



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

Case Reference : LON/00AC/LSC/2013/0846

Property : Flat 36 Hendon Hall Court, Parson Street NW4 1QY

Applicant : Hendon Hall Court Residents Limited

Representative : Mr Meyers of Churchills Solicitors

Respondent : Mr Franklin Joseph-Brown (1)
Ms Maria Reynolds (2)

Representative : In person

Type of Application : Transfer from the County Court

Tribunal Members : Ms N Hawkes
Mr M Taylor FRICS

Date and venue of Hearing : 9.4.14 10 Alfred Place, London WC1E 7LR

Date of Decision : 25.4.14

DECISION

Decisions of the Tribunal

- (1) The Tribunal determines that the sum of £2,600 is payable by the respondent in respect of the service charges for the period 29th September 2011 to 28th September 2013.
- (2) Since the Tribunal has no jurisdiction over county court costs and fees and since the Counterclaim remains outstanding, this matter should now be referred back to the Barnet County Court.

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 the period 29th September 2011 to 28th September 2013.
2. Proceedings were originally issued in the Northampton County Court under claim no.3YQ71980. The claim was transferred to the Barnet County Court and then in turn transferred to this tribunal, by order of District Judge Parfitt on 6th December 2013.
3. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

4. The applicant was represented by Mr A Meyers of Churchills Solicitors at the hearing and the respondent appeared in person.
5. During the course of the hearing, the respondent sought permission to hand up a new document, namely a certificate concerning the service charge accounts relating to another property which the respondent owns.
6. The document had not been disclosed to the applicant prior to the hearing and Mr Meyers argued that he would not be able to ascertain where the document had emanated from and that he would be prejudiced by its late introduction.
7. The Tribunal refused the respondent permission to adduce this new document because (i) it did not relate to the subject property and so would be of only limited relevance; (ii) no satisfactory explanation was given for the respondent's failure to produce it earlier; and (iii) the Tribunal accepted that Mr Meyers would be likely to be prejudiced by its very late introduction part-way through the hearing.

The background

8. The property which is the subject of this application is a flat in a purpose built 1960s block containing 52 flats. The members of the applicant company are leaseholders of the block.
9. 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.
10. The respondent holds a long lease of the 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

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

The payability of service charges for the period 29th September 2011 to 28th September 2013

12. Mr Meyers confirmed that the sum of £2,600 referred to in the Particulars of Claim did not include any ground rent. He accepted that the further sums referred to at paragraph 2 of the applicant's Statement of Case could not be claimed in these proceedings because the Tribunal only has jurisdiction over the matters which have been transferred to the Tribunal from the County Court.
13. The respondent confirmed that the sole issue for determination was whether or not he was entitled to withhold service charges in accordance with section 21A of the Landlord and Tenant Act 1985 ("the 1985 Act"). When it was pointed out that section 21A of the 1985 Act is not in force for these purposes, the respondent stated that he relied upon clauses 2(2)(b)(ii) and 2(2)(b)(iii) of the lease in relation to the certification of the accounts. He confirmed that that this was the full extent of his case.
14. The respondent later sought to introduce some additional points for determination during the course of the hearing. Mr Meyers argued that he was not in a position to deal with additional matters and the respondent then accepted that his case should be limited to the issue referred to above which had been identified at the outset of the hearing.
15. The Tribunal notes that at no time did the respondent seek to challenge the charges for specific items of expenditure on the grounds that the

costs were unreasonably high and that at a directions hearing which took place on 21st January 2014 the respondent indicated that his defence is essentially technical in nature.

16. Having heard evidence and submissions from the parties and having considered all of the documents referred to, the Tribunal has made determinations on the various issues as follows.

The tribunal's decision

17. Clause 2(2)(b)(ii) of the lease provides that the lessees' contribution shall be ascertained and certified annually by a certificate signed by either the auditors of the lessor or the managing agents appointed by or on behalf of the lessor (as the case may be) as soon as practicable after the end of the lessor's financial year to which it relates and a copy of the certificate shall be supplied by the lessor to the lessee. Clause 2(2)(b)(iii) of the lease provides that the certificate shall contain a fair summary of the lessor's expenditure during the financial year to which it relates.
18. The precise form of wording to be used in the certificate is not specified in the lease and the Tribunal notes that these provisions of the lease do not mirror the wording of section 21 of the 1985 Act to which the respondent referred during the course of his submissions.
19. The applicant relied upon an accountant's report to the chairman of the Hendon Hall Court Residents Association dated 21.3.13 ("the applicant's certificate") as comprising the certificate required by clause 2(2)(b)(ii) of the lease.
20. The respondent argued that the wording used in the applicant's certificate falls short of compliance with the terms of the lease. The accountants state: "In accordance with instructions given to us, we have prepared the attached accounts from the accounting records of the Hendon Hall Court Residents Association and from the information and explanations supplied to us."
21. The applicant submits that this statement should be read in conjunction with a statement from the chairman of the trustees on the following page of the applicant's certificate. This statement appears below the service charge statement and provides: "On behalf of the Trustees, I approve the above accounts and confirm that we have made available all relevant information for their preparation".
22. The chairman having confirmed that all relevant information was made available for the preparation of the accounts and the accountant having confirmed that the accounts were prepared on the basis of that information it was argued on behalf of the applicant that the applicant's

certificate contains a fair summary of the lessor's expenditure during the financial year in question.

23. Mr Saleh of the applicant's managing agents gave oral evidence. He confirmed that he had personally made all the relevant information available to the accountants and that the service charge summary is a fair summary of the lessor's expenditure. Save that the respondent suggested that the sum charged to the lessees in respect roofing was too low, the respondent did not challenge this factual assertion.
24. The Tribunal finds that the service charge summary contained in the applicant's certificate is a fair summary of the lessor's expenditure during the financial year to which it relates. The Tribunal also finds that, whilst the applicant's certificate could have been more extensive in its wording, the applicant's certificate was sufficient to comply with the terms of the lease and that the sum claimed by the applicant in respect of outstanding service charge is payable.

Applications for costs

25. At the end of the hearing, the applicant invited the Tribunal to make an order for costs against the respondent under section 13(1)(b) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 on the grounds that the respondent has behaved unreasonably in seeking to defend these proceedings. The respondent then asked the tribunal to make an order for costs against the applicant on the grounds of unreasonable conduct.
26. Whilst Tribunal has found in favour of the applicant costs do not follow the event and the Tribunal does not consider that the respondent behaved unreasonably in seeking to defend the applicant's application. The Tribunal has found in favour of the applicant and does not consider that the applicant has acted unreasonably in its conduct of the proceedings. Accordingly, the Tribunal declines to make an order for costs against either party.

The next steps

27. The tribunal has no jurisdiction over ground rent or county court costs and the Counterclaim remains outstanding. Accordingly, this matter should now be returned to the Barnett County Court.

Judge Naomi Hawkes 25.4.14

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.