



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

Case reference : **LON/00AY/LSC/2016/0103**

Property : **86 Elkington Point, Lollard Street,
London SE11 6UG**

Applicant : **Mr B Linacre**

Representative : **In person**

Respondent : **The London Borough of Lambeth**

Representative : **In person**

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

Tribunal members : **Mrs S O’Sullivan
Mr H Geddes RIBA**

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

Date of decision : **9 May 2016**

DECISION

Decisions of the tribunal

1. The tribunal determines that the amount payable in respect of concierge services for 2014/15 and 2015/16 is £394.04 and £394.83 respectively.
2. 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.
3. The tribunal determines that the Respondent shall pay the Applicant £90 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") as to the amount of service charges payable by the Applicant. The charges in issue are concierge charges for the years 2014/15 and 2015/16.
2. The relevant legal provisions are set out in the Appendix to this decision.
3. The matter was fixed for a paper determination and as neither party requested an oral hearing the application was considered on the papers alone on 9 May 2016.

The background

4. The property which is the subject of this application is described in the application as a one bedroom flat in a purpose built local authority block of flats.
5. 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.
6. 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 charges

7. The Applicant was charged £658.14 for 2014/15 and £664 for 2015/16 in respect of concierge charges. The Applicant says the costs should be £394.04 and £394.83 respectively.
8. Directions were made dated 9 March 2016. These provided for the Applicant to serve a bundle containing his evidence by 15 April 2016 and for the Respondent to serve a bundle in response by 28 April 2016. The Applicant served his bundle on 25 April 2016. No bundle has been received from the Respondent.
9. The address given for the Respondent in the application was 1st Floor Blue Star House, 234-244 Stockwell Road London SW9 9 SP. No written response has been received from the Respondent. However the tribunal has been provided with a copy of an email chain between John Gillon of Home Ownership & Property Services and is satisfied that the Respondent is aware of the tribunal proceedings. It also notes that the address at which the Respondent was served is noted as the address for Home Ownership and Property Services in that email.
10. Elkington Point is said to be a local authority tower block being one of three which make up the Ethelread Towers Estate. The three towers are served by one concierge station located on the ground floor of Brittany Point. The station is open from 7am to midnight 365 days a year. The concierge is managed by the North Lambeth Area Concierge Manager who is responsible for running 7 concierge stations. The cost of the concierge system increased by 81.54% in 2014/15.
11. The Applicant set out his case in his statement of case. His calculations are based on information obtained using Freedom of Information Requests and other information provided by the Respondent. It is confirmed that in attempting to settle this matter the Applicant has been in contact with the Respondent which has provided him with a breakdown of the total contractual cost for providing a concierge service to the North London Area and the basis used to apportion the area cost to the seven component estates of which Ethelread Towers is one. He has carried out his own calculation of the cost of the service based on the method used by the Respondent up until 2014/15 and compared it with that actually charged. He apportioned a cost for the charges to 86 Elkington Point (the "Flat") on the basis of the rateable value of the Estate compared with the rateable value of 86 Elkington Point. The Respondent has stated that the apportionment is carried out on the basis of the relative number of hours of concierge service that are provided on each estate. The Applicant confirms that he accepts all of the information provided by the Respondent being the contractual cost of providing the North Area Concierge Service for 2014/15 and 2015/16 and the methods of apportionment adopted by the Respondent.

12. The Applicant's calculations show a disparity in the actual contractual cost for each year and the amount in fact charged, working out that the contractual cost for the Flat in 2014/15 and 2015/16 was £394.04 and £394.83 respectively compared to the amounts charged of £658.14 and £664 respectively. The Applicant has requested an explanation from the Respondent for the increase above the contractual cost but has received no reply. The Applicant therefore says that in the absence of an explanation the amount found to be payable should be £394.04 and £394.83 for the two service charge years in issue.
13. As stated above the tribunal has received no statement of case from the Respondent. It has however been provided by the Applicant with a series of emails between the Applicant and employees of the Respondent. It is apparent from that correspondence that the Respondent is already looking in to concierge charges following a request made by Kate Hoey MP. Following a significant number of complaints that the previous method did not reflect the consumption it appears that the Council decided on an alternative method of apportionment in 2014/15 which took into account the number of hours the service was delivered to a particular estate before the costs were sub-apportioned against the customary Rateable Values. It is further confirmed in an email of 16 March from Mr Gillon that the Council is "*currently communicating with both the contractor that supplies the Concierge Service and a colleague from Estate Services, to ensure that the methodology of cost apportionment and the Actual amount meet the Council's contractual liabilities*". However on 31 March 2016 Mr Gillon confirmed that he was leaving the Respondent's employment. It seems that no further action has been taken.

The tribunal's decision

14. The tribunal determines that the amount payable in respect of concierge services for 2014/15 and 2015/16 is £394.04 and £394.83 respectively.

Reasons for the tribunal's decision

15. The tribunal has been provided with the Applicant's calculations which show a large disparity in the costs claimed for these service charge years when using the method of apportioning by reference to rateable values. The tribunal has no statement from the Respondent. However from the email correspondence it appears to be accepted that the new method adopted in 2014/15 may not comply with the lease provisions and the Respondent appears to be investigating a change to its apportionment of the charges. In the absence of an explanation from the Respondent as to the huge disparity and the actual costs of the service as set out in the Applicant's extensive and detailed calculations the tribunal finds the charges proposed by the Applicant to be reasonable.

Application under s.20C and refund of fees

16. Taking into account the determinations above, the tribunal orders does the Respondent to refund any fees paid by the Applicant within 28 days of the date of this decision.
17. In the statement of case, the Applicant applied for an order under section 20C of the 1985 Act. 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.

Name: S O'Sullivan

Date: 9 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 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).