

11510



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

Case reference : **LON/00AX/LSC/2016/0032**

Property : **12b Arcade Parade, Kingston, KT9
1AB**

Applicant : **Tradetimes Ltd**

Representative : **Feldgate Ltd Property Management**

Respondent : **Ms Evelyn Khoo**

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

Tribunal members : **Ruth Wayte (Tribunal Judge)
Michael Mathews FRICS**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of decision : **5 May 2016**

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the sum of £4,432.82 is payable by the Respondent in respect of the outstanding service and administration charges.
- (2) The tribunal makes the determinations as set out under the various headings in this Decision.
- (3) The tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985.
- (4) Since the tribunal has no jurisdiction over county court costs and fees, this matter should now be referred back to the Kingston County Court to deal with the rest of the claim, including interest.

The application

1. The parties seek 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 certain service charges and administration charges payable by the Respondent in respect of the service charge years 2007 to 2015.
2. The proceedings were originally issued in the County Court Business Centre under claim no. B2QZ10H2. The claim was transferred to the Kingston County Court and then in turn transferred to this tribunal, by orders of District Judge King dated 24 August 2015 and 30 December 2015.
3. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

4. The Applicant was represented by Mr Berger at the hearing and the Respondent appeared in person, together with her witness Mr Cressey.
5. Following receipt of the hearing bundle, the tribunal had received a witness statement from Andrew Cressey for the Respondent and had requested further documents from the Applicant. Mr Berger raised an objection to the late service of the witness statement but this was not upheld by the tribunal. The statement was short and factual, relying on matters which were within Mr Berger's knowledge. In the circumstances the tribunal determined that there was no prejudice to

the Applicant, who effectively was also introducing evidence at a late stage, in terms of the documents requested by the tribunal.

The background

6. The property which is the subject of this application is a flat in a medium-sized block with commercial premises beneath, known as Arcade Parade. The parade was mainly built in the 1930s of brick with a tiled roof. The flats can be accessed from street level by way of communal stairs with asphalted balcony walkways to the front and rear at first floor level. The walkways are edged by brick walls (“the balcony walls”).
7. The tribunal inspected the property after the hearing in the presence of Mr Berger, Ms Khoo and Mr Cressey.
8. The Respondent 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 of 1/30th of the Annual Maintenance Provision estimated by the lessor. The specific provisions of the lease will be referred to below, where appropriate.

The issues

9. The claim had originally included arrears of ground rent but these were cleared by the Respondent before the hearing. She had also paid £3,000 towards the outstanding service charges, reducing that claim to £4,772.75. At the start of the hearing the parties identified the relevant issues for determination as follows, the Respondent having made a number of concessions in relation to other previously disputed items:
 - (i) The payability and/or reasonableness of service charges for the major works to the balcony walls and walkways;
 - (ii) The reasonableness of charges for communal cleaning from 2007 to 2012;
 - (iii) The reasonableness of charges for communal waste bins from 2010 to 2012;
 - (iv) The reasonableness of management fees in relation to lighting works carried out in 2012;
 - (v) The Applicant’s claim for costs of £1,080.

10. 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.

Major works

11. The works involve the total resurfacing of the walkway and rebuilding of the majority of the balcony walls to the rear of the parade and some replacement of the walls to the front. The total estimated costs were £265,254.90, with the Respondent's outstanding contribution being £4,440.07. The Respondent's objections as set out in her statement dated 6 March 2016 were based on the unsuitability of the chosen contractor and a claim that the Applicant's delay in carrying out the works had led to an increase in the overall cost.
12. The works had been awarded to Maintaining London Ltd (the trading name of Cranescot Ltd) after a competitive tender with one other bidder. Maintaining London had submitted the lower quote but the Respondent's concerns were based on the fact that there was a long history of the Applicant placing work with Cranescot and some connection in terms of directors, albeit dating back a few years. Her final concern was that there was an active proposal to strike Cranescot off the corporate register. Mr Berger's response was that there was no current connection in terms of directors. Cranescot were a trusted provider. It was difficult to obtain quotes for works of this nature – a fact admitted by the Respondent who had been unable to get any alternative quotes herself. He had raised the striking off issue with the company and would ensure this was resolved before making payment.
13. In terms of the delay, the Respondent relied on a surveyor's report from 2002 which stated that the "asphalt is generally in need of attention and repair/replacement is required in many areas". She acknowledged some patch repairs had been done but asserted that delay must have added to the scope and cost of the works now proposed. Mr Berger pointed out that the rear walkways were used by all the residents and even if works had been carried out in 2002 it would be likely that further works of repair would be due now, some 14 years later. The Respondent focused her objection of the replacement of the balcony walls to the front of the parade, conceding that the rear walkways and walls required total replacement.
14. The Applicant had provided a summary of the cost of the works and the apportionment between the flats and the commercial units. The Respondent raised an objection to the amount sought for preliminaries, namely £35,000. She submitted that £20,000 was a more reasonable sum. Mr Berger subsequently provided the detailed specification which set out the requirements of the contractor and a contract period of 16 weeks.

15. The final consideration was whether the cost of the works had been properly apportioned between the residential and commercial units. Although the primary purpose of the walkways was for access to the residential flats, they also formed part of the roof to the shops below, who had complained of leaks. Mr Berger gave evidence that there was an accepted practice of dividing service charges for works which benefited the shops on a ratio of 3:1, reflecting the requirement in the lease for a "fair proportion". In fact, the asphaltting had been charged equally between the flats and the shops. The Respondent accepted that the costs had been fairly apportioned save in respect of the scaffolding costs of £19,500 and notices and fees of £1,000 which had been charged in their entirety to the flats. She submitted that at least 5% should be apportioned to the shops.

The tribunal's decision

16. On inspection of the parade it was apparent that the surface of the walkways and the balcony walls to the rear required total replacement, although there was clear evidence of repairs having been carried out in the past. Mr Berger had produced a detailed specification of works which indicated that only part of the balcony walls to the front of the property were to be replaced and none of the asphalt to the front walkway, which appeared to be in good condition. The Applicant provided evidence of a competitive tender, with the chosen contractor submitting the lowest bid. The Respondent has adduced no evidence to support her claim that any relationship with the contractor or the delay in carrying out the works had increased their cost. In the circumstances, the tribunal determines that the overall scope of the works and the estimated costs appear reasonable.
17. In terms of the cost of the preliminaries, bearing in mind that the total quote was the lower of the two and that these are estimated costs, the tribunal does not consider it appropriate to single out an item within that quote unless it appears grossly excessive. Given that the works are substantial with an estimated contract length of 16 weeks, a cost of just over £2,000 per week for preliminaries is not excessive.
18. However, the tribunal considers that there should be some apportionment to the shops in relation to the scaffolding and notice costs of £20,500. Taking into account the relative benefit to the shops, the tribunal determines that a 9:1 ratio is appropriate. This reduces the flats' contribution to those items to £18,450 and the Respondent's individual contribution by £68.27.
19. In the circumstances the tribunal determines that the amount payable by the Respondent in respect of the estimated major works is £4,317.80.

Communal cleaning

20. The Respondent's challenges to the service charges for cleaning, waste bins and management charges applied to the lighting works formed her counterclaim in respect of the unpaid service charges, which she had previously estimated at £3,000. The charge for communal cleaning was one of the biggest items of service charge expenditure. The charges were based on a twice weekly visit and were mainly for ensuring the communal stairways and walkways were kept free from litter and clean. Having inspected the property the scale of the exercise was much clearer, involving several staircases from street level to the front and rear of the parade and long walkways to the flats. The current standard of cleaning appeared to be high, as admitted by the Respondent who had no complaints in respect of the current charges of just over £1,000 per month for the whole parade. Her objections were based on the poor standard of cleaning in the past, she submitted that those services were worth at best 50% of the amount charged, from 2007 to the end of 2012.
21. Mr Berger stated that the Applicant had tried to address the complaints to the best of their ability and had already applied a rebate of 2 months in 2012 as a response to the complaints.

The tribunal's decision

22. The communal staircases and walkways at the parade are fairly substantial and on balance would appear to justify the current charges of some £100 per visit. The tribunal queries whether a twice weekly service is necessary, although does not consider that level of service excessive – provided the standard of cleaning is good. Although both the respondent and her witness maintained the standard of cleaning from 2007 was poor, the written complaints on the file and the witness statement of Mr Cressey focus on 2012. Bearing in mind Mr Berger's concession that the cleaning services were not up to standard during that period, the tribunal considers that a reduction in the service charge item of 50% for 2011 and 2012 reflects the actual service provided. The charge for cleaning as shown in the service charge expenditure account for those years was £12,016 and £12,560 respectively. Bearing in mind that the Applicant had already applied a rebate of 2 months for 2012, the total reduction amounts to £10,194.67 of which the Respondent's share is £339.48.

Waste bins

23. The Respondent objected to the charges for 2010 to 2012 on the basis that two bins were unnecessary. That item was charged at £691, £999 and £1,045 respectively. The Respondent maintained that 50% of those amounts would represent a reasonable charge. Mr Berger conceded a rebate of 6 months was due for 2012 and accepted that bins were finally provided by the council at no charge to the leaseholders.

The tribunal's decision

24. The tribunal agrees with the Respondent that the hire charges were excessive. In the circumstances and bearing in mind Mr Berger's concession that one bin was sufficient a rebate is due of 50% of the total charged, being £1,367.50 of which the Respondent's share is £45.54.

Management fees

25. The Respondent challenged the management fees of 10% or £3,000 which were applied to the lighting works carried out in 2011/12. She submitted that 3% was a more appropriate percentage, as charged for the proposed major works. Mr Berger's response was that the work in terms of consultation with the leaseholders was much the same for any major works and therefore resulted in a higher percentage where the overall costs were lower.

The tribunal's decision

26. The tribunal considers that 10% or £3,000 is too high for management fees in relation to the lighting works, bearing in mind the works were supervised by surveyors and relatively limited. A reasonable percentage to reflect additional management of the project is 6% or £1,800. This amounts to a rebate of £1,200, of which the Respondent's share is £39.96.
27. That makes the total counterclaim, to be set off against the sums claimed by the Applicant, £424.98.

Applicant's costs

28. The claim for costs was for 10 hours at £90 per hour plus vat, amounting to £1,080. The Respondent claimed that an hourly rate of £45 was reasonable but made no objection to the number of hours or the claim in principle. In the absence of any evidence from Mr Berger as to how he calculated his hourly rate, the tribunal agrees that £45 per hour is reasonable for managing agents, reducing this item to £540.

Application under s.20C

29. At the hearing, the Respondent 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 no order should be made. The Respondent had withheld service charges and although she has succeeded to a limited extent with her counterclaim, there is still a substantial amount outstanding in favour of the Applicant.

30. The total amount due to the Applicant is £4,432.82 (£4,317.80 - £424.98 + £540). It is hoped that the parties can agree terms to finalise proceedings, pending any agreement these proceedings will be returned to the Kingston County Court to deal with the Applicant's claim for interest and court costs.

Name: Ruth Wayte

Date: 5 May 2016

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

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 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).