



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

Case Reference : LON/OOAA/LSC/2014/0306

Property : 8-9 Botolph Alley, Botolph Lane
EC3R 8DR

Applicant : Mrs M Dixon (Flat 1)
Ms A Haug, Flats 2,3.& 4
Mr G McKane & Mr P Marshall,
Flat 5

Representative : In person

Respondent : Mr Y Bhaliok

Representative : Did not appear and was not
represented

Type of application : Payability of service charges

Tribunal members : Judge Tagliavini
Mr I Thompson
Ms S Wilby

**Date and venue of
Hearing** : 19 August 2014 @ 10 Alfred Place,
London WC1E 7LR

Date of Decision : 16 September 2014

DECISION

Decisions of the tribunal

- (1) The tribunal makes the determinations as set out under the various headings in this Decision
- (2) The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge
- (3) The tribunal determines that the Respondent shall pay the Applicants within 28 days of this Decision, the sums paid in respect of the tribunal application and hearing fees paid by the Applicants.

The application

1. The Applicants seek a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") in respect of the reasonableness of service charges for the following years and amounts:

2011/12 – the sum of 3,881.46 payable in relation the building insurance premium

2012/13 – management fee £4,000
- risk assessment £900
- communal repairs (sinking fund) - £4,000
- Accounting and Audit fees £1,000 and
- Insurance £8,485.97 .

2013/14 – management fee £4,000
- risk assessment £900
- communal repairs (sinking fund) - £4,000
- Accounting and Audit fees £1,000 and
- Insurance £7,970

2. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

3. The Applicants appeared in person. The Respondent did not appear and was not represented.

Preliminary matters

4. Immediately prior to the hearing the Respondent made an application in writing for an adjournment due to ill health and provided a letter dated 18 August 2014 from his GP in support. The Applicants opposed the application to adjourn asserting that it was just a delaying tactic. The tribunal considered the application and refused it. The tribunal was not satisfied that Mr Bhailok was so incapacitated that he could not have attended the tribunal although it accepts his mobility might have been compromised to a limited extent. However, Mr Bhailok's GP did not assert that the landlord was unable to attend or that he was virtually unable to walk. Further, the tribunal is of the view that Mr Bhailok could have instructed someone to represent him as he had clearly done so in the past. Therefore, having regard to the overriding objective the tribunal determined that it was fair and appropriate to proceed.
5. The Respondent also sent to the tribunal a large number of documents, which consisted of emails and correspondence between the parties. The documents were not presented in a way that was usable by the tribunal or their relevance of many either explained by the Respondent or apparent. In the absence of any explanation for these bundles and the almost absolute disregard of the tribunal's directions, the tribunal was unable to rely on this documentation and referred to the numbered and indexed bundle of the Applicants in order to hold a meaningful and substantive one-day hearing (as listed).

6. **The background**

The property, which is the subject of this application comprises five flats in a purpose built block over commercial premises on the ground and basement floors.

7. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.
8. The Applicants each hold a long lease of their flats in the subject property, which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease will be referred to below, where appropriate.

The issues

9. At the start of the hearing the parties identified the relevant issues for determination as follows:

(i)The payability and/or reasonableness of service charges for:

2011/12 – the sum of 3,881.46 payable in relation the building insurance premium

2012/13 management fee £4,000
risk assessment £900
communal repairs (sinking fund) - £4,000
accounting and audit fees £1,000 and
insurance £8,485.97 .

2013/14 management fee £4,000
risk assessment £900
communal repairs (sinking fund) - £4,000
accounting and audit fees £1,000 and
insurance £7,970

10. Having heard evidence and submissions from the Applicants, the Respondent having failed to comply with the tribunal's directions dated 1 July 2014 and considered all of the Applicants' documents provided, the tribunal has made determinations on the various issues as follows.

2011/12 - Insurance

The tribunal's decision

11. The tribunal determines that the amount payable in respect of the insurance is £4,959.85 and therefore minus the uplift of £655.30 charged to the tenants by the landlord. The sum of £655.30 should be re-credited to the lessees. .

Reasons for the tribunal's decision

12. Mr Bhailok became the landlord of the subject premises in July 2012. At the time he acquired the property the buildings insurance had been charged and paid in full by the lessees to the former landlord Peaceline. On assuming the landlord's obligations Mr Bhailok arranged his own building's insurance at a greater cost, which resulted in an increased sum being passed on to the tenants. In the absence of any explanation whether by a Statement in Response, witness statement or oral evidence the tribunal fails to understand why the substantially increased sum sought by the respondent in respect of the insurance can be considered reasonable.

2012/13 – management fee

The tribunal's decision

13. The tribunal determines that the amount payable in respect of the management fee of £4,000 is £1,000.

Reasons for the tribunal's decision

14. The tribunal determines that few effective management services have been provided to the tenants. The tribunal notes that the demands for service charges do not accord with the service charge year or with the percentages specified in the lease. There has been no certificate of expenditure produced. The tribunal accepts the tenants' evidence that there was no managing agent in place for this service charge year.

Risk assessment

15. The tribunal determines that the sum payable is nil.

Reasons for the tribunal's decision

16. The tribunal has not been provided with any persuasive evidence that this sum has been incurred and therefore, the tribunal finds that this sum is not reasonable.

Communal repairs (sinking fund)

17. The tribunal allows the actual figure incurred for repairs of £1,045

Reasons for the tribunal's decision

18. The tribunal is satisfied that the figure permitted represents the actual sum incurred. The tribunal finds in the absence of any certified or audited accounts it is only possible to ascertain the actual costs of repairs by looking at the limited number of invoices produced.

Accounting and auditing fees

19. The tribunal finds that the sum payable for this item is nil.

Reasons for the tribunal's decision

20. In light of the very limited number of services provided it is the tribunal's view that the only auditing and accounting that has been carried has been minimal. Although accounts are referred to in an email dated 09/09/2013 from Jackie Stropyra of Davies & Crane Limited, Chartered Accountants these refer to accounts for the service charge year ending 31 July 2013. However Mr Bhailok in his email of 09/09/2013 refers to accounts for the service charge year ending December 2013 (sic). Further the tribunal does not have a copy of any contract/invoice for the sums claimed by the landlord and queries how much time was in fact spent on the preparation of these service charge accounts, which have, in any event not been produced to the tribunal. Consequently, the tribunal is not persuaded that the charges claimed by the landlord have been reasonably incurred.

Insurance

21. The tribunal finds that the sum of 4,959.85 is reasonable together with a 5% uplift

Reasons for the tribunal's decision

22. As stated above, the landlord has failed to satisfy the tribunal that the insurance premium obtained is reasonable. Therefore, taking the 2012 (Peaceline) insurance premium for a 12 months period the tribunal considers that a 5% uplift to this figure is reasonable.

2013/14 (estimated)

23. The tribunal determines that the following sums are reasonable estimated charges.
- Management fee £4,000 – accepted by the lessees as reasonable provide management services are provided.
 - Risk assessment £900– not challenged by lessees
 - Communal repairs - £2,000 allowed as reasonable as this in line with the previous year's actual costs.
 - Accountancy fees - £500 + VAT if prepared properly by qualified accountant.

Application under s.20C and refund of fees

24. At the end of the hearing, the Applicants made an application for a refund of the fees that had paid in respect of the application/ hearing¹. Having heard the submissions and taking into account the determinations above, the tribunal orders the Respondent to refund any fees paid by the Applicants within 28 days of the date of this decision in respect of the application and hearing fees.

25. In the application form the Applicants applied for an order under section 20C of the 1985 Act. Having heard the submissions from the Applicants and taking into account the determinations above, the tribunal determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the Respondent may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge.

Name: Judge Tagliavini

Date: 16 September 2014

¹ The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 SI 2013 No 1169

Appendix of relevant legislation

Landlord and 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.

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) a leasehold valuation 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.

Leasehold Valuation Tribunals (Fees)(England) Regulations 2003

Regulation 9

- (1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.
- (2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).

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).

Schedule 12, paragraph 10

- (1) A leasehold valuation tribunal may determine that a party to proceedings shall pay the costs incurred by another party in connection with the proceedings in any circumstances falling within sub-paragraph (2).
- (2) The circumstances are where—
- (a) he has made an application to the leasehold valuation tribunal which is dismissed in accordance with regulations made by virtue of paragraph 7, or
 - (b) he has, in the opinion of the leasehold valuation tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.
- (3) The amount which a party to proceedings may be ordered to pay in the proceedings by a determination under this paragraph shall not exceed—
- (a) £500, or
 - (b) such other amount as may be specified in procedure regulations.
- (4) A person shall not be required to pay costs incurred by another person in connection with proceedings before a leasehold valuation tribunal except by a determination under this paragraph or in accordance with provision made by any enactment other than this paragraph.