

10521



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

Case Reference : **LON/00AK/LSC/2014/0505**

Property : **5 Cherry Blossom Close
London N13 6BQ**

Applicant : **Chequers Way (Block ABE&L)
Management limited**

Representative : **Aston Rose (West End) Ltd**

Respondent : **Eleni Christodolou**

Type of Application : **Liability to pay service charges.**

Tribunal Member : **Ms S Hargreaves**

**Date and venue of
Hearing** : **8th January 2015
10 Alfred Place, London WC1E 7LR**

Date of Decision : **8th January 2015**

DECISION & REASONS

Background

1. On 1st October 2014 the Applicant applied to the Tribunal to consider the service charges payable by the Respondent in respect of the property, a two bedroomed purpose built flat, for the years 2012-2014 and 2015. More particularly that claim amounted to th31,516.15 in respect of the annual yearly service charge due on 1st April 2014 to which the Applicant added £150 administration charge in respect of the fee for debt recovery, making a total of £1666.15.
2. The Tribunal held a case management conference on 23rd October 2014 when Judge Nicol gave directions and warned the Respondent, who did not appear, to take legal advice. The Respondent has failed to comply with any of the directions. Under paragraph 3 and 7 of the directions (in particular) the Judge directed that unless the Respondent filed and served her statement of case and other documents by 20th November 2014 she would be barred from taking any further part in the proceedings pursuant to Tribunal Rule 9(1) and the Applicant would be able to apply for a paper determination. The Respondent failed to comply with that direction and the Applicant duly applied for a paper determination. The determination is therefore carried out without taking into account any submissions from the Respondent, none having been received. It is also based on an assumption that the Applicant complied with paragraph 6 of the directions, the statement of its witness Neil Spurrier being dated 20th November 2014.
3. This is an application made on the basis of s27A Landlord and Tenant Act 1985; the crux of the issues is whether the service charges claimed by the Applicant are reasonable. Appendix 1 attached contains relevant statutory provisions.
4. The documents on which the Applicant relies are contained in a trial bundle which supports Mr Spurrier's statement. The Applicant is the management company appointed under the lease dated 17th April 1998 to manage the property and collect the service charge.
5. The lease is at p2-35 of the bundle. The Applicant's management obligations are contained in clause 9 and Part V of the schedule to the lease. The Respondent's corresponding obligations are contained in clause 3.5.2 and paragraph (j) of part VI of the schedule as stated in paragraph 8 of Mr Spurrier's statement.
6. On 25th March 2014 the Applicant sent the Respondent a demand for the sums anticipated to be due for the period 1st April 2014-31st March 2015, as it was entitled to do (bundle p70A). As is clear from the statement of account (bundle p71-73), the Respondent has not paid any part of that demand. Even if the amount charged turns out to be more than is payable

by the end of the year, the charge can be adjusted if necessary at the end of the next accounting year, but this does not relieve the Respondent of the obligation to pay it subject to this decision.

7. The items charged for are recoverable by the Applicant under the terms of the lease (see eg clauses 2.2, 8 and Part V of the schedule) and given the overall amount claimed, whilst it shows an increase of around £200 on the previous year's demand, there is nothing to suggest the claim relates to items which are unreasonable in amount, particularly given the evidence of amounts charged in previous years which (it appears) the Respondent seems to have paid, if in arrears. All of the items charged for are the type of commonly incurred expenses met in managing residential blocks of flats, and they have been properly audited and accounted for in accordance with the terms of the lease.
8. In addition there was nothing from the Respondent by evidence or otherwise (prior to her being debarred) which provides any grounds for concluding that the charges are not reasonable. She was afforded a specific opportunity to explain her position and chose not to do so. On the face of it the Applicant's service charges are not challenged in any way by the Respondent.
9. The findings above relate to the sum of £1516.15.
10. In addition the Applicant seeks repayment the sum of £150 as an administration charge. That seems to me to be a reasonable sum which is recoverable under paragraphs 10 and 15 of Part V of the schedule, bringing the total amount recoverable by the Applicant to the sum of £1,666.15.
11. It follows that the Applicant is successful in relation to the head of claim summarised at paragraph 12(a) of the statement dated 20th November 2014.
12. As for the head of claim set out in paragraph 12(b), the Applicant claims the sum of £3,429 either under *s18 Landlord and Tenant Act 1985* or *Tribunal Rule 13*. As the Respondent has not had the opportunity to deal with this head of claim, separate directions are attached for the parties to address this part of the claim. The fact that the Respondent is debarred from defending the claim does not affect her right to make submissions on this costs aspect of the proceedings.

Appendix 1

LANDLORD AND TENANT ACT 1985

Section 19 Limitation of service charges: reasonableness

(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 provision of services or the carrying out of works, only of 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 Liability to pay service charges: jurisdiction

(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 subject of determination by a court, or
- (d) has been 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.

20C.— Limitation of service charges: costs of proceedings.

(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 First-tier 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 [the county court] ;

(aa) in the case of proceedings before a residential property tribunal, to a leasehold valuation tribunal;

(b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;

(ba) in the case of proceedings before the First-tier Tribunal, to the 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 [the 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 ADMINISTRATION CHARGES

Part 1 REASONABLENESS OF ADMINISTRATION CHARGES

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.

Paragraph 2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Paragraph 5

(1) An application may be made to [the appropriate tribunal] ¹ 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).

Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013/1169

Rule 13.— Orders for costs, reimbursement of fees and interest on costs

(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.

- (3) The Tribunal may make an order under this rule on an application or on its own initiative.
- (4) A person making an application for an order for costs—
- (a) must, unless the application is made orally at a hearing, send or deliver an application to the Tribunal and to the person against whom the order is sought to be made; and
 - (b) may send or deliver together with the application a schedule of the costs claimed in sufficient detail to allow summary assessment of such costs by the Tribunal.
- (5) An application for an order for costs may be made at any time during the proceedings but must be made within 28 days after the date on which the Tribunal sends—
- (a) a decision notice recording the decision which finally disposes of all issues in the proceedings; or
 - (b) notice of consent to a withdrawal under rule 22 (withdrawal) which ends the proceedings.
- (6) The Tribunal may not make an order for costs against a person (the “paying person”) without first giving that person an opportunity to make representations.
- (7) The amount of costs to be paid under an order under this rule may be determined by—
- (a) summary assessment by the Tribunal;
 - (b) agreement of a specified sum by the paying person and the person entitled to receive the costs (the “receiving person”);
 - (c) detailed assessment of the whole or a specified part of the costs (including the costs of the assessment) incurred by the receiving person by the Tribunal or, if it so directs, on an application to a county court; and such assessment is to be on the standard basis or, if specified in the costs order, on the indemnity basis.
- (8) The Civil Procedure Rules 1998, section 74 (interest on judgment debts, etc) of the County Courts Act 1984 and the County Court (Interest on Judgment Debts) Order 1991 shall apply, with necessary modifications, to a detailed assessment carried out under paragraph (7)(c) as if the proceedings in the Tribunal had been proceedings in a court to which the Civil Procedure Rules 1998 apply.
- (9) The Tribunal may order an amount to be paid on account before the costs or expenses are assessed.