

12454



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

Case Reference : LON/OOAE/LSC/2017/0112

Property : 5 Linford Court Elmwood Crescent
London NW9 0NP

Applicant : Home Group Limited

Representatives : Mr Chris Green Solicitor

Respondent : Mr Michael Jackman

Representative : In person

Type of Application : Reasonableness of and liability for
service charges and administration
charges under the Landlord and
Tenant Act 1985

Tribunal Members : Judge Professor Robert M. Abbey
(Solicitor)
Mrs Sarah Redmond (Surveyor)
MRICS
Mr Nat Miller (Lay Member)

**Dates and venue of
hearings** : 31st July 2017 and 26th October 2017
at 10 Alfred Place, London WC1E
7LR

Date of Decision : 30th October 2017

DECISION

Decisions of the tribunal

1. The Tribunal determines that as at the date when the county court proceedings were issued by the applicant there was payable by the respondent to the applicant all the service charges claimed by the applicant save as relates to service charges for grounds maintenance. Therefore the service charges claimed are determined to be reasonable service charges payable by the respondent to the applicant pursuant to the terms of the lease of the property other than charges relating to grounds maintenance which are disallowed in full.
2. The file shall be returned to the Willesden County Court for the determination of the following claims which this tribunal does not have jurisdiction to determine:
 - o Court fee, interest and
 - o Costs
3. The reasons for our decisions are set out below.

The application and procedural background

4. In 2016 the applicant landlord commenced legal proceedings in the county court for the recovery of service charges against the respondent as proprietor of a long lease of the subject property. The works that gave rise to the service charges were carried out over several years as detailed in the statement attached to the claim form. The Directions issued by the tribunal on 25 April 2017 noted that "A statement of account was attached to those proceedings for the period 5 July 2011 to 1 July 2016. However it was identified in the county court that there have been previous proceedings in this tribunal under reference LON/OOAE/LSC/2014/0250 and a determination issued in respect of service charges to the year ending 31 March 2013. District Judge Holmes therefore ordered that the proceedings be transferred to this tribunal as to the liability for service charges since 2012/2013." The claim was for £6585.85.
5. The respondent did file a defence which asserted that the respondent was not liable because he said the costs were excessive or wrong, not done when required and he was being charged for work that was being done by Brent Housing Partnership and not the applicant. Consequently the respondent considered that he was entitled to challenge the claimed service charges.
6. The applicant's claim concerning the determination of service charges referenced CM44YM782 was transferred to this tribunal by order of District Judge Holmes from the County Court at Willesden. The date of

the order was 25 November 2016. The claim made in the county court was for unpaid service charges since 2012/2013.

1. The relevant legal provisions relating to this matter are set out in the Appendix to this decision and rights of appeal made available to parties to this dispute are set out in an Annex.

The hearing

2. There were two oral hearings on the dates shown above. The applicant was represented by Mr Chris Green. The respondent was also in attendance appearing on his own behalf as a litigant in person.
3. In the Directions of 25 April 2017 mentioned above Judge O'Sullivan confirmed that she took some time to explain how the respondent should prepare his case. It was stressed that it was not sufficient for the respondent to simply say a cost was too high or of a poor standard. The respondent was told he should produce evidence in support of his challenges and attach it to his statement of case. In addition he was also advised that evidence must be relevant to the year in dispute. He was told that it was not sufficient to attach photographs of the condition of the grounds from the present day when the dispute relates to an earlier year or years. Where it was alleged by the respondent that management is poor, evidence of management failures needed to be attached to his statement of case.
4. Regrettably the respondent did not file and serve a formal statement of case relevant to this dispute. What was produced to the tribunal seemed to emanate from the previous tribunal hearing referred to in paragraph 4 of this decision. One such item was a letter dated 29 September 2014, addressed to the Judge who chaired the previous tribunal as well as a witness statement filed in the Willesden County Court and dated 17 November 2017. This was the most recent response from the respondent that the tribunal could refer to. It exhibited photos that seemed to have been taken in 2009.
5. 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. The landlord applicant claimed service charges of £6585.85. It is this sum that is in dispute and is the item referred to the tribunal by District Judge Holmes.

The service charges claimed

6. Having read and heard oral evidence and submissions from the parties and considered all of the documents provided, the tribunal determines the issue as follows.

7. In regard to the claimed service charges the tribunal finds that the service charges claimed are reasonable and payable by the respondent other than the service charges that relate to grounds maintenance. The service charges for grounds maintenance are disallowed in full. The evidence for the payability and reasonableness of the service charges was provided by the applicant in the applicant's statement of case and is set out in summary in the following paragraphs.
8. Dealing first with the payability of the service charges claimed by the applicant it is clear that the lease of the property contains provisions requiring the respondent to pay service charges demanded by the applicant. The lease definitions clearly delineate the extent of the property and the estate in which it is located. Clause 7(2) of the lease requires the respondent to pay to the applicant service charges. Clause 5(3) then sets out the service charge tasks to be performed by the lessor such as the maintenance and renewal of the roof foundations and main structure of the building in which the property is located. Accordingly pursuant to these lease provisions the applicant is responsible for all maintenance and repair works in respect of the upkeep of the whole building at Linford Court and therefore is dependent upon the leaseholders paying the duly demanded service charge in full.
9. The tribunal was informed at the time of the first hearing that the last payments made by the respondent were two separate payments of £250 on 17 April 2013 and again on 18 April 2013. There had been no further payments received by the applicant at that time for all the years since those 2013 payments.
10. It was clear at the hearing that the following were items in dispute:
 - (i) Ground maintenance
 - (ii) Cleaning works
 - (iii) Repair costs cost of replacement light bulbs and communal electricity
 - (iv) Insurance.
 - (v) Management charge

Each of these service charge items in dispute will now be considered.

11. Ground maintenance. This service charge proved to be a thorny issue for the parties and the tribunal. It emerged from the evidence provided at the hearings that it was possible that two parties were seeking to cut the grass at the property. Grass cutting seems to be the major element

of this charge. The parties involved appear to be the applicant and Brent Council, both via their contractors. At the end of the first hearing date the tribunal directed that copies of the registered titles be provided to the tribunal so that the ownership of the property could be clarified. The tribunal also directed that the parties make submissions in the light of the details in the two registered titles.

12. The tribunal, at the time of the second hearing date had the benefit of copies of the registered titles .Title number NGL 189965 was of the freehold land being Linford Court 20 Elmwood Crescent London NW9 0NP. The registered proprietor is shown as Home Group Limited, the applicant. Unfortunately on looking at the title plan for NGL 189965 it is apparent that the freehold only extends to the building being Linford Court together with two small plots which Mr Jackman said were stores at the site. None of the surrounding grounds were part of the freehold title or what appeared on the plan to be parking spaces.
13. Mr Green correctly pointed out that the title also included certain exclusive rights over the surrounding grounds as set out in the property register of NGL 189965. The rights are in the main in respect of a right to park vehicles on the land coloured yellow on the title plan and a right of way on foot over the communal grounds tinted brown on the title plan.
14. The tribunal also had sight of the freehold property registered under title number MX86663 being land on the east side of Elmwood Crescent Wembley. The registered proprietor of this land is the London Borough of Brent. The title plan purports to show that most but not all of the surrounding land outside Linford Court was in the ownership of the council. Land to the south west of the Court did not seem to be in this title.
15. This led the tribunal to the inescapable conclusion that the applicant did not own the surrounding land over which the grounds maintenance was carried out and as such the work if done was being done to land not in the ownership of the landlord. It might also explain why it is possible that two different parties seem to be involved in carrying out grounds maintenance. Indeed, Mr Green did inform the tribunal that his client had tried on several occasions to raise this issue with Brent Council but without any meaningful response being forthcoming from the local authority.
16. Mr Green did seek to assert that to be able to exercise the rights in the title grass cutting would be required. The tribunal was not persuaded by this argument. If the party suffering the burden of the right of way (Brent) did not maintain the land in a way such that the right of way was not possible, or being limited, then the party with the benefit of the right of way (the applicant) needed to take issue with Brent rather than charge the lessees. For that reason , and because the applicant cannot

charge for services carried out on land they do not own the tribunal felt they had no alternative other than to disallow this charge in full for all the years under consideration.

17. Cleaning works. The tribunal was satisfied from the evidence before it that the charges for cleaning were reasonable and payable. The work had been carried out and the respondent had failed to provide any convincing evidence to the contrary. In these circumstances the tribunal were satisfied as to the reasonableness of these charges.
18. Repair costs, cost of replacement light bulbs and communal electricity. The tribunal was similarly satisfied from the evidence before it that the charges for these various items were reasonable and payable. The work had been carried out and the respondent had failed to provide any convincing evidence to the contrary. In these circumstances the tribunal were again satisfied as to the reasonableness of these charges. The tribunal did suggest to the parties that at the end of the hearing it might be helpful if they did discuss the ongoing issues with the lighting as this could represent a useful outcome.
19. Insurance. The applicant produced to the tribunal copy insurance schedules for the relevant years as well as copy statements of service charge relevant to the insurance. At the hearing the respondent accepted the reasonableness of all the insurance charges. The tribunal therefore finds all these charges reasonable and payable by the respondent.
20. Management charge. The applicant produced to the tribunal a "Schedule of Management Fee" giving details the nature and basis for these charges. It highlighted both the general management and financial management tasks undertaken for which charges were levied. The tribunal were satisfied with the level of these charges which they found to be reasonable and also noted that respondent failed to provide any convincing evidence to the contrary. In these circumstances the tribunal were again satisfied as to the reasonableness of these management charges.

Transfer back to the County Court

21. There were some claims made in the court proceedings which we do not have jurisdiction to determine. We have therefore transferred the file back to the County Court so that these claims may be pursued if the applicant wishes to do so.

Application for costs

22. At the end of the hearing an application was made by the Applicant for no order under section 20C of the 1985 Act so that the Applicant should

be allowed to add its costs incurred in connection with these proceedings before the tribunal regarding the reasonableness and payability of the service charge. The Applicant has been almost wholly successful on the issues before this tribunal. In the circumstances the tribunal declines to make a section 20C order. Therefore the applicant can add its reasonable costs incurred in connection with these proceedings to the service charge to the extent (if at all) that the lease of the property allows for these costs to be recovered.

Name: Judge Professor Robert
M. Abbey

Date: 30 October 2017

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 subparagraph (1).

The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 S.I. 2013 No. 1169 (L. 8)

Overriding objective and parties' obligation to co-operate with the Tribunal

3.

(1) The overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly.

(2)

Dealing with a case fairly and justly includes—

(a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties and of the Tribunal;

(b) avoiding unnecessary formality and seeking flexibility in the proceedings;

(c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;

(d) using any special expertise of the Tribunal effectively; and

(e) avoiding delay, so far as compatible with proper consideration of the issues.

(3)

The Tribunal must seek to give effect to the overriding objective when it—

(a) exercises any power under these Rules; or

(b) interprets any rule or practice direction.

(4)

Parties must—

(a) help the Tribunal to further the overriding objective; and

(b) co-operate with the Tribunal generally.

Orders for costs, reimbursement of fees and interest on costs

13.

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

(a) under section 29(4) of the 2007 Act (wasted costs) and the costs incurred in applying for such costs;

(b) if a person has acted unreasonably in bringing, defending or conducting proceedings in—

(i) an agricultural land and drainage case,

(ii) a residential property case, or

(iii) a leasehold case; or

(c) in a land registration 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(a), section 74 (interest on judgment debts, etc) of the County Courts Act 1984(b) and the County Court (Interest on Judgment Debts) Order 1991(c) 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.

ANNEX - RIGHTS OF APPEAL

1. 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.
2. 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.
3. 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.
4. 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.