



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

Case Reference : LON/00AM/LSC/2013/0760

Property : Flat 5, Walnut Court, Woodmill Road, London E5 9GX

Applicant : Altius One (Hackney) Management Company Limited

Representative : Mr Jonathan Wragg of Counsel

Respondent : Mr R Sardana, and Ms L. De Cristofano

Representative : Mr A. Mashkur

Type of Application : Section 27A Landlord & Tenant Act 1985, Schedule 11 Commonhold & Leasehold Reform Act 2002 – Service Charges and Administration Charges (Court transfer)

Tribunal Members : Judge Lancelot Robson
Mr F. L. Coffey FRICS
Mrs L. West MBA

Date and venue of Determination : 10 Alfred Place, London WC1E 7LR
13th November 2014

Date of Decision : 25th November 2014

DECISION

Decision Summary

- (1) In the referred County Court case, pursuant to an agreement made by consent of the parties at the hearing, the Tribunal determined that the demanded sum of £1,616.54 was payable by the Respondent under the terms of the lease dated 17th December 2007 (the Lease). Such sum shall be paid within 21 days of the date of this decision.
- (2) The Tribunal determined that the demanded sum of £275 in respect of administrative charges was reasonable and also payable within 21 days of the date of this decision.
- (3) In respect of an application by the Respondent under Section 20c of the Landlord and Tenant Act 1985 to limit the landlord's costs incurred in this application, the Tribunal made no order.
- (4) The Tribunal also made the other decisions noted below.
- (5) This case is now referred back to the Clerkenwell and Shoreditch County Court to deal with court costs and any other outstanding matters.

Preliminary

1. By an order made on 4th November 2013 in the Clerkenwell and Shoreditch County Court in Claim No. 2ECO1972 District Judge Manners referred the Applicant's claim for service charges and administration charges to this Tribunal. The Applicant seeks an order as to the reasonableness of service charges under Section 27A of the Landlord & Tenant Act 1985 and also under Schedule 11 of the Commonhold and Leasehold Reform Act 2002 as to the reasonableness of administration charges relating to the service charge years commencing 1st January 2011 and 2012, pursuant to a lease dated 17th December 2007 (the Lease).
2. The route to the hearing of this case has been slightly tortuous. There were numerous postponements of the case in the County Court before the case was transferred. Neither party attended the first case management conference fixed by the Tribunal on 26th November 2014. Although Mr Mashkur attended on behalf of the Respondents, he was unable to give a relevant explanation as to why these charges were being disputed. Judge Martynski noted that there had been previous proceedings between the parties during which the Respondents had been directed to set out their reasons for disputing service charges in detail, which had not been done. Judge Martynski refused to give Directions unless both parties attended a new case management conference on 17th December 2013. Finally Directions were given on 14th January 2014 with a hearing date fixed for 26th March 2014. More adjournments were sought by the parties on several occasions for the purpose of settling the case. Finally, the Tribunal gave Directions for this hearing. The Applicants served a detailed statement of case with documentary evidence and a witness statement from Mr Ullam on 22nd September 2014 in accordance with the amended Directions. On 24th October 2014, they also sent a note of their charges. The Respondents only served a

statement of case on 9th November 2014, and without any supporting documents. The matters raised in that statement were mostly irrelevant to the issues set out in the application.

3. Extracts from the relevant legislation are attached as Appendix 1 below. The Tribunal notes for the benefit of the parties that it has no jurisdiction relating to Ground Rent, costs, or any interest claimed pursuant to statute in the County Court. These matters remain within the jurisdiction of the Court. The Tribunal also has no jurisdiction in a referred case under Section 27A relating to any matters raised which were not raised in the claim in the County Court. This last point was discussed at some length at the start of the hearing.
4. The Tribunal noted that the Court file sent to the Tribunal contained no copy of an acknowledgement of service or other document which set out the Respondents' reasons for objecting to the claim, although the parties had been proceeding later in the court proceedings on the basis that a defence had been served. Mr Wragg noted that the claim had originally been a Part 8 claim, which might explain the discrepancy. The Tribunal subsequently considered the Part 8 procedure rules, which still normally require the Defendant to make some written statement of reasons for disputing a claim. The lack of such a document in this case remains a mystery. Nevertheless the Tribunal stated at the hearing that if the Respondents had raised matters of dispute in their statement of case following the Tribunal's own Directions dated 17th January 2014, it would have considered relevant issues raised in that statement within its jurisdiction. Unfortunately the Respondents had not done so. Further, the statement of 9th October 2014 raised issues which related to service charges and repair generally, but did not address the particular claims made by the Applicant.
5. Mr Wragg did not apply to have that statement debarred, but was prepared to allow Mr Mashkur to query the specific charges claimed by the Applicant at the hearing, with the proviso that the Applicant might not have come prepared to deal with specific points so raised. Mr Mashkur appeared to accept this proposal. The Tribunal accepted this was the best way to allow the Respondents an opportunity to challenge the charges, without the trouble and delay of referring a relatively small claim back to the County Court to amend proceedings.
6. The Tribunal gave the parties a short period to discuss a possible settlement. When they returned, they agreed that they had managed to agree the service charge element of the claim, but the question of the administration charges totalling £275 remained for decision by the Tribunal. The parties had also agreed to meet the following week to discuss the matters raised in the Respondents' statement of case dated 9th November 2014.

Applicant's case

7. Mr Wragg set out the charges involved (all inclusive of VAT, which were:

- (a) a "Reminder Fee" of £15 from RMG, (the previous managing agent) for work done by its debt collection arm, Property Debt Collection Limited, dated 1st February 2012, for writing two chasing letters to the Respondents for the service charges.
- (b) a charge of £20 from RMG dated 18th May 2012 for a Land Registry search against the Respondents' title (the invoice for this item was produced at the hearing)
- (c) a "Legal Fee" of £192 dated 18th May 2012 from RMG for preparation and supply of documentation by its debt collection arm
- (d) an "Administration Fee" of £48 dated 18th May 2012 from RMG for further correspondence with the Respondents by its debt collection arm

All these items were explained by Mr Terna Ullam, the property manager for the current agent, Urban Owners. He said that he had no personal knowledge of the work or charges concerned, but were in the file which had been passed to him.

Respondent's case

8. Mr Mashkur raised the following issues;
 - a) the total cost of the work done was too high
 - b) whether the demands gave the formal information required in compliance with sections 47 and 48 of the Landlord and Tenant Act 1987, and had been served with a statutory copy of the tenant's rights and responsibilities. He stated it was also difficult to know whether demands related to service or administration charges.
 - c) the actual work which was covered by the invoices, the descriptions being very brief.
9. In answer to questions, Mr Mashkur agreed that he did not know what documents his clients had actually received, nor had he a witness statement from his clients. He was asked to identify any other particular omissions from the demands, but was unable to satisfy the Tribunal that there were any. Mr Ullam stated that so far as he was aware from the files, which he did not have with him, the necessary notices of rights and responsibilities were attached. He knew from his own experience that the chasing procedures used by the then agent resulted in 95% of money being collected without the expense of formal legal proceedings. Mr Wragg reminded us that his clients had no indication that these specific points would be raised by the Respondent. The Tribunal stated that it would weigh the available evidence and come to a decision on these matters.

Decision

10. The Tribunal considered the evidence and submissions. The Tribunal noted that the best evidence it had of the work done was Mr Ullam's view of the work which would probably have been done. The Tribunal also had concerns that the total of the invoices (except the Land Registry fee) added up to £255 which appeared a high figure for the work which had

apparently been done. Nevertheless the Tribunal accepted that the Respondent had not been given notice of the specific challenges made by Mr Mashkur and had had no opportunity to consider its files or call witnesses to answer those challenges. It seemed wrong in principle to allow a party who had put forward no case, and made no serious attempt to comply with the Tribunal's Directions, to make challenges to specific invoices orally at the hearing and require the other party who had complied with Directions to be ready to answer them. The Respondents and their representative were not completely ignorant of the Tribunal's procedure, as previous LVT decisions involving them showed. A full set of the invoices and account summaries for the work charged for had been produced. An explanation of the work had been given, which was not unreasonable. On balance, the Tribunal decided that it was reasonable to do the work, the work was done to a reasonable standard, and the charges demanded were reasonable in amount. Although not part of its decision, it noted for future reference that a short summary of the work actually done would have greatly assisted understanding of that work.

Costs

Regulation 13

11. Mr Wragg stated that his clients had decided not to pursue an application for costs based on the Respondents' unreasonable behaviour under Regulation 13(1)(b) of The Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013.
12. Mr Mashkur, after the matter was carefully explained to him, made an application under Section 20C of the Landlord and Tenant Act 1985 for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before this Tribunal, 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. He submitted that the costs charged by the Applicant were excessive when pursuing such small sums. His clients had tried on many occasions to settle the matter without success.
13. Mr Wragg submitted that the Respondents had put forward "no hint" of a Defence or statement of case in this application. Several attempts made to settle the case had come to nothing prior to this hearing. The Respondents seemed confused as to the real issues in this case. It seemed unjust that the Respondents should not contribute to these costs via the service charge together with other leaseholders who had taken no part in the proceedings. Mr Wragg also noted that these costs were still open to challenge on the question of reasonableness by any leaseholder until after issue of the final accounts for the year in question.
14. The Tribunal preferred Mr Wragg's submissions. It decided that there was considerable confusion about the issues on the part of the Respondents, coupled with almost total failure to make a written case in the time limited by the Tribunal, or at all. The landlord had no other

reasonable choice but to bring the proceedings. Thus the Tribunal exercised its discretion and refused to make the order sought.

Chairman: Judge Lancelot Robson

Signed: Lancelot Robson

Dated: 25th November 2014

Appendix 1

Landlord & 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.

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).

Landlord and Tenant Act 1985 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 leasehold valuation tribunal, or the Lands 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).....
- (3) The court or tribunal to which application is made may make such order on the application as it considers just and equitable in the circumstances.

The Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013

Regulations 13(1) - (3)

- 13.-(1) The Tribunal may make an order in respect of costs only-
- (a) under Section 29(4) of the 2007 Act (wasted costs) and the costs incurred in applying for such costs;
 - (b) if a person has acted unreasonably in bringing, defending, or conducting proceedings in-
 - (i) an agricultural land and drainage case,

- (ii) a residential property case, or
 - (iii) a leasehold case; or
 - (c) in a land registration case.
- (2) The Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor.