Reasons for the tribunal's decision

41. The sum claimed is recoverable under the terms of the lease and was considered to be reasonable.

B. SERVICE CHARGE BUDGET 2013/14 - £6,050.00

Tribunal's decision

42. The tribunal considered that the budget for the service charge 2013/14 to be reasonable. The tribunal's determination relates to estimates only and it does not prevent either party making an application in respect of the actual expenditure incurred.

Reasons for the tribunal's decision

43. The aggregate of the estimated costs was lower than the previous year. The estimated sums were considered to be reasonable.

C. Section 20C application

44. The Respondent made an application under section 20C in relation to the costs of the tribunal proceedings. The Applicant informed the tribunal that the only costs that would be added to the service charge in respect of the proceedings was travel expenses in the sum of £200.00.

Tribunal's decision

45. The tribunal declined to make an order under section 20C.

Reasons for the tribunal's decision

46. The tribunal considered that the Applicant had been justified in making the application given the history of non-payment. It was reasonable for the Applicant to seek a determination prior to pursuing any other action. The Respondent failed to co-operate with the tribunal. The tribunal held that almost all the charges had been reasonably incurred.

D. Reimbursement of hearing fee of application fee and hearing fee - total £150

15. At the end of the hearing, the Applicant made an application for a refund of the application fee of £150.00 and the hearing fee of £350.00.
16. The Respondent failed to comply with directions and failed to co-operate with the tribunal. The Respondent has not paid anything at all towards the service charges.
17. Given that the tribunal found that nearly all charges were payable and reasonable, the tribunal orders the Respondent to refund the total of £500.00 within 28 days of the date of this decision.

Name:

Date: 26/09/2013

Miss J E Guest

Appendix of relevant legislation

Landlord and Tenant Act 1985

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 a leasehold valuation 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 a leasehold valuation 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) a leasehold valuation 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.

Leasehold Valuation Tribunals (Fees)(England) Regulations 2003

Regulation 9

- (1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.
- (2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).

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 a leasehold valuation 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 a leasehold valuation 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).

Schedule 12, paragraph 10

- (1) A leasehold valuation tribunal may determine that a party to proceedings shall pay the costs incurred by another party in connection with the proceedings in any circumstances falling within sub-paragraph (2).
- (2) The circumstances are where—
- (a) he has made an application to the leasehold valuation tribunal which is dismissed in accordance with regulations made by virtue of paragraph 7, or
 - (b) he has, in the opinion of the leasehold valuation tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.
- (3) The amount which a party to proceedings may be ordered to pay in the proceedings by a determination under this paragraph shall not exceed—
- (a) £500, or
 - (b) such other amount as may be specified in procedure regulations.
- (4) A person shall not be required to pay costs incurred by another person in connection with proceedings before a leasehold valuation tribunal except by a determination under this paragraph or in accordance with provision made by any enactment other than this paragraph.