



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

Case reference : **LON/00BA/LSC/2017/0045**

Property : **11 Grove Farm Court, Brookfield Avenue, Mitcham, Surrey CR4 4BT**

Applicant : **Circle Housing Merton Priory**

Representative : **Circle Housing (managing agents)**

Respondent : **Ms Marian Mustapha**

Representative : **In person**

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

Tribunal members : **Mr J P Donegan (Tribunal Judge)**

Date and venue of paper determination : **6 June 2017
10 Alfred Place, London WC1E 7LR**

Date of decision : **6 June 2017**

DECISION

Decisions of the tribunal

- (A) **The Tribunal determines that the sum of £789.84 is payable by the Respondent in respect of service charges for 11 Grove Farm Court, Brookfield Avenue, Mitcham, Surrey CR4 4BT ('the Flat'), as detailed at paragraph 9 of this decision.**
- (B) **Since the Tribunal has no jurisdiction over county court costs and fees, this matter should now be referred back to the County Court at Croydon.**

The application

1. The Applicant seeks a determination pursuant to section 27A of the Landlord and Tenant Act 1985 ('the 1985 Act'), as to the amount of service charges payable by the Respondent.
2. Proceedings were originally issued in the County Court Business Centre under claim number C9QZ2Y3D. The claim was transferred to the County Court at Croydon and then in turn transferred to this Tribunal, by an order of District Judge Bishop dated 27 January 2017.
3. Directions were issued on 4 April 2017. These included provision that the application be dealt with on the paper track, without an oral hearing. Neither of the parties has objected to this or requested an oral hearing. The paper determination took place on 6 June 2017.
4. In accordance with the directions, the parties supplied the Tribunal with statements of case.
5. The relevant legal provisions are set out in the Appendix to this decision.

The background

6. The Applicant is the freeholder of the Flat. The Respondent holds a long lease of the Flat, which requires the landlord to provide services and the tenant to contribute towards their costs by are referred to below, where appropriate.

The lease

7. The lease was granted by the Mayor and Burgesses of the London Borough of Merton ("the Landlord") to the Respondent ("the Tenant") on 23 September 2002, for a term of 125 years from 25 December 1984.

8. The detailed service charge provisions are to be found at clause 5 of the lease and include:

“5 (1) The Tenant further covenants with the Landlord that the Tenant will pay to the Landlord in each year of the term ending on 31st March the following sum or sums namely:

(i) The Tenant’s proportion as specified in the Fifth Schedule hereto of the Landlord’s Building Expenditure in respect of that year of the term and

(ii) where applicable the Tenant’s proportion as specified in the Fifth Schedule hereto of the Landlord’s Estate Expenditure in respect of that year of the term and

(iii) a fair proportion of the cost of any Improvements (as defined in the said 1985 Act and amended by the said Housing and Planning Act 1986) carried out to the Demised Premises and the Building by the Landlord

...

(2) In this clause

(a) “year of the term” means the year ending 31st March

(b) “financial year of the Landlord” means the year ending on 31st March or on such other date as the Landlord may from time to time determine

...

(e) (i) “the annual maintenance charge” shall be payable in respect of the period from the 1st day of April in one year to the 31st day of March in the following year by half yearly payments in advance on the 1st day of April and the 1st day of October in each year and on account of the Landlord’s Aggregate Expenditure for such financial year as referred to in sub-clauses 1(i) and (ii) of this clause but the first payment to be made on the completion hereof will be a due proportion of such annual maintenance charge in respect of the period from the date hereof to the end of the financial year unless the Initial Period (as defined in the said 1985 Act and the said 1986 Act) specified in the Fifth Schedule hereto commences with a date prior to the date of this Lease in which event the first such apportioned payment due upon completion hereof shall be a due proportion of such annual maintenance charge calculated from the commencement of the Initial Period to the end of the financial year next following the completion date

(ii) at the end of any financial year should there be surplus or deficit in respect of the Landlord’s Aggregate Expenditure then such surplus or deficit shall be taken into account in assessing the annual maintenance charge for the following financial year or years

...”

The issues

9. In the County Court proceedings, the Applicant claimed service charge arrears of £789.84. In a letter to the Court dated 18 January 2017, the Applicant's managing agents (Circle Housing) provided the following breakdown of the arrears figure:

Arrears brought forward 2015/16	£465.45
<u>Estimated service charges 2016/17</u>	<u>£905.07</u>
1 st half yearly amount due on 01 April 2016	£452.66
2 nd half yearly amount due on 01 October 2016	£452.51
Actual service charge bill 2015/16	£19.55
Total payments made £600.23	
Balance outstanding as of 18/01/17	£789.84

10. The only issue raised by the Respondent is her contractual liability to pay advance service charges for 2016/17. She has not contested the 2015/16 service charges or any of the items claimed in the 2016/17 service charge budget. The sole issue to be determined by the Tribunal is whether the Respondent is liable to pay advance charges under the terms of her lease.
11. Having considered the parties' statements of case, the Tribunal makes the following determination.

Advance service charges 2016/17 - £905.07

12. The Applicant's position is that advance service charges are payable on 01 April and 01 October in each financial year, in accordance with the lease. The advance charges for 2016/17 were £905.07 and the Respondent was notified of these charges in a letter from Circle Housing dated 29 February 2016. Approximately half this sum (£452.66) was demanded on 01 April 2016 and the balance (£452.512) was demanded on 01 October 2016.
13. The Respondent's case is that advance service charges for 2016/17 did not have to be paid until the end of the financial year (31 March 2017) and there is no obligation in her lease to pay service charges six months in advance. She also makes the point that some services are provided on a quarterly, monthly or weekly basis and the contractors are not paid six months in advance.

The tribunal's decision

14. The tribunal determines that the Respondent is liable to pay the advance service charges of £905.07 under the terms of her lease. Of this sum, £452.66 fell due on 01 April 2016 and £452.51 fell due on 01 October 2016. It follows that the Respondent is liable to pay the service charge arrears of £789.84.

Reasons for the tribunal's decision

15. Clause 2(e)(i) of the lease makes clear provision for the payment of advance service charges on 01 April and 01 October in each year. The advance charges are payable on these dates. There is no provision in the lease for the Respondent to defer payment until the end of the financial year. Rather she must pay the advance charges on 01 April and 01 October. This obligation is not affected by the manner in which Applicant's contractors are paid.
16. The Respondent has not disputed any of the 2015/16 service charges or any of the items in 2016/17 budget. It follows that she is liable to pay the arrears in full but credit should be given for any payments made since the County Court proceedings were issued.

The next steps

17. The tribunal has no jurisdiction over ground rent or county court costs. This matter should now be returned to the County Court at Croydon.

Name: Tribunal Judge Donegan **Date:** 6 June 2017

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 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

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