



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

Case Reference : LON/00AU/LSC/2014/0204

Property : Flat 7, 334-340 Caledonian Road,
London N1 1BB

Applicant : A.C.Panayi

Representative : Armstrong & Co, solicitors
I.Khawaja

Respondent : M.Rafiah & O Sharon

Representative : In person

Type of Application : For the determination of the
liability to pay a service charge
under section 27A Landlord &
Tenant Act 1985 (the "Act")

Tribunal Members : Judge Pittaway
Ms S Coughlin MCIEH

: Determination without an oral
hearing in accordance with
 : Regulation 31 The Tribunal
Procedure (First-tier Tribunal)
(Property Chamber) Rules 2013

Date of Decision : 25 June 2014

DECISION

Decision of the tribunal

The Tribunal determines that the respondents are liable to pay by way of service charge £368.77 of the total service charge of £1659.12 claimed in the application to the County Court made as follows

Insurance rent demanded in February 2011 in the sum of £300; and

Service charge for the year ending December 2010 of £41.25

Service charge for the year ending December 2011 of £27.52

The application

1. Proceedings were originally issued in the Northampton County Court under claim no.2YL68954 for unpaid service charges and fees. The claim was transferred to the Clerkenwell & Shoreditch County Court and then in turn transferred to this tribunal, by order of District Judge Parker on 8 April 2014 for the issues as to the service charge to be determined.
2. The Tribunal issued directions on 10 April 2014 in which they identified that the issue to be determined by the tribunal was liability to pay such of the sum demanded in the County Court as is service charge, the defendants having argued that they were not liable to pay it either because the costs were incurred before they had purchased the Property, or because they had been demanded more than eighteen months after the costs had been incurred.
3. In their directions the tribunal indicated that they considered the matter suitable for determination on paper; that is without an oral hearing or inspection, unless any party requested an oral hearing. No oral hearing was requested.
4. The relevant legal provisions are set out in the Appendix to this decision.

The background and evidence

1. The applicant provided a bundle to the tribunal on 18 June, following a notice under section 9(3) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 that the matter would be determined on the basis of the papers submitted by the County Court unless the applicant complied with the tribunal's directions.
2. The papers provided by the County Court included a Defence Form of Dr O Sharon.

3. The tribunal has had regard to the bundle provided by the applicant and Dr Sharon's Defence Form in reaching its decision.
4. The respondents are lessees of the flat under a lease dated 7 September 1989 for a term of 125 years from 17 December 1986 (less 3 days), having been registered as proprietors of the same at the Land Registry on 13 March 2007. The lease provides at Schedule III paragraphs 3 and 4 for the payment of a fair proportion of certain service charge costs incurred by the landlord and a fair proportion of the cost to the landlord of keeping the premises insured.

The tribunal's decision and reasons.

5. The applicant provided no evidence to the Tribunal that the service charge the subject of the court application and which dated back to 2007 had been demanded before 26 June 2012, being the date upon which it was demanded by Armstrong & Co, in two letters; one demanding rent (which included a demand for insurance premiums dating back to 1 February 2007) and the other service charge in the sum of £159.12 (for five service charge years from 31 December 2007). The faxed copy demands (which are different to those enclosed in the court papers) included in the applicant's bundle are dated 7 December 2011 but do not include the summary of tenants' rights and obligations as required by the Act.
6. In the absence of evidence to the contrary the tribunal accepts the statement in the defence form of Dr Sharon that the respondents had not demanded the service charge amounts prior to the letters Armstrong & Co. Only demands made within 18 months of the costs being incurred are recoverable.
7. The tribunal note that the lease provides at clause 5.9 that section 196 Law of Property Act as amended applies to the service of notices under the lease. Under this section notices are sufficiently served on a lessee if served on the house or building comprised in the lease, and are deemed to be served at the time at which a registered letter would in the ordinary course be delivered. The applicant was therefore entitled to send the service charge demands to the Flat but the applicant has provided no evidence that any letter demanding the earlier service costs and insurance premium was sent to the flat before 26 June 2012.
8. In view of the tribunal's decision above they have not had to consider whether the respondents were liable for service charge costs incurred before the respondents bought the flat.
9. The tribunal has no jurisdiction over ground rent or county court costs and fees, and this matter should now be referred back to the London County Court.

Name: Judge Pittaway

Date: 25 June 2014

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 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 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.