



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

Case Reference : LON/00BE/LSC/2014/ 0135

Property : 12 Edward Square, Rotherhithe Street, London SE16 5EE

Applicant : Mr A Mayer

Representative : N/A

Respondent : OM Property Management Ltd on behalf of Holding and Management (Solitaire) Ltd

Representative : Peverel Property Management represented by Ms Janina Lamb

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

Tribunal Members : Dr Helen Carr
Mr Mel Cairns
Mr Clifford Piarroux

Date and venue of Hearing : 7th July 2014
10 Alfred Place, London WC1E 7LR

Date of Decision : 11th August 2014

DECISION

Decisions of the tribunal

- (1) The tribunal has made determinations on those matters which were outstanding following a 'without prejudice' agreement between the parties. It has set out the determinations under the various headings in this Decision.
- (2) The tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985 as the Respondent has no current status to charge service charges.
- (3) The tribunal determines that the Respondent shall pay the Applicant £ 630 within 28 days of this Decision, in respect of the reimbursement of the tribunal fees paid by the Applicant.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act")] as to the amount of service charges and (where applicable) administration charges payable by the Applicant in respect of the service charge years 2009 - 2011.
2. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

3. The Applicant appeared in person at the hearing and the Respondent was represented by Peverel Property Management. Ms Janina Lamb, legal consultant with Peverel Property Management appeared for the Respondent. Ms Lamb was accompanied by Mr Tola Danso accountant with the Respondent and Ms Nicola Wood who is employed by the Respondent as a property manager.

The background

4. The property which is the subject of this application is situated on the Sovereign View Estate which comprises 271 leasehold properties. Number 12 Edward Square is within a block of 9 properties within Edward Square. The Applicant is responsible for 1/271 of Estate charges and 5/42 of Block charges.
5. Edward Square, a four storey brick faced faux Georgian design, was built in 1993 as part of Sovereign View docklands development. Edward

Square was managed by OM until June 2012 and the Sovereign View Estate was managed by OM until 31st December 2013.

6. 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.
7. The Applicant 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 and will be referred to below, where appropriate.

The issues

8. The Scott schedule provided by the parties identified the issues as follows:
 - (i) The payability and/or reasonableness of service charges for 2009 relating to
 - a. Estate electricity charges of £6,888.70
 - b. Estate landscaping charges of £6,023.01
 - c. Estate bank charges of £ 264.16
 - d. Estate prior year adjustment
 - e. Block general repairs of £2,044.70
 - f. Block Electricity charges of £1,789.21
 - (ii) The payability and/or reasonableness of service charges for 2010 relating to
 - a. Estate Electricity Charges of £4,509.64
 - (iii) The payability and/or reasonableness of service charges for 2011 relating to
 - a. Estate Electricity charges of £7,114.02
 - b. Estate Gate Maintenance and Repair charge of £17,754.67

- c. Estate Landscape Maintenance and Planting charge of £23,050.66
 - d. Estate Pest Control of £1,173.60
 - e. Block General Maintenance charges of £1,943.42
 - f. Block Lift Maintenance and Repair charges of £2,053.40
- (iv) The payability and/or reasonableness of service charges for 2012 relating to
- a. Increase in Block Reserve fund charge from £4,160 to £8010 from 2011 – 2012
 - b. Lift maintenance charges of £866 despite no provision of lift service
9. At the beginning of the hearing the tribunal asked the parties if they could narrow the issues between them and identify the value of the matters in dispute. The result of the discussions were that the following issues remained to be determined by the tribunal:
- (i) The amount payable by the Applicant in respect of block charges for electricity in 2009
 - (ii) Bank charges payable by the Applicant in 2009
 - (iii) The reasonableness of the reserve fund contributions demanded in 2012
 - (iv) The payability of the sum demanded in connection with a prior year adjustment in 2009
 - (v) The amount payable in respect of estate electricity in 2010
10. The tribunal commends the parties for this considerable narrowing of the issues before it and notes that a 'without prejudice' agreement has been reached in relation to the issues not raised before it. The parties are asked to note that this determination relates only to the issues set out in paragraph 9.
11. The Respondent did not have evidence relating to the 2010 block electricity credits available to it at the date of the hearing. From its

perspective, as the amount was not challenged in the Scott Schedule it had not been prepared for that challenge.

12. The Applicant argued that it was implicit in his case that this amount was disputed.
13. The tribunal agreed that the Respondent could provide written submissions on the outstanding matter within 7 days of the date of the hearing, that the Applicant was to respond to those submissions within a further 7 days, and that if the matter had not been resolved, the tribunal was to be sent the relevant papers within 7 days of that date. The result of the further submissions was that the Applicant withdrew his challenge to the 2010 block electricity credit notes and there is no need for the tribunal to make a determination on this matter.
14. Having heard evidence and submissions from the parties and considered all of the documents provided, including the additional statement received by the tribunal from Peverel dated 14th July 2014 and Mr Mayer's response, the tribunal has made determinations on the various issues as follows.

The amount payable by the Applicant in respect of block charges for electricity in 2009

15. The Applicant argued that as two invoices (one for £583.22 and £382.99) were missing from the documentation provided by the Respondent, that the amount payable should be reduced by the total of the invoices. He argued that he had been overcharged by £104. He argued that the figure he was charged was out of line with later charges.
16. The Respondent agreed that they could not explain the missing invoices, but suggested that the amount charged was reasonable.
17. In the additional documents provided to the tribunal dated 14th July 2014 the Respondent produced an invoice from the electricity company for £382.99p. The Applicant stated in his response that he was prepared to withdraw his challenge to that missing invoice.
18. The Respondent was prepared to accept a 30% reduction of the Applicant's proportion of the missing invoice.

The tribunal's decision

19. The tribunal determines that the full amount of the missing invoice be deducted from the Applicant's proportion of the missing invoice.

Reasons for the tribunal's decision

20. The tribunal determined that as the Respondent was not able to produce the invoice of £583.22 the Applicant's share should be deducted from his service charge account.

Bank charges payable by the Applicant in 2009

21. The Respondent was prepared to concede the amount of 91p which had been demanded of the Applicant in connection bank charges. The Applicant wanted the tribunal to make a decision.

The tribunal's decision

22. The tribunal determines that the amount payable in respect of bank charges is 91p.

Reasons for the tribunal's decision

23. The tribunal is prepared to accept the concession from the Respondent. To investigate the circumstances in which this charge arose is disproportionate.

The reasonableness of the reserve fund contributions demanded in 2012

24. The Applicant considered that the Respondent had been unreasonable in increasing the contributions to the reserve fund by 74% in 2012 despite an already healthy reserve fund balance of £25,302.29 at the end of 2011. There had been no discussions with the lessees about the reasons for the increase.
25. The Respondent explained that the increase related to anticipated costs of major works to the lift. In the event the costs of the works were considerably less than had been anticipated.

The decision of the tribunal

26. The tribunal makes no determination in respect of this sum.

The reasons for the tribunal's determination

27. In general the tribunal consider that it is prudent to have substantial sums in reserve to cover planned works. However landlords should bear in mind that increases in demands for reserve funds should be proportionate to properly estimated costs of future works, and that

significant increases in reserve funds should be avoided. However in this instance, as a new managing agent has taken over from the Respondent it is unnecessary to order the Respondent to reimburse the monies to the lessees. Although the tribunal understands that the Respondent is still holding this money, it was informed that once the year end accounts have been finalised it will be handed over to the new managing agent.

The payability of the sum demanded in connection with a prior year adjustment in 2009

28. The Applicant pointed the tribunal to the figure of £15,943.23 which was described as a prior year adjustment for the year of 2009 in the 2011 accounts. His point was that he did not know what this was being charged for and it had not been demanded with 18 months of it having been incurred.
29. The Respondent explained that the sum related to charges for insurance and bin hire incurred in earlier years. The Respondent was prepared to concede the sum because it accepted it had not been charged within the appropriate period of time.
30. The Applicant wanted the tribunal to make a decision on this matter.

The tribunal's decision

31. The amount is not payable.

The reasons for the tribunal's decision

31. The amounts were not charged within eighteen months of having been incurred.

Application under s.20C and refund of fees

32. The Respondent agreed to refund the Applicant's application fee and hearing fee which totalled £630.
33. The Respondent also agreed that it was not entitled to make service charge demands and therefore there was no need for a determination under s.20C.

Name: Dr Helen Carr

Date: 11th August 2014

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.

Section 20

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
- (a) complied with in relation to the works or agreement, or
 - (b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .
- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

- (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
 - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
- (a) an amount prescribed by, or determined in accordance with, the regulations, and
 - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

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 20C

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are

not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

- (2) The application shall be made—
 - (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
 - (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
 - (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
 - (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
 - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

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 the appropriate 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 the appropriate 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).