



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

Case Reference : LON/00AH/LSC/2014/0302

Property : Flat 5, 26 Birdhurst Rise, South
Croydon, London, CR2 7ED

Applicant : Greyclyde Investments Limited

Representative :

Respondent : Ms S. King

Representative :

Type of Application : Section 27A Landlord & Tenant
Act 1985, Schedule 11 Commonhold
& Leasehold Reform Act 2002 –
Service Charges and
Administration Charges (Court
transfer)

Tribunal Members : Judge Lancelot Robson
Mr C. Gowman MCIEH MCMI BSc
Mr L. G. Packer

**Date and venue of
Determination** : 10 Alfred Place, London WC1E 7LR
1st September 2014

Date of Decision : 30th September 2014

DECISION

Decision Summary

- (1) In the referred County Court case, the Tribunal noted that the Respondent had admitted at the case management conference on 26th June 2014 that the ground rent totalling £320 demanded was payable. The Respondent also admitted that service charges totalling £3712.12 were payable. Pursuant to the Respondent's concession in her statement of 8th August 2014, the Tribunal decided that the cleaning charges of £690.30 in dispute were payable.
- (2) Pursuant to the Applicant's concession, the Tribunal decided that the gardening charges still in dispute were not chargeable.
- (3) Pursuant to the Applicant's further concession, the Tribunal decided that administration charges of only £180 were payable by the Respondent, thus reducing the figure of £270 claimed by the Applicant in the County Court.
- (4) The Tribunal made the other decisions noted below.
- (5) This case is now referred back to the Croydon County Court to deal with court costs and any other outstanding matters.

Preliminary

1. By an order made on 22nd May 2014 in the Croydon County Court in Claim No. A39YJ759 District Judge Major referred the Applicant's claim for service charges and administration charges to this Tribunal. The Applicant seeks an order for payment of service charges under Section 27A of the Landlord & Tenant Act 1985 and also under Schedule 11 of the Commonhold and Leasehold Reform Act 2002 as to the reasonableness of certain administration charges relating to the service charge years 2010 – 2013 inclusive, pursuant to a lease dated 30th April 1976 (the Lease).
2. Extracts from the relevant legislation are attached as Appendix 1 below. The Tribunal notes for the benefit of the parties that it has no jurisdiction relating to Ground Rent, costs, or any interest claimed pursuant to statute in the County Court. These matters remain within the jurisdiction of the Court. The Tribunal also has no jurisdiction in a referred case under Section 27A relating to any matters raised which were not raised in the claim or defence in the County Court.
3. At the Directions hearing, the Applicant did not attend. The Respondent confirmed the concessions noted above. She still disputed the cleaning and gardening on her account which she considered to total £427.93, and administration charges totalling £270.
4. Pursuant to Directions of the Tribunal made on 26th June 2014 the Tribunal made a paper determination on 1st September 2014.

5. The Applicant Landlord made written submissions dated 17th July 2014, supplemented later. The Respondent Lessee made written submissions dated 8th August 2014.

Applicant's case

6. In its statement dated 17th July 2014, the Applicant conceded that the gardening charges were not payable, but produced invoices from the cleaner. The Applicant claimed £690.30 for cleaning and £180 for administration charges. It submitted that Paragraph 4, schedule 4 of the Lease gave it power to charge administration fees. It submitted a number of other documents, one of which confirmed that it had received £223.59 from the Respondent.

Respondent's case

7. In her Response to the Applicant's statement, the Respondent submitted that she had been unable to obtain a witness statement from a person named Terry, who could confirm that the cleaner had been ill for a long period. She therefore also conceded the sum of £690.30, although still retained doubts about the invoices produced. She made no reference to the administration charges.

Decision

8. The Tribunal considered the evidence and submissions. Paragraph 4 of Schedule 4 of the Lease appeared to permit charging of the administration charges. The Applicant's original claim demanded £270, but in its statement, the Applicant reduced this figure to £180, being charges made on 12th March 2012 and 9th September 2013, each for £90. In the absence of a submission from the Respondent on this point, the Tribunal decided that the sum of £180 was payable by the Respondent.
9. Regrettably the Tribunal could not reconcile the figures produced by either party relating to the cleaning and gardening, or the total amount owed, from the papers submitted to it. However it was clear that the Applicant had conceded the gardening, and the Respondent had conceded the cleaning. The Tribunal therefore so determined. The parties need to agree the actual figures relating to these items allocated to the Respondent's account.

Costs – Section 20C

10. While not forming part of this decision, the Tribunal noted that the Respondent had made no Section 20C application in her statement, as directed by the Tribunal in its Directions in relation to costs in connection with the application to the Tribunal (as opposed to the Court proceedings). Neither party formally raised such matters in the papers. Without submissions by the parties the Tribunal is therefore unable to decide upon such matters. If an application to the Tribunal were to be made by the lessee for an order under Section 20C of the Landlord and Tenant Act 1985 that the costs incurred in connection with these proceedings by the landlord should not form part of any future service charge, the Tribunal would be minded to order that half the costs of this

application should be placed on the service charge for the Building. The Respondent had effectively won her point on the costs of gardening, and a partial concession on the administration charges. The Applicant had won a concession on the gardening.

Chairman: Judge Lancelot Robson

Signed: Lancelot Robson

Dated: 30th September 2014

Appendix 1

Landlord & 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.

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).