



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

Case Reference : LON/00AH/LSC/2013/0745

Property : Flats 1,2 & 4, 70 Bungalow Road,
London SE25 6JZ

Applicant : Navy Properties Limited

Representative : Circle Residential Management
Limited

Respondent : (1) Mr Chana (Flat 1)
(2) Mr Khan (Flat 2)
(3) Mr Acheampong (Flat 4)

Representative : Not applicable

Type of Application : Liability to pay and/or the
reasonableness of service charges

Tribunal Member : Ms N Hawkes
Mr D Jagger MRICS

**Date and venue of
Paper Determination** : 10 Alfred Place, London WC1E 7LR

Date of Decision : 15.4.14

DECISION

Decisions of the tribunal

- (1) The Tribunal determines that the sum of £990.50 is payable by the First Respondent, Mr Chana, in respect of the interim service charge for the year 2012-2013.

- (2) The Tribunal determines that the sum of £990.50 is payable by the Second Respondent, Mr Khan, in respect of the interim service charge for the year 2012-2013.
- (3) The Tribunal determines that the sum of £990.50 is payable by the Third Respondent, Mr Acheampong, in respect of the interim service charge for the year 2012-2013.

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 interim service charge payable by the Respondents in respect of the service charge year 2012-2013.
2. The relevant legal provisions are set out in the Appendix to this decision.

The background

3. The property which is the subject of this application is a purpose built, three storey, modern building containing six flats.
4. None of the parties requested an inspection of the property and the Tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.
5. The Respondents hold long leases of flats within the property which require 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 leases (which insofar as material are in identical form) will be referred to below, where appropriate.
6. The matter was listed for an oral hearing on 19.2.14. The Applicant was represented at the hearing but none of the Respondents attended or were represented.
7. On 19.2.14, the matter was adjourned in order to enable the Applicant to make further enquiries because a bankruptcy notice had been entered on the register in respect of the First Respondent's flat.
8. By correspondence dated 21st March 2014, the Applicant informed the Tribunal that notwithstanding that the notice remains on the register, the bankruptcy petition which had been presented against the First Respondent was dismissed on 17.1.11.

9. By letter dated 9.4.14, the Tribunal informed the parties that this application would be determined by way of a paper determination within the period of a week commencing on 15.4.14.
10. None of the Respondents have at any stage filed any written representations or evidence in opposition to the application and, as stated above, none of the Respondents attended or were represented at the oral hearing on 19.4.14.

The tribunal's decision

11. By clause 3.2.4 of the leases, the Respondents covenanted to pay an interim service charge. By clause 9.3 of the leases, the interim service charge is payable by equal instalments in advance on 24th June and 25th December in each year.

12. By clause 9.1.3 of the leases:

“The Interim Charge” means such sum to be paid on account of the Service Charge in respect of each Accounting Period as the Landlord or their Managing Agents shall specify at their discretion to be a fair and reasonable interim payment having regard to anticipated expenditure in the next Accountancy Period and the reserves held.

13. Clause 9.1.2 of the leases provides that:

“The Service Charge” means such percentage of Total Expenditure as is specified in Paragraph 9 of the Particulars ...

14. It is stated at clause 1.16 of the leases that the service charge percentage is 16.666% of the whole.

15. Clause 9.1.1 of the leases provides that:

“Total Expenditure” means the total expenditure incurred by the Landlord in any Accounting Period in carrying out his obligation under clause 6(5) of this Lease and any other costs and expenses reasonably and properly incurred in connection with the Building including without prejudice to the generality of the foregoing (a) the costs or employing managing agents (b) the costs of any Accountant or Surveyor employed to determine the Total Expenditure and the amount payable by the Tenant hereunder.

16. The landlords' repairing obligations are in fact under clause 5(5) of the leases rather than under clause 6(5) but the Tribunal notes that in, any event, the proposed expenditure relates to costs and expenses reasonably and properly incurred in connection with the building.

17. The total estimated expenditure which forms the basis of the interim service charge payments is £5,943.00. This does not differ significantly from the actual figure for the previous year in respect of which some supporting documentation has been provided.
18. The estimated charges relate to the anticipated costs of building repairs; electricity; health and safety related expenses; buildings insurance; refuse collection; and accounting and management fees. The Tribunal notes that the Respondents have not sought to challenge the reasonableness of any of the sums claimed.
19. Having considered the Applicant's submissions and the documents supplied by the Applicant, the Tribunal is satisfied that the sums claimed by way of interim service charge in the Applicant's application are reasonable and payable.

Judge Naomi Hawkes

15.4.14

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.