

10554



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

**Case reference** : LON/00/00BJ/LSC/2014/0484

**Property** : 54 Warriner Gardens London SW11  
4DU

**Applicant** : Ruth Bailey

**Representative** : In person

**Respondent** : Peter Gamble (now deceased) and  
Petra Skienarova

**Representative** : Mr Miles Baird Director of SL  
Property Consultants

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

**Tribunal members** : Sara Hargreaves  
Hugh Geddes  
Laurelie Walter

**Date and venue of  
hearing** : 10 Alfred Place, London WC1E 7LR

**Date of decision** : 9<sup>th</sup> February 2015

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**DECISION**

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### **Decisions of the tribunal**

- (1) The tribunal determines that the sum of £957.90 is payable by the Applicant in respect of the service charges for the year 1<sup>st</sup> January - 31<sup>st</sup> December 2014.
- (2) The tribunal makes the determinations as set out under the various headings in this Decision.
- (3) The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge.

### **The application**

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Applicant in respect of the service charge years 2014-2016 but directions were only given in relation to 2014 and the hearing and evidence related only to that period.
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 Miles Baird, a director of SL Property Consultants Limited, which took over the management of the property in which the Applicant's flat (one of three) is situated, in January 2014 after the previous managing agents went into liquidation. Mr Baird is not a qualified surveyor and appeared on occasions to be less than familiar with a number of issues relating to the proper management of properties. In particular the tribunal was concerned at his admission that he had not read (in full) the relevant RICS Code of Practice, and was less than confident that the service charge demand complied with all statutory requirements. It was also the first time that it was made clear that one of the two landlords (Peter Gamble) had in fact died in July 2014 and the possible implications of this had not really occurred to Mr Baird, being content to rely on the management agreement signed with the landlords on 20<sup>th</sup> March 2014 (attached to the end of a bundle prepared for a mediation). On the other hand the tribunal takes into account his evidence that the previous management had been wholly unsatisfactory, and he has had some difficulties getting the management on a proper footing. However, on any view, the points which divided the parties are relatively short.

## **The background**

4. The property which is the subject of this application is a first floor flat in a converted Victorian house in Battersea, the house being divided into three flats. Only the Applicant has challenged the service charge demand which is at p22 of the bundle, and is for £938, but wholly unparticularised, even given its status as an estimate.
5. 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 will be referred to below, where appropriate. The lease is dated 10<sup>th</sup> February 1993 and is for a term of 125 years from 29<sup>th</sup> September 1992. Various relevant definitions are contained in clause 1. The tenant's obligation to pay the service charge is contained in clause 3(c) and in full in clause 7. That in turn has to be read with the landlord's obligations in clause 5 and the Fourth Schedule. Clause 7(b) provides for the landlord to prepare an account certified by an accountant at the end of each financial year: this has not yet been done in this case and the dispute therefore centred round the January 2014 estimated demand for £938. The Applicant's liability is for 35% of the relevant expenditure (lease particulars, clause 9).

## **The issues**

6. In accordance with the directions dated 9<sup>th</sup> October 2014 the relevant issues for determination are the accountancy fees, common parts electricity, building insurance and management fees.
7. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows. In particular the tribunal was assisted by the parties' competing cases as set out in the schedule prepared in accordance with the directions given. As the sum of £938 was not particularised, the parties were in reality (to start with) working off figures provided for the year end 2013 (document T in the mediation bundle) which had not been challenged by the Applicant.

## **Accountancy fees**

8. The Applicant objects to the landlord's proposal to charge £250 (based on a quote dated 12<sup>th</sup> January 2015 from a firm of chartered certified accounts, N. Lewis & Co, page D in the mediation bundle) as in previous years it was £180. But the Applicant, who proposed alternative hourly rates (p24) could not demonstrate that the figure of £250 for certifying the accounts for the property as a whole is unreasonable. Hourly rates of £50 do not establish that a figure of £250 for the entire job, is unreasonable.

### **The tribunal's decision**

9. The tribunal determines that the amount payable in respect of accountancy fees is 35% of £250.

### **Reasons for the tribunal's decision**

10. The figure of £250 is not inherently unreasonable. The Applicant could not demonstrate that the job could be reasonably done for less. The Respondent obtained a quote and has opted for the lowest figure quoted by a certified accountant.

### **Common parts electricity**

11. The amount claimed by the Respondent is £150 for the year.

### **The tribunal's decision**

12. The tribunal determines that the amount payable in respect of common parts electricity is 35% of £150.

### **Reasons for the tribunal's decision**

13. The Applicant produced hard evidence that a meter reading between July 2014 and January 2015 would generate a charge of £11.60. The daily charge is also known because there is a bill in evidence. The 2013 figure is £147. The July 2014 reading was accurate. Taking the evidence as a whole (pages E-G mediation bundle) the figure of £150 is little changed from 2013 and is reasonable. The fact that the Applicant contends that cheaper tariffs are available is not necessarily a justification for reducing the amount claimed. Mr Baird countered the Applicant's criticism that the charges were inordinately high for the timing switch system by giving evidence which the Tribunal accepted that he had asked an electrician to confirm that the supply to the common parts meter was not being diverted, and the assurance had been given.

### **Buildings insurance**

14. Evidence as to the actual premium of £1256.85 is now available (p21 trial bundle). The Applicant's main dispute is that the additional premium included in that figure for terrorism cover is not required. She contends that neither her mortgagee nor that of another leaseholder requires such cover. That does not address the cover required (if any or not) by the owner of the third flat. Mr Baird's position is that the landlord's mortgagee would require such cover; but he was unable to confirm the details.

### **Reasons and decision**

15. On balance, since this is now a common feature of many such policies, the tribunal considers it reasonable to include such cover (noting Mr Baird's commitment to removing that item if he can). The Applicant could not prove that in the circumstances of this case a 35% share of £1256.85 is unreasonable.

### **Management fees**

16. Mr Baird produced a copy of his company's management agreement signed on 20<sup>th</sup> March 2014 with the landlords: see the end of the mediation bundle. A fixed fee of £900 plus VAT for the year was agreed. The agreement speaks for itself, though the Applicant says little management has in fact been carried out. To counter that Mr Baird's evidence is that a certain amount of activity was generated by "mopping up" after the previous managing agents went into liquidation, and it is clear that he recovered part of the sinking fund which had otherwise apparently disappeared (that issue not being one that concerns the tribunal in this application, there being no charge for a payment towards the sinking fund in 2014, though such a charge is recoverable under clause 7 of the lease).

### **Reasons and decision**

17. The Applicant's case was based on a claim that a charge of £1080 was a 59% increase on previous years. Perhaps the problem with this starting point is the fact that the previous agents went into liquidation and the evidence (such that we had) was that they were not (in the end) value for money in any event. The question is whether the £900 is unreasonable. In the absence of evidence that anyone could provide the service described in the agreement for less, the amount is reasonable and is allowed by the tribunal.
18. The total comes to £2736.85 of which a 35% share is £957.90.

### **Application under s.20C and refund of fees**

19. At the end of the hearing, the Applicant made an application for a refund of the fees that she had paid in respect of the hearing<sup>1</sup>. Having heard the submissions from the parties and taking into account the determinations above, the tribunal does not order the Respondent to refund any fees paid by the Applicant. The gains made by the Applicant in coming to a hearing ie clarifying the unparticularised demand made in January 2014, were outweighed by the fact that the determined

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<sup>1</sup> The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 SI 2013 No 1169

amount is slightly higher than she was asked to pay. The Tribunal bears in mind that the amounts in question are relatively small, and there has been a failed mediation.

20. In the application form the Applicant applied for an order under section 20C of the 1985 Act. Having heard the submissions from the parties and taking into account the determinations above, the tribunal determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the Respondent may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge. This is the other side of justifying a £900 management fee: although that amount is not inherently unreasonable it does suggest that the fact that the Applicant had to issue proceedings in September 2014 to obtain hard evidence from the landlords, indicates that there was some justifiable frustration in trying to get to the bottom of the proposed 2014 figure which was only clarified after proceedings were issued.

**Name**

**Sara Hargreaves**

**Hugh Geddes**

**Laurelie Walter**

**Date: 9<sup>th</sup> February 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 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).