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

Case reference : LON/00AL/LSC/2-015/0456

Property : Ground Floor Flat, 7 Plumstead
High Street, London SE18 1SA

Applicant : South London Ground Rents
Limited

Representative : Mr David Bland (In House Lawyer)

Respondent : Mr Godwin Ogbuka

Representative : In person

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

Tribunal members : Mr Jeremy Donegan (Tribunal
Judge)
Mr Luis Jarero BSc FRICS

**Date and venue of
hearing** : 24 February 2016
10 Alfred Place, London WC1E 7LR

Date of decision : 06 March 2016

DECISION

Decisions of the tribunal

- (1) **The tribunal determines that the total sum of £3,896.44 is payable by the Respondent in respect of the service years 2009/10, 2010/11, 2011/12 and 2012/13. Credit is to be given for the sums actually paid by the Respondent for these years.**
- (2) **The tribunal determines that the sum of £60 is payable by the Respondent in respect of the administration charges levied by the Applicant on 09 July 2013.**
- (3) **The tribunal determines that the additional administration charge of £150 is not payable by the Respondent.**
- (4) **Since the tribunal has no jurisdiction over county court costs and fees, this matter should now be referred back to the County Court at Dartford.**

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ('the 1985 Act') and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ('the 2002 Act') as to the amount of service and administration charges payable by the Respondent, The service charges total £3,896.44 and the administration charges total £210.
2. Proceedings were originally issued in the Northampton (CCMCC) County Court under claim no. 3YS57809, on 07 November 2013. The claim was subsequently transferred to the County Court at Dartford and then in turn transferred to this tribunal, by order of District Judge Glover dated 17 June 2015.
3. The tribunal wrote to the parties on 26 November 2015, requesting documents and information. The Applicant's then solicitors, PDC Legal, replied on 11 December 2015 stating they were unable to comply with the request, as they were without instructions. The Respondent wrote to the tribunal on the same date, asking for additional time as he was unable to access his office premises due to a "closure order". The second paragraph of his letter read:

"This matter deals with the reasonableness of the service charges on the premises. The freeholders conceded in June 2012 that service charge on that premises was unreasonable. See letter from the valuation tribunal dated 22nd June 2012. Ref:

LON/00AL/LSC/2012/0167. Therefore, this matter should not have arisen again.”

4. The tribunal issued directions on 17 December 2015. Paragraph 2 made it very clear that the directions must be complied with. The final sentence read:

“The parties should be left in no doubt that if they do not comply with these directions either the applicant’s case will be struck out or the respondent will be barred from taking any further part in the proceedings, as the case may be.”

5. The Applicant complied with paragraph 5 of the directions, which required it to serve its case by 15 January 2016. The Respondent failed to comply with paragraph 6 of the directions, which required him to serve his case by 29 January 2016.
6. The relevant legal provisions are set out in the Appendix to this decision.
7. Neither party requested an inspection of the Flat. The tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.

The background

8. The Applicant is the current freeholder of 7 Plumstead High Street, London SE18 1SA (‘the Building’). The Respondent holds a long lease of the ground floor flat at Building (‘the Flat’), which requires the Lessor to provide services and the Lessee to contribute towards their costs by way of a variable service charge. The relevant provisions of the lease are referred to overleaf.
9. The service charges being claimed by the Applicant have been the subject of previous litigation, with proceedings pursued against the Respondent by Newservice Limited (‘NL’), Mr S Bannon and Mr Cohen (‘the First Proceedings’). They were originally commenced in the County Court under claim no. 9BT03769 and were transferred to the leasehold valuation tribunal (‘LVT’) by an order of District Judge Glover dated 29 February 2012. The LVT proceedings were dealt with under case reference LON/00AL/LSC/2012/0167 and were withdrawn by solicitors acting for NL, Mr Bannon and Mr Cohen, Liddigans LLP, on 21 June 2012. The hearing bundle contained a copy of the order dated 29 February 2012 and a letter from the LVT to the Respondent dated 22 June 2012, notifying him of the withdrawal, but no other documents from the First Proceedings.

The lease

10. The lease was granted by Rapid Investments Limited ('Lessor') to Novel Developments Limited ('Lessee') on 11 October 2001 for a term of 125 years from 29 September 2001.
11. Clause 1 contains various definitions, including:

"1.6 "the Accounting Period" means a period commencing on the 29th day of September and ending on the 28th day of September in the following year or such other period as the Lessor may specify from time to time"
12. Clause 4.4 of the lease obliges the Lessee to:

"Pay the Maintenance Service Charges at the time and in the manner provided in the Fifth Schedule hereto all such Charges to be recoverable in default as rent in arrears"
13. The fifth schedule contains detailed service charge provisions, which include an obligation to pay an *"Interim Maintenance Charge"* on 29 September and 25 March (paragraph 3). There is also provision for production of a *"Certificate"* after the expiry of each Accounting Period, showing any end of year deficit or excess (paragraphs 7-8).

The hearing

14. The hearing of the application was listed for 1.30pm on Wednesday 24 February 2016. The Respondent did not attend at the appointed time and the tribunal delayed the start of the hearing by 10 minutes.
15. The Applicant was represented by an in-house lawyer, Mr Bland. Initially there was no attendance by the Respondent. Mr Bland stated he had not had any recent contact with the Respondent.
16. The tribunal was supplied with a hearing bundle that included copies of the directions, the Applicant's statement of case, relevant service charge accounts and demands, the lease and some of the County Court documents. Immediately before the hearing, the tribunal was also supplied with a skeleton argument from Mr Bland.
17. At the start of the hearing, the tribunal requested additional information regarding the First Proceedings. Mr Bland explained that NL was the previous freeholder of the Building. That company, which held a large portfolio of properties, was placed in administration in 2009 and Mr Bannon and Mr Cohen were appointed as the administrators. NL's property portfolio was transferred to Newservice

- Number 1 Limited (“N1L”) on 02 April 2013 and the parties entered into a deed of assignment for the service charge arrears. On the same date Ground Rents (Regis) Limited bought all of the shares in N1L. The name of N1L was subsequently changed to South London Ground Rents Limited on 19 April 2013.
18. Following Mr Bland’s explanation, the Respondent arrived. This was at approximately 1.45pm. No explanation was given for his late arrival.
 19. On questioning by the tribunal, the Respondent stated that the service charges in question were disputed and he wished to rely on documents filed with the LVT in the First Proceedings. The tribunal referred him to paragraphs 2 and 6 of the directions and pointed out that it was incumbent on him to produce the documents. His failure to do so was a clear breach of the directions. The tribunal also pointed out that the First Proceedings were a completely separate case and its old file would have been archived. The Respondent stated that he had brought some documents with him but most were unavailable, as his previous solicitors had been the subject of a Law Society intervention.
 20. Mr Bland had little information about the First Proceedings, as he was not instructed or involved in that case. He was aware that NL, Mr Bannon and Mr Cohen instructed Liddigans to try and recover service charge arrears for various properties in the portfolio.
 21. The tribunal then granted a short adjournment to give Mr Bland an opportunity to consider any documents that the Respondent wished to produce. The tribunal also suggested that the parties discuss the case generally, to see if there was any scope to resolve the dispute.
 22. When the hearing resumed, Mr Bland explained that a settlement was very unlikely and he agreed to the Respondent producing one additional document. This was a letter from the former managing agents, Salter Rex, to the Respondent’s former solicitors, Goldfields, dated 29 October 2012. The tribunal were supplied with copies of this letter, which referred to an “*on-going court case*”. Presumably this was a reference to the First Proceedings.
 23. The Respondent then applied for a further adjournment of the hearing, so he could obtain documents relating to the First Proceedings. This application was opposed by Mr Bland who pointed out that the current proceedings had been ongoing for over 2 years and the Respondent had already had ample time to obtain the documents. Further an adjournment would not be proportionate and would prejudice the management of the Building. The disputed service charges have not been paid and need to be collected.

24. The Respondent referred to frequent changes of managing agents since he has owned the Flat and alleged that previous agents had accepted that the disputed service charges were unreasonable. However there was no evidence of this.
25. The tribunal refused the application for a further adjournment. The Respondent had failed to comply with the directions, despite the clear warning of the consequences of non-compliance. The only explanation given was he did not have the documents from the First Proceedings. However he could still have produced a statement setting out his grounds for disputing the service charges and/or asked the tribunal to try and locate its file from the First Proceedings. He did neither of these things and there was no justification for an adjournment. The tribunal agrees with Mr Bland that the Respondent had already had ample opportunity to obtain the documents.
26. An adjournment would have delayed the hearing by several weeks. If not months. This would have been wholly contrary to the overriding objective, as set out in Rule 3 of The Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 ('the 2013 Rules'). The tribunal is required to deal with cases fairly and justly. This includes "*dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties and of the Tribunal*" (Rule 3(2)(a)). The service charges being claimed by the Applicant total £3,896.44. An adjournment would have been entirely disproportionate and a waste of the tribunal's resources, given the modest sum at stake.
27. Having refused the application for an adjournment, the tribunal then proceeded with the hearing. It explained that the Respondent could rely on the arguments advanced in his defence filed in the county court proceedings and his letter to the tribunal 11 December 2015. He could also rely on the letter from Salter Rex to Goldfields dated 29 October 2012. However no additional arguments or evidence would be allowed.
28. Mr Bland then took the tribunal through the service charges being claimed. These were detailed in a schedule exhibited to the original particulars of claim and are:

29/09/09 – 28/09/10	£1,060.04
29/09/10 – 28/09/11 (£1,395 less credit of £706.05)	£688.95
29/09/11 – 28/09/12	£912.00
29/09/12 – 28/09/13 (£1,002.00 plus deficit of £233.45)	<u>£1,235.45</u>
	£3,896.44

29. In addition the Applicant is claiming two administration charges of £30 each, for issuing reminders to the Respondent. These were levied by Salter Rex on 09 July 2013. An additional administration charge of £150 is also claimed at paragraph 8 of the particulars of claim. This was said to have been levied by a debt collection agency, Property Debt Collection Limited. There were no documents in the hearing bundle, relating to this additional charge. Further it was not addressed in the Applicant's statement of case or Mr Bland's oral submissions.
30. The service charges claimed reconcile with the demands issued by Salter Rex. The Building is now managed by Inspired Property Management. The bundle also included a statement of account from these agents, dated 12 January 2016, showing a brought forward arrears figure of £3,408.98. Mr Bland explained that this is lower than the sum claimed in the particulars of claim, as the Respondent has made a payment since these proceedings were commenced. However he asked the tribunal to determine that the full sum of £3,896.44 is payable on the basis that credit will then be given for all payments.
31. The Respondent's defence in the county court referred to the First Proceedings. Paragraphs 8-10 read:
- "8. The judgment of the Dartford County Court in Case No. 9TB03769 is valid and binding between the Claimant and me.*
- 9. I have also filed an application before the Leasehold Valuation Tribunal for the determination of my liability to pay and reasonableness of the service charges of the Claimant.*
- 10. The Claimant claim is an abuse of court process and it is unreasonable and unfair. The Claim should be dismissed."*
32. As far as the tribunal is aware, there was no judgment of the Dartford County Court in the First Proceedings. Rather these proceedings were simply withdrawn.
33. At the hearing, the Respondent repeated his argument that the current proceedings are an abuse of process. He suggested they duplicate the First Proceedings, as the service charges being claimed are exactly the same. He argued that the Applicant should not be allowed to pursue these service charges, given that the previous case was withdrawn. The withdrawal effectively amounted to an admission that the charges were not payable. The Respondent also suggested that the Applicant was bound by the outcome of the First Proceedings, even though it was not a party to that case. He referred to a "*pattern of practice*". The freehold of the Building has changed hands on several occasions since he bought the Flat and there have been previous occasions where the

new freeholders have tried to recover service charges that are not payable.

34. In response Mr Bland suggested that Liddigans had been instructed to withdraw all proceedings pursued by NL, Mr Bannon and Mr Cohen, due to funding difficulties. This decision was not based on the merits of the various cases. Furthermore the Applicant had paid the various service charges arrears, to the Administrators, when they purchased NL's property portfolio and should be allowed to pursue the arrears.

The tribunal's decision

35. The tribunal determines that the disputed service charges are payable in full. The amounts payable by the Respondent are:

29/09/09 – 28/09/10	£1,060.04
29/09/10 – 28/09/11 (£1,395 less credit of £706.05)	£688.95
29/09/11 – 28/09/12	£912.00
29/09/12 – 28/09/13 (£1,002.00 plus deficit of £233.45)	<u>£1,235.45</u>
	£3,896.44

36. The tribunal determines that the administration charges totalling £60, levied on 09 July 2013, are payable by the Respondent.
37. The tribunal determines that the additional administration charge of £150 claimed at paragraph 8 of the particulars of claim, is not payable by the Respondent.

Reasons for the tribunal's decision

38. It is clear from the LVT's letter dated 22 June 2012 and the Respondent's evidence that the First Proceedings were withdrawn before any determination. There was no evidence before the tribunal of any admission in the First Proceedings. Further there was no evidence to establish that the disputed service charges had ever been agreed or referred to arbitration. Accordingly, there is nothing in section 27A(4) of the 1985 Act that prevents the Applicant from pursuing the current proceedings.
39. Re-litigating a case can amount to an abuse of process that precludes a court or tribunal from hearing the second claim, under the doctrine of res judicata (see *Henderson v Henderson* [1843] 3 Hare 100 and *Johnson v Gore-Wood (No 1)* [2002] 2 AC 1 (HL)). However the

tribunal would require convincing evidence before finding there is an abuse of its process. The only evidence from the Respondent was the letter from Salter Rex that he produced at the hearing, which gave very little information and was of no assistance to the tribunal.

40. The tribunal had very little information regarding the First Proceedings but the following is apparent:
- (a) The Applicant was not a party to the First Proceedings, which were pursued by NL, Mr Bannon and Mr Cohen;
 - (b) The First Proceedings were withdrawn in June 2012 before any determination and;
 - (c) The Applicant did not acquire the freehold until April 2013, approximately 10 months after this withdrawal.

Given these facts the tribunal concluded that the current proceedings do not amount to re-litigation and do not amount to an abuse of process.

41. There was no evidence from the Respondent to dispute the amount of the service charges. Based on the evidence put forward by the Applicant, the tribunal is satisfied that these charges were reasonably incurred and are payable in full. The same applies to the £60 administration charges levied by Salter Rex on 09 July 2013.
42. There was no evidence and very little information relating to the additional administration charge of £150 claimed at paragraph 8 of the particulars of claim. The Applicant has not established that this sum is payable by the Respondent. Accordingly it is disallowed.

Section 20C and refund of fees

43. There were no applications for an order under section 20C of the 1985 or for a refund of tribunal fees.

The next steps

1. The tribunal has determined the service and administration charges that are payable by the Respondent. Credit needs to be given for all sums actually paid by the Respondent, for the service charge years in question. The parties should now try and agree the current balance due, failing which this will need to be decided by the county court.
2. The tribunal has no jurisdiction over county court costs and fees.

3. This matter should now be returned to the County Court at Dartford.

Name: Tribunal Judge Donegan **Date:** 06 March 2016

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

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 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
 - (b) on particular evidence,
- of any question which may be the subject matter of an application under sub-paragraph (1).

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

Rule 3

- (1) The overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly.
- (2) Dealing with a case fairly and justly includes –
 - (a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties and of the Tribunal;
 - (b) avoiding unnecessary formality and seeking flexibility in the proceedings;
 - (c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;
 - (d) using any special expertise of the Tribunal effectively; and
 - (e) avoiding delay, so far as compatible with proper consideration of the issues.
- (3) The Tribunal must seek to give effect to the overriding objective when it –
 - (a) exercises any power under these Rules; or
 - (b) interprets any rule or practice direction.
- (4) Parties must
 - (a) help the Tribunal to further the overriding objective; and
 - (b) co-operate with the Tribunal generally.