10736

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00BJ/LSC/2014/0595**
Property	:	**Flat 2, 25 Eardley Road, Streatham, London SW16 6DA**
Applicant	:	**Humera Mohammed**
Respondents	:	**St James Court (IW) Management Co Ltd** **Maidenbridge Properties Ltd**
Type of Application	:	**For the determination of the payability of service charges**
Tribunal Members	:	**Judge Nicol** **Mr A Lewicki BSc (Hons) MRICS MBEng** **Mr CS Piarroux JP CQSW**
Date and venue of Hearing	:	**9th April 2015** **10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**14th April 2015**

DECISION

Decisions of the Tribunal

(1) The service charges claimed by the Second Respondent, namely Interim Maintenance Charges totalling £750 and Excess Maintenance Charges" of £200.62 and £2,244.15, are payable by the Applicant.

(2) The Tribunal refuses to make any costs order, either under section 20C of the Landlord and Tenant Act 1985 or rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

Relevant legislation is set out in the Appendix to this decision.

The application

1. The Applicant is the lessee of the subject property. She has been represented throughout these proceedings by her husband, Mr Mohammed Zia Ayub Khan. It is understood that she has never paid any of the service charges claimed from her during her time as lessee of the subject property although her mortgagees, Mortgage Express, have paid some to the First Respondent.

2. The Second Respondent is the current freeholder of the converted house containing the subject property and four other flats. The First Respondent is their predecessor-in-title, the title having been transferred on 31st March 2013. In fact the two companies are part of a group of companies holding the property portfolio of Mr and Mrs Bagley who say they are all run from the same small office, using staff and contractors in common. Another company, apparently the largest, in this group is Three Keys Properties Ltd which is referred to further below.

3. The Applicant has applied for a determination under section 27A of the Landlord and Tenant Act 1985 that she is not liable to pay service charges for the period from 31st March 2013 to 12th August 2014. The Second Respondent clarified that the sums they are seeking are:-

   (a) Interim Maintenance Charges, fixed in the lease at £500 per year, for the whole year to 24th June 2014 and for the first half of the year to 24th June 2015, totalling £750.

   (b) The "Excess Maintenance Charges", being the Applicant's share of the amount the Respondent claims to have spent over and above the Interim Maintenance Charge, of £200.62 for the year to 24th June 2013 and £2,244.15 for the year to 24th June 2014.

4. The Applicant had understood that the Respondent was claiming sums which had already been addressed by the Croydon County Court. The First Respondent had issued proceedings claiming £2,816.06 in ground rent and service charges allegedly not paid by the Appellant (plus an administration fee, interest and a court fee). On 4th September 2014 District Judge Hay dismissed the claim. However, the Second Respondent clarified that the service charges claimed in the county court related to earlier years and they accepted that they could not be claimed in these Tribunal proceedings.

5. The Applicant was also concerned that the Second Respondent was seeking payment of legal and court costs arising from the county court case but the Second Respondent further clarified that they were not doing so in these Tribunal proceedings.

6. The Second Respondent pointed to the Maintenance Fund Account, certified by their accountant, Barbara Palmer, for each of 2013 and

2014 as providing a breakdown of what was spent in compiling the Excess Maintenance Charges:

2013

- Buildings Insurance
  - 25th June 2012-1st June 2013 £2,020.27
  - 1st-24th June 2013 £159.38
- Barron Surveying Services fee £180
- Barbara Palmer's fee £100
- Management charge £725

2014

- Buildings Insurance
  - 25th June 2013-1st June 2014 £2,232.69
  - 1st-24th June 2014 £156.85
- Roofing works by GB Building & Roofing £7,938.88
- Electrical works by Southern Builders £696
- Guttering works by Southern Builders £174
- Barron Surveying Services fees
  - Fire risk assessment £150
  - Reinstatement valuation £150
  - Asbestos survey £125
- Barbara Palmer's fee £100
- Management charge £750

Documents addressed to a different company

7. The name of Three Keys Properties Ltd appeared on a number of documents produced by the Second Respondent in support of the service charges:

(a) It appeared in the top right hand corner of the buildings insurance policy schedule for 2012-13, 2013-14 and 2014-15, although the schedule otherwise correctly identified the Second Respondent as the insured and the risk address as 25 Eardley Road. Mr and Mrs Bagley explained that they had a block policy with Aviva covering their whole portfolio and the insurance premium was paid in instalments from one account, that of Three Keys Properties Ltd. The single premium was broken down and allocated to each property for the purposes of the service charges.

(b) Three invoices from Barron Surveying Services purported to be in relation to 25 Eardley Road but were addressed to Three Keys

Properties Ltd. On the copies in front of the Tribunal, the name of Three Keys Properties Ltd had been crossed out and the name of one of the Respondents inserted in handwriting. Mr and Mrs Bagley said that Mr James Barron MRICS RMaPS had worked for their companies for years and had made a mistake.

(c) A report dated 25th February 2013 from Mr Barron was clearly in relation to 25 Eardley Road, having a photo of the property alongside the name on the front cover and describing it extensively, but also had the name of Three Keys Properties Ltd on the front cover.

(d) An invoice from Gary Branch was addressed to Three Keys Properties Ltd but again that name had been crossed out and the Second Respondent's written in handwriting. Gary Branch trades under the name GB Building and Roofing and was the appointed contractor for the roofing works referred to in the 2014 service charges.

8. Mr Khan on behalf of the Applicant pointed out that Three Keys Properties Ltd was not involved with 25 Eardley Road as freeholder, managing agent or in any other capacity. He refuted the suggestion that the name was on the documents as a mistake because it happened so often and because the contractors in question knew the companies and which one they were supposed to be working for.

9. Mr Khan asserted that the documents must be in relation to other properties, not 25 Eardley Road. However, the Tribunal is satisfied that each of the documents refer to services provided or work done in relation to 25 Eardley Road. The property is insured under the block policy, Mr Barron did do a report which Mr Khan conceded was in relation to 25 Eardley Road and roofing works were carried out there. Each of the documents expressly mentions 25 Eardley Road and, in context, it is more logical to regard the mention of Three Keys Properties Ltd as wrong rather than the address.

10. Mr Khan put forward a proposition of law that, if an invoice is addressed to the wrong person, the right person is not liable for that invoice. If this were right, the Second Respondent would not be liable for the charges in the relevant invoices and could not pass them on in the service charges.

11. For his proposition, Mr Khan relied on a decision dated 17th March 2015 by the Tribunal in relation to his own leasehold property at 232B London Road (case ref: LON/00AH/LSC/2014/0538). The Tribunal in that case decided that no service charges were owing because they were not certified in accordance with the lease, the demands did not comply with statutory requirements as to providing a summary of relevant costs, a summary of rights and obligations and an address for service of the landlord and they were not reasonable due to a complete lack of supporting evidence (the respondent landlord took no part in the proceedings). The Tribunal did note that a service charge demand had

been addressed to the wrong person, "Mrs Shah", but did not draw any conclusions from that, let alone Mr Khan's proposition of law.

12. Having relevant documents addressed to the wrong company is bad practice. It has the potential to cause confusion or to mislead. It makes it more difficult to apportion liability correctly but the fundamental point is that it does not actually alter anyone's liability. The fact that Mr Barron or Mr Branch addressed their invoices to Three Keys Properties Ltd does not make that company liable for services they did not receive and does not alter the Second Respondent's liability for services they did receive. If the Second Respondent had refused to pay any of the invoices on the grounds that they were not addressed to them, the provider of the services in question would have been able to sue for their charges and would have been bound to succeed.

13. Mr Khan may well be right that the reference to Three Keys Properties Ltd on at least some of the documents is not a mistake but put there deliberately by the relevant contractor. Like the insurance, it may well be that the money with which the contractor was paid was taken from an account in the name of Three Keys Properties Ltd. Again, this is not good practice due to the risk of confusion and the difficulties which may result in following the money trail. However, such practices do not and cannot alter who is liable to pay for the relevant services. The reference to Three Keys Properties Ltd in any of the documents referred to does not have the effect of removing them from the service charges for which the Applicant is liable.

Accountant's invoice

14. An invoice dated 5th August 2013 from Mr and Mrs Bagley's accountant, Mrs Barbara Palmer FCCA, had a similar problem in that it was addressed to the First Respondent even though the property had been transferred to the Second Respondent just over four months previously. The Tribunal is satisfied that the services were actually rendered in relation to 25 Eardley Road because the invoice says so and because the above-mentioned Maintenance Fund Accounts were certified by Mrs Palmer. For the reasons already given above, the Tribunal is further satisfied that the reference to the wrong company has no effect on the Second Respondent's liability or their ability to pass on the charge through the service charges.

Roofer's invoice

15. In a similar submission, Mr Khan pointed out that the invoice from Mr Gary Branch did not refer to his trading name, GB Building & Roofing, whereas it was the trading name which the Second Respondent had referred to in other documents such as the consultation notices issued under the statutory consultation procedure. Mr and Mrs Bagley pointed out that Mr Branch's tender document identified that GB Building &

Roofing was his firm. The fact is that GB Building & Roofing is not a limited company but merely a trading name. GB Building & Roofing has no separate legal existence from Mr Branch. Mr Branch can sue or be sued in legal proceedings under either name. The absence of his trading name on his invoice could lead to confusion in circumstances like these but, again, cannot alter his entitlement to receive the amount charged in his invoice nor the Second Respondent's liability to pay it.

Buildings insurance

16. Mr Khan had a further objection to the buildings insurance. He said that the fact that the policy schedules shown to the Tribunal did not refer to the fact that the building contained five flats invalidated it. The Tribunal has no hesitation in rejecting this. Mr and Mrs Bagley have a 15-year relationship with Aviva, during which all claims across their portfolio have been paid. They say they have provided Aviva with full details of each property, including the fact that they all contain leasehold flats. The Tribunal knows from its own specialist knowledge and experience that this is highly likely. It is inherently incredible that Aviva would not know of the existence of leasehold flats at 25 Eardley Road. The lack of mention of the flats on the policy schedule is not a flaw, let alone one which could invalidate the entire policy.

Major works

17. On 6th March 2012 the local authority, the London Borough of Wandsworth served a Preliminary Improvement Notice warning the Applicant that they were considering taking enforcement action in relation to dampness and blocked drains at her flat. There is evidence in the form of a letter dated 10th May 2012 from Wandsworth to Mrs Bagley that she was aware of this action. Mr Khan said he spent around £25,000 complying with the notice, despite the fact that at least some items came within the Respondents' repairing obligations under the lease. He asserted that he is out of pocket as a result of the Respondents' failure to accept responsibility for carrying out the work.

18. The Tribunal has no original jurisdiction to consider a claim for damages from the Applicant in relation to this. The Tribunal does have the power to consider a set-off against service charges arising from a counterclaim but it would be unfair to the Applicant to try to reach any conclusions on this issue in these proceedings. This is because hardly any evidence has been presented in support, such as the works specification or invoices paid.

19. Having said that, the essential structure of the lease is that the landlord has to carry out work but the lessee has to pay for it. Even if the Respondents should have carried out the relevant work, it is not obvious that the Applicant would have avoided any of the actual costs.

20. In any event, the main reason that Mr Khan raised this issue was to compare it with the work carried out pursuant to Mr Barron's report by GB Building & Roofing. Mr Khan characterised the work as being principally to Flat 1 and asked rhetorically why the Second Respondent accepted responsibility for that work but not the work to his flat. He perceived an unfair and unjustified difference of approach which worked to his and the Applicant's detriment.

21. However, whether the Second Respondent should have carried out work to Flat 2 is irrelevant. The roofing works must be justified on their own account. If they were required in order for the Second Respondent to comply with their repairing obligations under the lease and chargeable through the service charges, then that is how they must be dealt with, irrespective of a failure to do this in relation to some other items.

22. Mr Khan was wrong to characterise the works as purely in relation to Flat 1, albeit that Flat 1 would benefit more than Flat 2 since the roof in question was principally over Flat 1. The Tribunal is satisfied that the work was properly identified and specified by Mr Barron and carried out by Mr Branch in accordance with the landlord's repairing obligations under the lease.

23. During the consultation process which the Second Respondent carried out in accordance with section 20 of the Landlord and Tenant Act 1985 and the Service Charges (Consultation Requirements) (England) Regulations 2003, the Applicant wrote a letter dated 22nd July 2013 to Mrs Bagley protesting that the works were not necessary and that the lessee of Flat 1 should be solely liable in the same way that she had been obliged to pay for works to her own flat. Mrs Bagley replied promptly, by letter dated 24th July 2013, but only to refer the Applicant back to the reasons given for the works in the initial notice dated 5th March 2013 – the reasons given were simply "To comply with the Landlord's covenants under clause 4 and The Sixth Schedule of the Lease dated 5th November 2004."

24. Mr Khan asserted that Mrs Bagley's response was inadequate in that it should have addressed the notice from the London Borough of Wandsworth, why the Second Respondent did not accept responsibility for the works to the Applicant's flat and what grounds there were for doing work in Flat 1. The Tribunal disagrees. The Regulations only require that the landlord "have regard" to the observations made and to summarise them in a later statement, both of which the Second Respondent appears to have complied with. As referred to above, the works were not solely in relation to Flat 1 – the one item in Mr Barron's report which did exclusively relate to the interior of Flat 1 was separately identified and excluded from the costs to be put onto the service charge. The Second Respondent's reasons were set out in probably the briefest possible way but it cannot be said that they are

inadequate – the works were indeed for the purpose of complying with their repairing obligations.

25. Therefore, the Tribunal is satisfied that the cost of the works has been correctly claimed through the service charge.

Management charge

26. The Respondents have not employed a managing agent to manage 25 Eardley Road. However, they have purported to charge a management fee for their various activities such as collecting the service charges, preparing statements and accounts, administering the insurance and dealing with lessee enquiries. The charges amount to no more than £150 per flat which is on the low side compared to managing agents' charges, particularly for a building containing only five flats. However, Mr Khan challenged whether there was any provision in the lease which would allow the landlord to charge for their own time.

27. In fact, as well as the usual provision for employing and charging for a managing agent, paragraph (11)(a) of the Eighth Schedule to the lease provides that the service charge may include "other proper costs incurred by The Lessor in the running and management of The Property". The Tribunal is satisfied that the Respondents were entitled to levy a management charge for their own time in managing 25 Eardley Road.

28. Mr Khan also objected to the management charge on the basis that the Applicant had not received any gardening or cleaning services. In fact, the garden is part of the Applicant's demise so that the Respondents are not obliged to look after it. Further, until recently one of the lessees had attended to the internal cleaning for free, saving the Applicant and her fellow lessees a significant amount of money. The absence of gardening or cleaning charges in the service charge accounts is not indicative of any management deficiency.

Costs

29. As well as her substantive application, the Applicant applied for an order under section 20C of the Landlord and Tenant Act 1985 that the landlord's costs of these proceedings should not be added to the service charge. It would appear that the aforementioned paragraph (11)(a) in the Eighth Schedule to the lease would permit the Second Respondent to do this. Unlike in the courts, there is no general rule that the loser has to pay the winner's costs but the Tribunal must bear in mind that any order would deny the landlord what is otherwise their right under the lease.

30. In this case, all issues have been decided against the Applicant. The Tribunal has observed some bad practice on the part of the Respondents' administration of their management but it should always have been clear that those problems did not justify the Applicant's failure to pay her service charges. The Applicant also alleged that the Respondents failed to comply with the Tribunal's directions but, by the time of the hearing, there was nothing to suggest that both parties had anything other than fair notice of the case they were to meet and a reasonable opportunity to meet it. There is simply no basis for the Tribunal to make an order under section 20C.

31. The Applicant also referred in her statement to an order for costs under rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. However, costs may only be awarded under that provision if it can be said that a party acted unreasonably in bringing, defending or conducting proceedings. This is a high hurdle to cross. In the circumstances, the Tribunal is satisfied that the Respondents did not act unreasonably so as to justify any award of costs.

Name: NK Nicol **Date:** 14th April 2015

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 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.

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.

The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013

Orders for costs, reimbursement of fees and interest on costs

13.—(1) The Tribunal may make an order in respect of costs only—

(b) if a person has acted unreasonably in bringing, defending or conducting proceedings in—
(ii) a residential property case, or
(iii) a leasehold case; ...

(2) The Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor.

(3) The Tribunal may make an order under this rule on an application or on its own initiative.

(4) A person making an application for an order for costs—
(a) must, unless the application is made orally at a hearing, send or deliver an application to the Tribunal and to the person against whom the order is sought to be made; and
(b) may send or deliver together with the application a schedule of the costs claimed in sufficient detail to allow summary assessment of such costs by the Tribunal.

(5) An application for an order for costs may be made at any time during the proceedings but must be made within 28 days after the date on which the Tribunal sends—
(a) a decision notice recording the decision which finally disposes of all issues in the proceedings; or
(b) notice of consent to a withdrawal under rule 22 (withdrawal) which ends the proceedings.

(6) The Tribunal may not make an order for costs against a person (the "paying person") without first giving that person an opportunity to make representations.

(7) The amount of costs to be paid under an order under this rule may be determined by—
(a) summary assessment by the Tribunal;
(b) agreement of a specified sum by the paying person and the person entitled to receive the costs (the "receiving person");
(c) detailed assessment of the whole or a specified part of the costs (including the costs of the assessment) incurred by the receiving person by the Tribunal or, if it so directs, on an application to a county court; and such assessment is to be on the standard basis or, if specified in the costs order, on the indemnity basis.

(8) The Civil Procedure Rules 1998, section 74 (interest on judgment debts, etc) of the County Courts Act 1984 and the County Court (Interest on Judgment Debts) Order 1991 shall apply, with necessary modifications, to a detailed assessment carried out under paragraph (7)(c) as if the proceedings in the Tribunal had been proceedings in a court to which the Civil Procedure Rules 1998 apply.

(9) The Tribunal may order an amount to be paid on account before the costs or expenses are assessed.