



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

**Case Reference** : LON/00AG/LSC/2014/0161

**Property** : Flat 18 Centre Point House, 15a St  
Giles High Street London WC2H  
8LW

**Applicant** : Almacanter (Centre Point) Ltd.

**Representative** : Ms S Irwin as Agent for Brady LLP,  
Solicitors

**Respondents** : Mr John Henry Weeks and Mrs  
Caroline Mary Weeks

**Representative** : None notified

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

**Tribunal** : Judge Goulden  
Mr T N Johnson FRICS

**Date and venue of  
Hearing** : 11 and 24 June 2014  
10 Alfred Place, London WC1E 7LR

**Date of Decision** : 8 July 2014

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**DECISION**

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## **Decision of the Tribunal**

The Tribunal determines that the sum of £1,205.97 is payable by the Respondents being their contribution to the quarterly reserve fund for the period 25 June 2013 to 29 September 2013.

## **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 Respondents in respect of their contribution to the quarterly reserve fund for the period 25 June 2013 to 29 September 2013.

## **The background**

2. The subject of this application is Flat 18 Centre Point House, 15a St Giles High Street, London WC2H 8LW ("the property"). It was described as a fifth and sixth floor flat in a block situated behind Centre Point Tower comprising 36 flats, 10 of which were retained by the landlord.
3. The Respondents hold 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. A copy of the lease dated 27 March 2002 and made between The Blackmoor LP (1) and the Respondents (2) is in the case file. The Respondents do not reside at the property. The Tribunal was advised that all the residential leases were in essentially the same form.

## **The issues**

4. The Applicant had issued county court proceedings for, inter alia, the Respondents' contribution to the quarterly reserve fund for the period 25 June 2013 to 29 September 2013.
5. By an Order of District Judge Jackson sitting at Central London County Court (Claim Number 3XV05825) and dated 18 March 2014, the matter was transferred to the Tribunal.
6. Directions of the Tribunal were issued on 22 April 2014.
7. As clearly stated at paragraph 3 of the Tribunal's Directions, the Tribunal's jurisdiction is limited as set out in that paragraph. It follows therefore that certain matters remain within the jurisdiction of the county court.

8. The matter was listed for an oral hearing which took place on 11 and 24 June 2014. On both dates, the Applicant was represented by Ms S Irwin as agent for Brady LLP, Solicitors and Ms S Izzard, Senior Property Manager, of HML Hawksworth, the Applicant's managing agents. Mr H Weeks, one of the Respondents, appeared on behalf of both Respondents.
9. At the hearing on 11 June 2014, the Applicant's representative had made an application for an order for costs in the sum of £2,302.80 to be awarded against the Respondents under Rule 13 (1)(b)(iii) of The Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013, and written submissions were submitted at the hearing on 24 June 2014. However, following discussions with the Tribunal and on taking further instructions from her Instructing Solicitors, Ms Irwin formally withdrew the application for costs.
10. The Tribunal also raised, at the 24 June 2014 hearing, the position with regard to the contents of Brady's letter to the Tribunal of 16 June 2014 , headed "*urgent application*" in which it was stated that the new landlords of the property were Almacantar Centre Point Nominee No. 1 Ltd and Almacantar Centre Point Nominee No. 2 Ltd. The letter contained a request that the proceedings before the Tribunal should be amended "*to reflect the change in the proprietor of development and consequently the parties are entitled to bring these proceedings*". The Tribunal has no authority to make such amendments on cases which have been transferred from the county court, and enquired as to whether this issue had been raised with the county court. After taking instructions from Brady, Ms Irwin confirmed that although the transfer to the new proprietors had taken place on 8 November 2013 (a copy of the notice of transfer having been provided to the Tribunal by Mr Weeks on 11 June 2014), the county court had not been notified.
11. Ms Irwin formally gave an undertaking on behalf of Brady, the Applicant's solicitors, that within 7 days of the 24 June 2014, application would be made to the county court to substitute Almacantar Centre Point Nominee No. 1 Ltd. and Almacantar Centre Point Nominee No. 2 Ltd. in place of the present Applicant company. Mr Weeks confirmed that he had no objection to the change of Applicant on the basis that a formal undertaking had been given.
12. Although Mr Weeks, for the Respondents, had originally said at the hearing on 11 June 2014, that there were 5 issues outstanding, he confirmed, at the second hearing on 24 June 2014, that of the original 5 issues raised, only two remained in issue, namely (a) whether the Respondents were bound by the Schedules to the lease and (b) whether the Reserve Fund was limited to specific works.

13. At the start of the hearing on 24 June 2014, a skeleton argument was provided to the Tribunal from the Applicant's solicitors, together with a witness statement from Ms Izzard, who gave oral evidence on that date.

### **The Applicant's case**

14. Ms Irwin relied on Clauses 3.21.2 and 3.21.3 of the lease. She construed the lease clauses in a different way to that argued by Mr Weeks and contended that it certainly covered the works proposed. In the skeleton argument it was stated "*the covenants within the lease clearly make reference to the Schedules and therefore the Respondent is bound by the Schedules as well as the covenants of the lease...*" Ms Irwin said that the words did not fall outside the covenants as suggested by Mr Weeks and that the wording of the lease gave some degree of flexibility built in by the use of the word "*generally*". The clauses were sufficiently general and Mr Weeks argument was flawed. She said "*he is working on an assumption that this is a specific purpose clause....The landlord is not restricted under these terms*".
15. In respect of the statement headed "*Service Charge Apportionment*" for the financial year 25 June 2013 to 24 June 2013, which provided for "*General Reserve*" Ms Izzard said that this was just a general description but, in any event, with that statement had been sent a copy of her letter dated 13 June 2013 to the Respondents which had specifically set out the works proposed.

### **The Respondents' case**

16. Mr Weeks said that although he accepted that the Respondents were bound by Schedules to the lease, this was only insofar as the Schedules related to the covenants in the lease. In this connection he relied on clauses 3.21.1 and 3.21.2 of the lease and contended that the amount demanded were not "*expended*" in each service charge year. If however they were expended in that year, they were not sums for providing services or fulfilling obligations because there was no requirement to have a reserve fund. It was discretionary. He said that it was not enforceable since "*I am not bound by schedules where they go beyond covenants in the lease*".
17. With regard to the reserve fund clauses in the lease, Mr Weeks contended that where a lease provided for a reserve fund to be collected for a specific purpose, then it could only be collected for that specific purpose and there could not be a general reserve fund. He cited an extract from Freedman and Shapiro, Service Charges Law & Practice (Fifth Edition) in support. He also said that his view was supported by the item in the service charge apportionment statement headed "*General Reserve*", although he accepted that it had just stated "*Reserve*" his position would have been more difficult. He said "*it doesn't cover a general reserve fund which is what they are arguing*".

for". Mr Weeks argued that even if his first submission as to general reserve fund failed, the works proposed would not fall within the specific clause in any event.

18. In answer to Ms Irwin's argument that the lease clauses were flexible in its wording, Mr Weeks said that Ms Irwin's emphasis on the word "generally" was incorrect and that only part of Clause 1 was included but the whole of paragraphs 2 and 4 were not. The clauses specifically excluded repairs. He said "*does the lease allow it or not. The short answer is 'no'*".
19. Mr Weeks said that in his view, the sum of £1,205.97 should not be demanded from the Respondents and, on being advised that the other tenants had paid, he said that any sums paid should be returned to the relevant tenants.

### **The Tribunal's Decision**

20. It clearly is good practice to provide for a reserve fund if the lease so permits in order to prepare for the costs of future works, and the fact that no contribution towards a reserve fund had ever been demanded of the tenants before, as referred to by Mr Weeks in the Respondents' Defence to the county court action, is irrelevant. The Applicant is a new landlord and is entitled to make appropriate arrangements to create a reserve fund. This case centres on whether the wording of the lease permits the same.

21. The clauses relied on by the parties are as follows:

22. **3.21.1. To pay to the Landlord in manner hereinafter described the Service Charge**

**3.21.2. The service charge shall be 1/36 of the amount expended in each service charge year (as defined in clause 3.21.3) by the Landlord in providing the services and fulfilling the obligations set out in part 1 of schedule 3 and a fair proportion of the like amount in regard to part 2 of schedule 3**

**3.21.3 The amount of the Service Charge shall be ascertained and certified annually by a certificate ("Certificate") signed by a chartered or certified accountant as soon as may be practicable after 24 June in every year save that in the last year of the said term such date shall be 24 March and which shall in each case relate to the year or (in the latter case) the period of approximately nine months ending on such date ("Service Year")**

### **Schedule 3 part 1**

- 1.1 To keep the Common Parts in good and substantial repair and condition and free from pests including where necessary the arrangement of suitable maintenance contracts in connection with and the testing and replacement of the Conduits lifts fixtures and fittings and similar items forming part of the Common Parts provided that where items are replaced the Landlord shall ensure that the replacement the Landlord shall ensure that the replacements are of an equal standard to those currently installed**
  
- 2. To redecorate or treat as appropriate the parts of the Common Parts which are usually or which ought to be so treated whenever necessary but at any event not less often than every five years (including the outer surfaces of the front doors and the fire escape doors (if any) of the apartments within the Residential Premises) with suitable materials of good quality in a good and workmanlike manner**
  
- 4 To pay and contribute a fair proportion of the expenses of rebuilding cleansing renewing and repairing all party walls party structures party fence walls common ways Conduits or other conveniences belonging or which shall during the said term belong to or be used by the Residential Premises in common with any adjacent or adjoining premises**
  
- 11.1 So far as it is reasonable so to do to make provision in each Service Charge Year for the future cost of fulfilling the obligations as to replacement comprised in paragraph 1 and generally as to paragraphs 2 and 4 of this part 1 of this schedule 3 any sums so provided for and set aside by the Landlord to be held by the Landlord for the joint benefit of the Landlord the Tenant and the tenants of all the other apartments within the Residential Premises upon trust at the Landlord's discretion so soon as practicable after the end of each Service Charge Year to place the same on deposit with a building society or joint stock bank and during the term of this lease to apply the same whenever necessary or as provided for by this part 1 of this schedule 3 in or towards the purposes referred to**

### **Schedule 3 part 2**

- 6.1. So far as it is reasonable so to do to make provision in each Service Year for the future cost of fulfilling the obligations as to replacement comprised in paragraph 1 and generally as to paragraphs 2 and 4 of this part 2 of this schedule 3 any sums so provided for and set aside by the Landlord to be held by**

**the Landlord for the joint benefit of the Landlord the Tenant and other tenants within the Building upon trust at the Landlord's discretion so soon as practicable after the end of each Service Year to place the same on deposit with a building society or joint stock band and during the term of this lease to apply the same whenever necessary or as provided for by this part 2 of this schedule 3 in or towards the purposes referred to**

23. The first issue to be considered by the Tribunal was whether the Schedules related to the covenants in the lease. Mr Weeks had relied on Clauses 3.21.1 and 3.21.2 of the lease as set out above. The Tribunal considers that on a true construction of the lease, the contribution was in respect of the amount expended in fulfilling obligations under the lease. The covenant in Clause 3.21.2 specifically links that covenant with the Schedules, and cannot be read in isolation. Whilst the provision of a reserve fund may be discretionary, the Applicant was entitled to exercise that discretion, and did so. Accordingly, the Tribunal determines that the Schedules do relate to the covenants in the lease and accordingly the Respondents are bound by them.
24. The Tribunal then considered whether the covenants imposed an obligation to contribute towards specific items only. Mr Weeks arguments are set out in paragraphs 17 and 18 above. Having considered the wording of Schedule 3 Part 1 clause 1.1, the Tribunal finds that there is some flexibility. It refers to replacement of the conduits lifts fixtures and fittings "**and similar items**". The similar items are not specifically listed. It also refers to the position "**where items are replaced the Landlord shall ensure that the replacements are of an equal standard to those currently installed**". It could be argued that the word "**items**" is neither specified nor narrowed. Schedule 3 Part 2 clause 2 refers to redecoration or treating "**as appropriate**". Schedule 3 part 2 clause 4 refers to "**or other conveniences**". The Tribunal is of the view that the use of such words does provide flexibility to the landlord and could include replacement.
25. The Tribunal rejects Mr Weeks argument in respect of the description in the service charge apportionment statement as a "*General Reserve*". The apportionment statement had been prepared by the Applicant's managing agents, and the Tribunal has not been persuaded that it should be relied on as Mr Weeks suggested (see paragraph 17 above) Further, it was supported by the managing agent's letter of 13 June 2013 which specified in some detail the works to be carried out.

26. On the basis of the above decisions of the Tribunal as to the construction of the lease, the Respondents must contribute the sum of £1,205.97 being their quarterly contribution to the reserve fund for the period 25 June 2013 to 29 September 2013.

**Name:** J Goulden

**Date:** 8 July 2014