

10371



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

Case reference : LON/00AE/LSC/2014/0091
LON/00AE/LSC/2014/0259

Property : Flat 82 Clarendon Court, Sidmouth
Road, London NW2 5HD

Applicant : Termhouse (Clarendon Court) Ltd

Representative : Mr J Wragg of counsel instructed
by PDC Legal solicitors

Respondent : Athir Al Balhaa

Representative : Ms I Dawber

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

Tribunal members : Ruth Wayte
Rosemary Turner JP
Mel Cairns

**Date and venue of
hearing** : 9 October 2014, 10 Alfred Place,
London WC1E 7LR

Date of decision : 27 October 2014

DECISION

6. Immediately prior to the hearing the Applicant had sent in a supplemental bundle and witness statement of Mr James McCaghy, for the managing agents. At the start of the hearing Ms Dawber objected to these documents being considered and applied for an adjournment of the hearing on the basis that the Respondent wished to instruct counsel but had been unable to do so due to the late submission of the main bundle by the Applicant.
7. Having considered the application, the tribunal decided to proceed with the hearing. The Respondent had been aware of the hearing date and the directions since July 2014. He had failed to provide a schedule listing the items in dispute or a witness statement, despite being given additional time in a subsequent order. The tribunal accepted that the Applicant was late in delivering the main bundle, but only by a few days which was insignificant in the timetable as a whole. The main reason for the application appeared to the tribunal to be the failure of the Respondent to prepare his case in accordance with the directions.
8. In the absence of any good reason provided by the Applicant for the delay in providing further documents, the tribunal also refused to admit the supplementary bundle and witness statement. Ms Dawber then requested admission of a witness statement on behalf of the Respondent, which was also refused. Again, the tribunal determined that no good reason was provided for the delay. Ms Dawber submitted that the Respondent was unable to produce the statement due to late submission of documents from the Applicant. That assertion did not sit well with her letter to the Applicant written in August enclosing the Respondent's papers for the hearing bundle and confirming the statement would be sent separately.

The background

9. The property which is the subject of this application is a flat in a building known as Clarendon Court. The freehold is owned by the Applicant, a leaseholder management company.
10. 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.
11. 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 specific provisions of the lease will be referred to below, where appropriate.

The issues

Clause 4(C) of the lease provides for a further demand in the event of any shortfall between the Contribution and the Expenditure, or, in the event of a surplus for it to *“be carried forward by the Managers and credited to the account of the Lessee in computing the Contribution in succeeding accounting periods as aforesaid.”*

17. Clause 6 contains a list of the usual costs and expenses incurred in relation to management of property with paragraphs (d) and (e) providing for recovery of expenditure in relation to a caretaker of particular relevance to one of the issues for determination.
18. Mr Wragg for the Applicant therefore identified the demands for the half-yearly payments in advance, the estimate and the year end account for the service charge year ending 30 September 2009. He conceded there was a small discrepancy between the amount in the demands and the Respondent's contribution as calculated from the estimate and agreed the latter would be the limit of the advance service charge claimed, being £2,356.60. In this year the surplus had actually been credited back to the Respondent, meaning that his contribution was reduced to £2,195.59.
19. Ms Dawber confirmed that the Respondent had paid that amount. She was initially confused by the difference in format between the advance demands produced by the Applicant in the hearing bundle and the Respondent's copy, although that was explained by Mr Wragg as being due to the difference in the printed copy produced at the time and what was in effect a computer record printed for the hearing. On comparing the two demands it was in any event clear that they were for the same amounts.

The tribunal's decision

20. The tribunal determines that the amount payable in respect of the service charge year 2008/9 is £2,195.59. Whether this has actually been paid by the Respondent is a matter for the County Court as set out above.

Service charge year 2009/10

21. Applying the lease as set out above, Mr Wragg again identified the demands and estimate for the year in question. Again, there was a small discrepancy and the Applicant limited its claim in relation to the advance payment to £2,261.04. In this year the final accounts indicated that a surplus was carried forward to the reserve funds. Mr Wragg explained that this would have resulted in a lower demand the following year and Ms Dawber accepted this approach. Again, she raised no other objections to the claim.

too costly and other residents would do the job for less, although she had produced no evidence to support that assertion or alternative quotes.

The tribunal's decision

28. As set out above, the only real dispute for this service charge year was in relation to the increase in the cost of the caretaker service. The tribunal accepts the Applicant's reason for the increase and considers the amount reasonable, particularly given that the overall charge to the leaseholders has reduced. In the circumstances the tribunal determines that the amount payable in respect of service charge year 2011/12 is £5,143.65. Whether this has actually been paid by the Respondent is a matter for the County Court as set out above.

Service charge year 2012/13

29. Applying the lease as set out above, Mr Wragg again identified the demands and estimate for the year in question. Again, there was a small discrepancy but this time the contribution should have been a higher amount (£4,770 compared to the demand of £4,752.02). Based on previous years the Applicant claimed £4,770 in relation to the advance payment. This year there had also been a shortfall but that had been taken from the reserve fund and therefore no additional demand was made.
30. Ms Dawber initially disputed that any demands had been served, although subsequently accepted that one of the demands was in the Respondent's bundle. She appeared confused by the fact that the other demand was for the same amount, although accepted the explanation that this was in accordance with the lease which required the contribution to be paid by two equal half-yearly instalments. Ms Dawber raised no other objections.

The tribunal's decision

31. The queried demand appeared to have been correctly addressed and in these circumstances the tribunal determines that it was made by the Applicant, triggering the advance payment. In each year there have been discrepancies between the amount demanded and the actual contribution due under the lease. They were usually a matter of pence but the Applicant accepted that it was limited by the terms of the lease to the correct amount, if lower than the demand. This year the demand is lower than the correct contribution. Since the service charge is payable on demand, the tribunal considers that the Applicant is limited to the amount demanded where it is lower than the correct contribution and therefore the tribunal determines that the amount payable in respect of service charge year 2012/13 is £4,752.02. Whether this has

challenge the actual claim if it appears in any future service charge demand.

The next steps

37. The tribunal was informed by the Applicant that these proceedings are just one in a number of disputes in relation to this property. As explained above, despite the Respondent making the application for consideration of the service charges from 2008 to 2014, no real objections of substance were raised by him in his application or by his representative at the hearing. The fact that the real dispute appears to lie elsewhere seems to be made out by the account produced by the Applicant which shows receipts from the Respondent over the period in issue of £18,749.37 against the £21,240.18 found by the tribunal to be payable. This matter should now be returned to the Barnet County Court.

Name: Ruth Wayte

Date: 27 October 2014

- (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 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;