



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

Case Reference	:	LON/00BK/LSC/2016/0163
Property	:	Flat 6, 10 Hatherley Grove, London W2 5RB
Applicant	:	Mr & Mrs TJ Barling and Mr R Gosrani
Representative	:	Nick Munns, Rayners Estates
Respondent	:	Mr R Lutz
Representative	:	In person, not appearing
Type of Application	:	Liability to pay service charges and administration charges
Tribunal Members	:	Judge Hargreaves Andrew Lewicki BSc (Hons) MBEng FRICS
Date and venue of Hearing	:	10 Alfred Place, London WC1E 7LR 22nd August 2016
Date of Decision	:	22nd August 2016

DECISION

The Tribunal determines as follows:-

1. The Tribunal could determine the application in the absence of the Respondent pursuant to Rule 34 so far as appropriate.
2. The reasonable service charge for the year ending 2013 is £632.28.
3. The reasonable service charge for the year ending 2014 is £1554.29.

4. The reasonable service charge for the year ending 2015 is £1581.35.
5. The reasonable service charge due on account for the year ending 2016 is £1300.
6. The sum of £5141.34 is reasonable in respect of the sums due pursuant to the works set out in the s20 notice issued in December 2015.
7. The Respondent must pay the Applicants their costs pursuant to Tribunal Rule 13 assessed in the sum of £900 plus VAT of £180 plus the application fee (£250) and the hearing fee (£190) totalling altogether £1520 by 5pm 7th September 2016.

REASONS

1. Directions for the conduct of the application were given on 19th May. The Applicants notified the Tribunal that the Respondent was in breach of the directions and Judge Timothy Powell made a further order on 29th July 2016 debaring the Respondent from defending the application for the reasons given. There has been no response from the Respondent whatsoever to the Tribunal in the course of this application, which is now the fourth in a series of applications which the Applicants have had to make over recent years to recover service charges, not counting applications to the county court in respect of ground rent. In the absence of the Respondent at the hearing, the Tribunal considered Rule 34 and decided (if the Rule actually applied considering the terms of the debaring order), that it was just to proceed in the absence of the Respondent. We are satisfied that reasonable steps were taken to notify the Respondent of the hearing, and that in the circumstances it was undoubtedly in the interests of justice to proceed with the hearing.
2. The subject property, Flat 6, is one of six flats in a converted Victorian flat. It is on the top floor. An inspection was not required. Mr Munns, who appeared for the Applicants, is not only the managing agent but is actually familiar with the property and ably answered the Tribunal's questions in relation to the service charges which are the subject of the application. It is to his credit that in relation to the charges for 2013, 2014, 2015, the Respondent has, through no effort of his own, secured a slight discount for the reasons given below, and the Tribunal is grateful to Mr Munns for his realistic and pragmatic approach to these items.
3. The lease is dated 19th January 1981 (p1 of the hearing bundle). The service charge provisions are in clauses 2 and 3 (p2), and they are calculated by reference to clause 5 and Part II of the Third Schedule (p12). The Respondent's share of the service charge is 16.1%. Interest is due on late payment once demanded by the managing agents (it has yet to be demanded) in accordance with clause 3.01.2 (p2), but once that is calculated, it will be contractually payable as a matter of construction of the lease. We are satisfied from Mr Munns' evidence and the documents in the hearing bundle that all

proper demands have been served on the Respondent, including s20 notices, and that he has failed to comply for reasons known only to himself. As requested, the Applicants have corresponded with him by email; if the Respondent has moved and is living elsewhere, no alternative postal address has been notified either to the Applicants or the Tribunal.

4. The Tribunal queried the reasonableness of certain invoices. Apart from repairs to the lock of an individual flat door (p50), Mr Munns and the Tribunal also considered that the invoices at p65-67, p91-95, and p119, 120 and 123 were not reasonable (additional charges by the managing agents for supervision of fire alarm and smoke alarm testing, for example). Accordingly credit for 16.1% of these sums has been given and that accounts for the difference between the list of figures claimed in the directions dated 19th May, and the figures calculated by the Tribunal as reasonable and payable in this decision.
5. Subject to these queries and qualifications, the Tribunal is satisfied that the sums claimed are reasonable. That includes the March 2016 “on account” claim for £1300 and the sum of £5141.34 which is the Respondent’s share of the works to be done pursuant to the s20 consultation. These consist of external repair and redecoration works and the Tribunal had the opportunity of considering the schedule as well as the reasonableness of the anticipated costs in the context of the overall response to the tender process. Again, the Tribunal is none the wiser as to why the Respondent having failed to pay, has failed to explain why.
6. In the circumstances he really has no answer to an application for costs pursuant to Tribunal Rule 13. A total failure to respond, result in a debarring order, must qualify as “unreasonable” litigation behaviour for the purpose of Tribunal Rule 13. There is no apparent reason for the complete failure to participate, so we have no hesitation in exercising our discretion to order that costs should be paid on the standard basis to be summarily assessed. In view of the amount claimed by Mr Munns, it would be disproportionate to invite further written submissions and so we assessed costs at the hearing.
7. Mr Munns’ hourly rate is £90 plus VAT. Including his time spent travelling to the Tribunal, preparing the bundle and preparing for the hearing, we consider that a reasonable and appropriate award is to order the Respondent to pay for 10 hours of his time, plus the disbursements (the application fee and the hearing fee) which were reasonably incurred. The total award of £1520 is entirely reasonable in the context of an award of £10,209.26 and is clearly proportionate, the Respondent being the clear beneficiary of the fact that the application was made and presented by managing agents charging a reasonable hourly rate.

8. For the avoidance of doubt, Mr Munns accepted that administration charges are not recoverable under the lease.

Judge Hargreaves

Andrew Lewicki BSc (Hons) MBEng FRICS

22nd August 2016

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).