



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

Case Reference : LON/00BG/LSC/2015/0367

Property : 305 The Listed Building The
Highway Tower Hamlets London
E1W 3HU

Applicant : David Fox

Representatives : In person

Respondent : Free Trade Wharf Management
Company Limited

Representative : Mr James Sandham of Counsel

Type of Application : Reasonableness of and liability for
service charges and administration
charges under the Landlord and
Tenant Act 1985 (Section
27A)/Commonhold and Leasehold
Reform Act 2002 (Schedule 11)

Tribunal Members : Prof Robert M. Abbey (Solicitor)
Mr Trevor Sennett (Professional
Member)

**Date and venue of
Hearing** : 8th January 2016 at 10 Alfred
Place, London WC1E 7LR

Date of Decision : 14 January 2016

DECISION

Decisions of the tribunal

1. The tribunal determines that the service charges for the property that gave rise to this application and hearing are payable by the applicant as demanded by the respondent without deduction or reduction. The reasons for our decision are set out below.

The application and procedural background

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 charge payable by the applicant in respect of service charges payable for services provided at 305 The Listed Building The Highway Tower Hamlets London E1W 3HU, (the property) and the liability to pay such service charge.
2. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

3. The applicant was in person at the hearing and the respondent was represented by Mr J. Sandham of Counsel.
4. The tribunal had before it an agreed bundle of documents prepared by the applicant. However, additional documents were handed to the tribunal by the applicant and the respondent before or during the hearing. Because these served to assist the parties, the tribunal felt it was appropriate to admit the additional papers in view of the terms of Rule 3 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 S.I. 2013 No. 1169 (L. 8). In particular the tribunal decided that by admitting the papers they would be dealing with the case fairly and justly by ensuring, so far as practicable, that the parties were able to participate fully in the proceedings. The additional papers also ensured that the tribunal was able to use its special expertise effectively and would avoid delay, so far as compatible with proper consideration of the issues.
5. At the hearing the tribunal had the benefit of hearing oral evidence from one witness for the respondent as well as the applicant himself. The one witness giving evidence for the respondent was Derek Snowball a director of the respondent company. There were no other witnesses for the applicant.

The background

6. The property which is the subject of this application is one of several leasehold units within a block of flats or maisonettes. The respondent occupies flat 305, and this is described in the lease as being the flat specified in the particulars of the lease where it is called Flat Number 305 The Listed Building 350 The Highway London E1.
7. 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.
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.
9. The issues the respondent raised covered the reasonableness of the charges raised for the several years listed in the application and carried out by the respondent. The applicant considered that the items were excessive, inaccurate or unreasonable. The applicant says therefore these service charges are not properly payable while the respondent says they have been reasonably incurred.
10. The items in dispute at the hearing were first identified as being the percentage chargeable to the applicant for the years 2006, 2007, 2008, 2009, 2010, 2011 and 2012. The applicant asserted that the percentage in his lease was stated to be 2.05% but the amounts being charged by the respondent was higher at 2.29%. Secondly, he also challenged the budgets, the estimates, for 2014 and 2015, as being excessive given the percentage increases involved.

The service charges claimed

11. Dealing firstly with the percentage dispute affecting the years 2006 to 2012 at the hearing the respondent explained that there was clause in the lease permitting the lessor, on written notice to increase the percentage. Back in 2002 when there was a previous landlord and other managing agents such a notice had been served. However, a copy had not been located but at the time of the hearing the respondent was finally able to produce a copy notice. This had been served upon the applicant in accordance with the terms his lease by letter dated 1 April 2002 from the lessors then managing agents and authorised the increased service charge percentage of 2.29%. In the light of this somewhat late disclosure the applicant conceded that the amounts claimed for the years mentioned above were therefore accurate and he no longer sought to pursue this element of his application. In the light of this admission the tribunal was able to determine in favour of the

respondent with regard to this aspect of the dispute namely for service charge years 2006 to 2012 at 2.29%.

12. The tribunal moved on to the second element of the application regarding the two disputed years of 2014 and 2015 concerning the estimated charges raised by the respondent. The evidence submitted for the respondent was by a company director who was able to provide detailed breakdowns of what work was to be done. This was true of the usual annual charges as well as for novel major works such as major roof works.
13. The evidence submitted for the applicant did not convince the tribunal that any of the charges were either unreasonable or excessive. Sadly, much of the evidence was about the percentage increase but when considered in detail it became clear that these were clearly referable to major works such as the roof repairs required to this old listed building. Other evidence given by the applicant was not relevant or sufficient to persuade the tribunal that the charges were unreasonable. The applicant did not challenge any specific items in the budgets in that he did not produce any like for like evidence to show what figures were unreasonably high. In these circumstances, having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal determines the second issue as follows.
14. Dealing with the estimated charges for 2014 and 2015 we agree the amounts proposed and charged by the respondent in their budgets for the years in question. The tribunal could not find anything in the evidence for the applicant that could in any way amount to a serious challenge to the otherwise comprehensive and detailed evidence submitted for the respondent. Indeed the evidence presented by the respondent was clear and detailed and showed precisely what was to be charged and indeed what these charges were for, including the provision of a reserve account to build up a fund to cover future works that may arise in an old building such as this one.

Application under s.20C

15. There was an application as to whether costs under section 20C would be considered by the tribunal. Having heard the submissions from the parties and taking into account the determinations set out above the tribunal determines that it is just and equitable in the circumstances not to make an order under section 20C of the 1985 Act. The applicant did make an application for an order that all of the costs incurred by the landlord in connection with these proceedings before the tribunal 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 but the tribunal is of the view that it should not make such an order. The tribunal had in mind that the respondent has been successful in all

parts of the disputed areas and as such felt that it was appropriate to take this view of section 20c accordingly.

16. A second application was made by the Applicant for costs under Rule 13 of the tribunal rules in respect of the costs of the applications/hearing. Having heard and considered the submissions from the parties and taking into account the determinations set out above, the tribunal does not make an order for costs.
17. The tribunal's powers to order a party to pay costs may only be exercised where a party has acted "unreasonably". Taking into account the guidance in that regard given by HH Judge Huskinson in *Halliard Property Company Limited v Belmont Hall & Elm Court RTM, City and Country Properties Limited v Brickman LRX/130/2007, LRA/85/2008*, (where he followed the definition of unreasonableness in *Ridehalgh v Horsefield* [1994] Ch 205 CA), the tribunal was not satisfied that there had been unreasonable conduct so as to prompt an order for costs.
18. In *Ridehalgh* it was said that "'Unreasonable" also means what it has been understood to mean in this context for at least half a century. The expression aptly describes conduct which is vexatious, designed to harass the other side rather than advance the resolution of the case, and it makes no difference that the conduct is the product of excessive zeal and not improper motive. But conduct cannot be described as unreasonable simply because it leads in the event to an unsuccessful result or because other more cautious legal representatives would have acted differently. The acid test is whether the conduct permits of a reasonable explanation. If so, the course adopted may be regarded as optimistic and as reflecting on a practitioner's judgment, but it is not unreasonable." Consequently, in the light of the conduct of the respondent there is no order for costs.

Name: Judge Professor Robert
M. Abbey

Date: 14. January. 2016

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

- (1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
 - (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
 - (b) the whole or part of which varies or may vary according to the relevant costs.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose -
 - (a) "costs" includes overheads, and
 - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
 - (a) only to the extent that they are reasonably incurred, and
 - (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;and the amount payable shall be limited accordingly.
- (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

- (1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to -
 - (a) the person by whom it is payable,
 - (b) the person to whom it is payable,
 - (c) the amount which is payable,

- (d) the date at or by which it is payable, and
 - (e) the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
- (a) the person by whom it would be payable,
 - (b) the person to whom it would be payable,
 - (c) the amount which would be payable,
 - (d) the date at or by which it would be payable, and
 - (e) the manner in which it would be payable.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which -
- (a) has been agreed or admitted by the tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
 - (c) has been the subject of determination by a court, or
 - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Section 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

Administration charges

Part 1 Reasonableness of administration charges

Meaning of “administration charge”

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.

Reasonableness of administration charges

2 A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

3(1) Any party to a lease of a dwelling may apply to a leasehold valuation tribunal for an order varying the lease in such manner as is specified in the application on the grounds that—

- (a) any administration charge specified in the lease is unreasonable, or
- (b) any formula specified in the lease in accordance with which any administration charge is calculated is unreasonable.

(2) If the grounds on which the application was made are established to the satisfaction of the tribunal, it may make an order varying the lease in such manner as is specified in the order.

(3) The variation specified in the order may be—

- (a) the variation specified in the application, or
- (b) such other variation as the tribunal thinks fit.

(4) The tribunal may, instead of making an order varying the lease in such manner as is specified in the order, make an order directing the parties to the lease to vary it in such manner as is so specified.

(5) The tribunal may by order direct that a memorandum of any variation of a lease effected by virtue of this paragraph be endorsed on such documents as are specified in the order.

(6) Any such variation of a lease shall be binding not only on the parties to the lease for the time being but also on other persons (including any predecessors in title), whether or not they were parties to the proceedings in which the order was made.

Notice in connection with demands for administration charges

4(1) A demand for the payment of an administration charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to administration charges.

(2) The appropriate national authority may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.

(3) A tenant may withhold payment of an administration charge which has been demanded from him if sub-paragraph (1) is not complied with in relation to the demand.

(4) Where a tenant withholds an administration charge under this paragraph, any provisions of the lease relating to non-payment or late payment of administration charges do not have effect in relation to the period for which he so withholds it.

Liability to pay administration charges

5(1) An application may be made to a leasehold valuation 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 a leasehold valuation 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).