

11913



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

**Case reference** : **LON/00AJ/LSC/2016/0073**

**Property** : **Garden Flat, 159a Horn Lane,  
Acton, London W3 6PP**

**Applicant** : **MMFC Properties Limited**

**Representative** : **Tom Bagley, Three Keys Properties  
Limited**

**Respondent** : **Vladimir Radicic**

**Representative** : **Mia Volic**

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

**Tribunal members** : **Judge Hargreaves  
Luis Jarero BSc FRICS**

**Date and venue of  
hearing** : **10 Alfred Place, London WC1E 7LR  
13<sup>th</sup> June 2016**

**Date of decision** : **13<sup>th</sup> June 2016**

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**DECISION**

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## **Decisions of the Tribunal**

- (1) The Tribunal determines that in respect of the years ~~2010-2013~~ the claims made by the Applicant in respect of service charges are reasonable and payable.
- (2) The Tribunal makes the determinations as set out under the various headings in this Decision.
- (3) It is not just and equitable to make an order under *s20C Landlord and Tenant Act 1985* so far as the costs before the Tribunal are concerned.
- (4) All other costs and outstanding issues are referred to the county court.

## **REASONS**

### **The application**

1. The Applicant seeks a determination pursuant to *s.27A of the Landlord and Tenant Act 1985* ("the 1985 Act") as to the amount of service charges payable by the Respondent in respect of service charges for the years ending 31<sup>st</sup> March 2010 – 2013.
2. The relevant legal provisions are set out in the Appendix to this decision.
3. Page numbers refer to those in the trial bundle prepared by the Applicant, represented by Tom Bagley of the managing agents Three Keys Properties Limited, who was familiar with the issue and helpful to the Tribunal.
4. The property is a basement/garden flat on a busy road, with three other flats in the same building, which is a converted property. There is a small front garden which is dominated by a lime tree. Access is by separate steps to the basement. Access to the rest of the property and communal stairs is by the separate front door. The Tribunal did not inspect the property and it was not necessary to do so to decide the issues before it. There are a number of photographs in the bundle.
5. The proceedings before the Tribunal started out as long ago as September 2012 as claim no 2YL80953 issued in the county court (p1). After a protracted time in the county court in which very little substantive progress was made but the parties came close (but not close enough) to settling, the proceedings were finally transferred to the Tribunal by DJ Willans on 9<sup>th</sup> February 2016, pursuant to an order

dated 30<sup>th</sup> November 2015 which referred specifically to the transfer of the element of the overall claim (including arrears of ground rents, administration charges and interest) relating *only* to service charges (p130-1). The Tribunal gave directions on 15<sup>th</sup> March 2016 (p137) in response to which the Applicant provided extensive disclosure, and the Respondent nothing by way of evidence except to complete the Respondent's part of the schedule of disputed items, which proved a useful and comprehensive tool for resolving the issues between the parties. That left the Respondent without any evidence to support the claims made about the matters which underlined the opposition to paying the relevant service charge demands.

6. The Respondent's representative Mia Volic attended the directions hearing. She was evidently authorised to act on behalf of the Respondent in the proceedings, though they are in the process of divorcing. Furthermore, it was clear from her oral evidence that she was actively engaged in managing the property and has lived in it for some time, apart from 2009-2011 when she let it to friends. The actual Respondent had not participated in the proceedings to any discernible extent; such contact as there has been between the Applicant and the Respondent (as it were) has been with her.
7. Given that the service charges to the year ending 31<sup>st</sup> March 2016 have also been demanded (apparently) but not paid, it is a matter of regret that the Applicant did not think to issue a s27A application in respect of the remaining charges, which could have been heard by the Tribunal and disposed of at the same time.

### The lease

8. The lease, dated 23<sup>rd</sup> November 2000, is at p559. The "*maintenance rent*" is defined as "*Twenty five per cent of the costs and expenses that the Lessor incurs pursuant to its covenants contained in the Second Schedule hereto*". The "*maintenance year end*" is 31<sup>st</sup> March and the "*on account payment*" is £250 per annum. The maintenance rent and on account payment are payable in four equal instalments on the payment dates, which are the usual quarter days. The provisions of the Second Schedule at p568 are wide enough to cover all the works or charges which are the subject of relevant demands and invoices. At the hearing, Ms Volic accepted that whether or not she benefited directly from expenditure (eg on cleaning and lighting the communal areas to which she does not have access or even need it to get to the property), she is required to pay 25% of the charge.
9. There is provision to maintain a sinking fund, but none has been created. The "*on account payment*" is limited as a matter of construction to £250 unless one month's notice has been given of an increase, after which the increased amount becomes the future "*on account payment*" (Second Schedule, paragraph 12). The Applicant had

clearly not appreciated the limitations of this provision in serving on account demands which exceeded £250 pa, without serving any requisite notice. The only practical way to deal with this was to examine the final service charge demands for the year's end, as will be explained below, it having little practical impact due to the fact that the arrears are admittedly substantial, the Respondent not having paid any of the sums claimed at all. Those final demands have all been prepared and certified in accordance with paragraph 11 of the Second Schedule.

### **The issues**

10. It was a little difficult to understand why the Respondent/Ms Volic had resisted payment of the various service charge demands for so long, as when questioned in relation to her submissions as expressed against various headings in the schedule, she had little opposition to the charges or their reasonableness, except in relation to a major works charge. It makes sense to deal with the items by type at this stage rather than year or specific amount, for that reason.

### **Maintenance fees 2010-2013**

11. The Applicant's agents Three Keys Properties Limited charge a management fee which has been somewhat misdescribed in the service charge demands as a "*maintenance fee*" which Ms Volic found confusing. Once it was explained that the charge under this heading is a standing charge for the management of the property as a whole, and that the property's share is 25%, Ms Volic did not seek to argue that the charges are unreasonable. The Tribunal considers that the management charges or fees are well within the bounds of what is considered reasonable (£120-£145 for the property over the years in question). These items are payable.

### **Communal cleaning and communal electricity charges 2010-2013**

12. Mr Bagley produced copies of all relevant invoices in the trial bundle. Ms Volic had no objections to the reasonableness of the charges, which are payable.

### **Surveyor's fees Y/E 2010**

13. On 19<sup>th</sup> May 2009 Barron Surveying Services (James Barron MRICS MaPS) produced three reports: (i) an asbestos survey report (ii) a fire risk assessment (iii) a reinstatement cost assessment for building insurance purposes for which a charge of £458.75 (£114.68 for the property) was made. The reports are at pages 259-293. The charge is evidently reasonable for the work done which is required for the proper management of the property as a whole. Ms Volic accepted the charges

as reasonable. The relevant invoices dated 5<sup>th</sup> June 2009 are at p170, p171, p172. These charges are payable.

#### **Surveyor's fees Y/E 2012**

14. There was a charge of £58.75 raised for a report prepared by Mr Barron on drains and trees affecting the property: see p417-433. The fact that the charge seems to have been raised for the year 2012 rather than 2011 (see the invoice at p183) is not in this instance a matter which affects the conclusion (which Ms Volic accepted) that the charge is reasonable – he clearly attended the property in August 2010 when Ms Volic was having problems with water ingress caused by the neighbouring property. However, the charge was incurred in September 2010 and invoiced in May 2012, more than 18 months later, and on the face of it is not recoverable pursuant to the provisions of *s20B LTA 1985*. So the Respondent must be given credit for 25% of the charge which is £14.68.

#### **Insurance excess claim Y/E 2010 and 2011**

15. The documents supplied by Mr Bagley evidence the claim made on the building insurance for damage caused to the ground and first floor flats by a leak from the flat above in 2010. The insurers met the claim and the agents re-charged the £100 excess to the leaseholders. Ms Volic accepted the £25 charge as reasonable. There was a repeat incident in 2011 in which more serious damage was sustained at a higher cost (over £3000) and again Ms Volic accepted the £25 charge as part of the £100 excess, to be reasonable.

#### **Buildings insurance Y/E 2010-2013**

16. All the insurance certificates are in the bundle evidencing the annual premium (see eg p166, p169, p178, p194, p215). The point taken by Ms Volic in relation to each year was that the charge was high but she had no evidence or comparables to support her position. She had been provided with a copy of the policy at some time, she thought. The Applicant's response to her submission in the Schedule is detailed and cogent and accepted by the Tribunal. The Applicant insures the building under a block policy, has instructed insurance brokers (changed over the course of 2010-2013) and managed the insurance obligation reasonably and properly. There is nothing to support the allegation that the charges are unreasonable, and they relate to the property as properly re-valued by Mr Barron.

#### **Tree surgery Y/E 2013**

17. In August 2012 the local authority served an enforcement notice on the Applicant in respect of nuisance to the highway caused by the overhanging branches of the lime tree. See pages 540-557. The tree

surgeon's invoice for £725 is at p221. Without any comparables to suggest that it is unreasonable, the Tribunal considers this sum to be reasonable.

### **Major works Y/E 2012**

18. The sum claimed is £18,325.85 and the Respondent's share is £4581.46. The Tribunal concludes this amount is reasonable and payable (subject to one point as to part: see below) for the following reasons. Ms Volic claims that the sum charged is higher than originally proposed as the result of the tender process, and that the works carried out were done to an unsatisfactory standard. As to the latter, although Ms Volic was condemnatory of the repainting work carried out, it was impossible for the Tribunal to treat what she said as probative evidence that the works had not been carried out to a reasonable standard. It was insufficiently detailed, and we have to take into account the fact that she was not in occupation during the works, and partly relied on criticism from her tenants. She produced no evidence whether by way of a report or photographs and the relevant works were carried out before the end of 2011, nearly five years ago. As Mr Bagley pointed out, the works were supervised by Mr Barron, who had drawn up the schedule of repairs, is a qualified surveyor, and familiar with the building as a whole. We should add that there is no evidence of dissatisfaction from any other tenant or leaseholder. Some of her criticisms related to the condition of the rear steps, which were not the subject of any part of the schedule. As to the condition of the front of the property, we noted the comments of the tree surgeon in 2012, as to the negative effect of the lime tree on the condition of the property.
  
19. It is clear from the documents in the bundle that the Applicant carried out the s20 consultation process properly, starting in January 2011, based on a schedule of repairs drawn up by Mr Barron in September 2010. See generally pages 440-465, p500-509, and Mr Barron's letter and invoice for supervision at p539 and p207, taking into account a previous invoice 1803 at p183 dated 14<sup>th</sup> September 2010, paid by the agents but not charged to the leaseholders until 2012 (p255). It can be seen from the invoices submitted by Southern Builders and Property Maintenance (instructed because their quote was the lowest) at p204-207 that the final sum was £12,800 plus VAT, to which Mr Barron added 11% of £12,800 (plus VAT) for overseeing the works, and the managing agents added a 10% charge (with no VAT)<sup>1</sup>. Whilst Ms Volic is correct that the final charge was higher than she anticipated, it is less than £1000 (or £250 per flat) more than the original projected figure of £17,678.04, which is well within the sort of adjustment one would expect to see on similar projects: additional works were required as

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<sup>1</sup> The actual sum charged gives credit for payment made against invoice 1803 p183 which charged 3 hours for preparing the schedule of repairs, and was paid by the agents in October 2010.

detailed at p206 (and the schedule provided for a contingency of £500 in any event: see p12<sup>2</sup>).

20. However, in relation to invoices 2177 at p207 and invoice 1803 at p183, it is clear that Mr Barron charged for 3 hours' work preparing for the schedule of repairs in September 2010, which the agents paid. But the cost was not passed to the leaseholders until May/June 2012 (p255). There is however no breach of *s20B LTA* in this case because the leaseholders were notified of the likely charge in August 2011 (p502-504), less than 18 months before the service charge for the year ending 2012 was raised.
21. Therefore with the exception of the £14.78 referred to in paragraph 14 above, the Respondent is liable for a 25% share of the service charges claimed by the demands at p251-257.
22. This decision does not deal with interest or administration charges.

**Application under s.20C**

23. In view of the above it would not be appropriate to make an order under *s20C LTA 1985*.

Judge Hargreaves

Luis Jarero BSc FRICS

13<sup>th</sup> June 2016

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<sup>2</sup> Once the contingency is taken into account, the charge to the individual leaseholders for the extra work detailed at p206 is less than £250.

## **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