

12381



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

Case Reference : LON/00AT/LSC/2017/0166,
LON/00AT/LSC/2017/0176 and
LON/00AT/LSC/2017/0190

Property : 259 Wooldridge Close Feltham
Middlesex TW14 8BY

Applicant : Notting Hill Home Ownership
Limited.

Respondent : Mr Samuel Okafor and Mrs Xaviere
Daniele Okafor

Type of Application : Section 27A Landlord and Tenant
Act 1985 and Schedule 11
Commonhold and Leasehold
Reform Act 2002

Tribunal Members : Mrs E Flint DMS FRICS IRRV
Mr P Roberts DipArch RIBA

**Date and venue of
determination** : 22 June 2017
10 Alfred Place, London WC1E 7LR

Date of Decision : 30 August 2017

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the amended charges shown on the attached schedule are payable.
- (2) The tribunal determines that no administration charges are payable as none have been entered on the Respondent's service charge account.
- (3) The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the tribunal proceedings may be passed to the lessee through the service charge.
- (4) Since the tribunal has no jurisdiction over county court costs and fees, this matter should now be referred back to the Staines County Court.

The application

1. Proceedings were originally issued in the Business Centre of the County Court on 3 May 2016. The claim was transferred to the Staines County Court and then in turn transferred to this tribunal, by order of District Judge McCulloch on 23 February 2017 under claim number C3QZ39G9 to consider the amount of the service charge and the services provided.
2. The Tribunal received an application dated 27 April 2017 from the Applicant Landlord under s27a of the Landlord and Tenant Act 1985 (the Act) in respect of service charge budgets for the period May 2016 to March 2017 and April 2017 to March 2018. The sums in dispute total £3,647.81.
3. The Tribunal received an application under s27a of the Act dated 4 May 2017 from Mr Okafor one of the Respondent Lessees in respect of 2007-2009, 2009-10, 2010-11, 2011-12, 2012-13 and 2013-14. He included an application under section 20c of the Act limiting the costs of the proceedings before the Tribunal which may be recovered via the service charge account and an application under paragraph 5A of schedule 11 to the Commonhold and Leasehold Reform Act 2002 in respect of administration charges.
4. The relevant legal provisions are set out in the Appendix to this decision.

The property and the lease

5. The property which is the subject of this application is a ground floor flat in a block of 30 flats, part of a building of 106 flats known as Block B within an estate of five blocks constructed c2007.

6. Neither party requested an inspection and the tribunal did not consider that one was necessary in view of the nature of the issues in dispute.
7. The lease which is for a term of 99 years from 7 September 2007 is dated 2 November 2007. The Respondents own a 50% share.
8. By clause 3 of the lease the Lessee covenants to pay the service charge in accordance with clause 7 which requires the lessee to pay the service charge by equal monthly payments in advance on the first day of the month. The specified proportion in relation to the costs incurred for the building is 1.07%, in relation to the costs for the Estate 0.31% and 0.39% in respect of the domestic cold-water provision.
9. The costs to be included in the service charge are set out in Clause 7(5): and “*comprise all expenditure reasonably incurred by the Landlord in connection with the repair management maintenance and provision of services for the Building*” ...
10. The landlord covenants at clause 5 (2) to insure the building and at 5(3) to maintain and repair the structure of the building, the pipes, sewers etc and the common parts. The common parts include not only the common parts within the building but also the communal areas within the Estate including the roads and pathways.

The background

11. In respect of the first application proceedings were issued in The Northampton County Court. The sums claimed were: £4,664.75 in respect of service charges plus legal costs of £80 and £185 Court fee.
12. A Case Management hearing was held on 18 April 2017 at which the Applicant was represented by Mr Tristan Salter of Counsel, Mr Samuel Okafor represented himself and his wife. Directions were issued on the same date.
13. Further Directions were made on 9 May 2017 allowing the applications referred to above at paragraphs 2 and 3 made by both the Landlord and the Lessees to be heard together with the referral from the County Court.

The Issues

14. The Defence lodged with the County Court stated that the service charges for the period 2007 to 2016 had been paid, queries raised were unanswered, the Respondents believed their account ought to be in credit.

15. By the date of the hearing the Respondent had narrowed the issues for the period from April 2010 onwards to management fees, fire system repairs, communal water charges, electricity, estate maintenance, repair costs, communal heating and fire alarm maintenance plus the amount transferred into a reserve fund. The Scott Schedule for the earlier years had not been annotated by the Respondent who stated in an email of 31 May 2017 that no schedule had been received for the earlier years. The Applicant confirmed that the missing schedules had been sent by email and post to the Respondent's new address on 14 May as the Respondents had moved to another part of the country on 12 May. There was only the application before the Tribunal in respect of the period prior to 2010 however the findings regarding inclusion of fees not allowed under the terms of the lease also applied during this period. The Tribunal therefore determined the management costs for both the estate and block for those years also.

The Hearing

16. The Applicant's case was presented by Ms Lucy Javelot MRIPM AssocRICS, the leasehold manager for Notting Hill Home Ownership. Miss Jessica Wild, a property management officer for the applicant gave evidence. She was assisted by Ms Ellie Desvorough, head of leasehold services and Mr Rahim Lalji, a property manager.
17. The respondents were not present and were not represented.
18. Ms Javelot explained that from 2007 to 2010 the block was managed, with the rest of the estate, by Peverel Property Management Ltd and subsequently by OM Property Management Limited. There had been problems obtaining information regarding the service charge account for that period which was the reason why the Scott schedule for these years had been sent to the Respondent separately on 14 May 2017.

Management Fees

19. Ms Javelot said that the freeholder, Barrett, own the estate including Block A. The residents' management company of Block A, Azure Management Company, have appointed Rendell and Ritner to manage the estate. Block B and its associated garden area is managed by the Applicant. Blocks C, D and E are managed by Notting Hill Housing Trust. In 2007, it had been considered beneficial to have one managing agent for the entire estate. However, there were difficulties because of the differing requirements in relation to the various tenures within the estate. The Applicant took over management of Block B in 2010.
20. There are two management charges shown each year: an estate charge and the Applicant's charge for covering its obligations under the lease: managing the block, section 20 consultations and administering the

service charge account. A caretaker, who is employed by the estate managing agent, sweeps the roads and path on the estate, litter picks and moves the bins. He does not sweep around Block B. The amount the Applicant charged for the block is the standard charge adopted by the Applicant for all its leasehold properties. The Applicant employs cleaners to clean the common parts of the block and surrounding area.

21. The Respondent had noted on the Scott Schedule that the estate management charges of £87.32, £88.25, £95.68 and £152.23 and were acceptable for 2010-11, 2011-12, 2012-13 and 2013-14 but that those for the later years were excessive because there is no exclusive manager for the estate or the block and the charges are duplicated under the heading "Standard Management Fee". The Respondent did not consider that the standard management fee should be payable in any of the years under consideration because management costs had already been stated on the schedule.
22. The charges challenged by the Respondent are as shown on the attached schedule. The Tribunal has also considered the estate charges for each of the years in question because the Respondent's comments indicate that the estate management charge has been treated by the Respondent as the total management charge payable whereas the management charge is split between block and estate charges however the headings of "standard management charge" does not make this entirely clear.
23. The Tribunal has made similar deductions for the period prior to 2010.

The decision of the Tribunal

24. The management charges of the Applicant are excessive for management of the block and its immediate environs, taking into account the management element within the estate charges the Tribunal determines that the standard management fee should be reduced by 20%. The estate management charges should be reduced by the amount of the company accountancy and audit and company secretarial fees plus a reduction in the increased costs from April 2015. The revised amounts are shown on the attached schedule.

Reasons for the decision of the Tribunal

25. The estate is managed by others, there is no evidence that the applicant is proactive in monitoring the charges demanded by the managing agents: the inclusion of company accountancy and audit and secretarial fees was not challenged despite there being no provision in the lease for the inclusion of the fees within the service charge account; there was no monitoring of the electricity charges resulting in two years of very low charges followed by a third much higher to make up the shortfall; some items within the Applicants own service charge account were

misidentified such as communal heating and gas charges, the total estate charges are grouped together making it difficult to ascertain what is included in the charges.

26. The Applicant's standard management charge applies to flats within estates where the Applicant manages the estate and the block. Consequently, it is excessive and effectively includes an element of double counting where the responsibility for management of the estate is carried out by a third party and separately charged in addition to the standard management fee of the Applicant.

27. The management charges for the estate include company secretarial work and preparation of the company accounts for Azure, the Block A residents managing company, the lease does not provide for such costs to be added to the service charge account. In addition, the estate management fees from April 2015 have increased without there being any explanation.

Fire system repairs

28. In 2012 – 2013 £111.55 and £30.31 in 2014 – 2015 was charged for fire system repairs. The respondent did not agree that there had been any repairs and referred to the fire system maintenance contract.

29. The applicant produced invoices for replacement of the smoke vent system, replacing fuses and batteries and other reactive maintenance visits were produced to support the charges.

The decision of the Tribunal

30. The Tribunal determines that the costs were reasonably incurred and are payable.

Reasons for the Tribunal's decision

31. The Tribunal has considered all the copy invoices included in the bundle most of the invoices relate to reactive maintenance following either call outs or following the quarterly planned maintenance visits. Following ongoing issues with the smoke vent system it was replaced to improve the reliability of the system.

Communal water charges

32. The Respondent queried the amount of the communal water charge from 2014-15 onwards on the grounds that the charge had increased significantly compared with previous years.

33. The Applicant explained that there is one water meter for the whole estate. The agents for the estate had previously advised the Applicant the amount for the block, the Applicant had assumed the amount was the charge for the estate. Consequently, the amount charged prior to 2014 was insufficient as the Respondent's contribution is 0.39% of the charge for the estate not of the block. The applicant has not sought to recover the undercharge from any of its lessees. As a check on the amount the Applicant looked at what Thames Water estimate are typical amounts payable for a two bedroom property.

The decision of the Tribunal

34. The charges were properly incurred and are payable.

Reasons for the Tribunal's decision

35. The Tribunal accepts that the Applicant did not properly monitor the water charges from 2010 resulting in undercharging prior to 2014. If proper consideration of the charges had been undertaken from 2010 onwards it is unlikely that the lessees would have been faced in 2014 with an increase to almost three times that payable in previous years nevertheless over the period the amount payable is not excessive.

Electricity

36. The Applicant's case was that the electricity charges are based on the bills received for the common parts. The bills for 2012 and 2013 were lower than previously, the bill for 2014-15 was much higher however when averaged out over three years the amount was reasonable. The Applicant explained that the budget for figures for 2015-2016 did not reflect this catching up. A reasonable budget figure would be £53.50

37. The Respondent accepted the charges for service charge years from April 2010 to March 2014 of £48.08, £47.91, £15.24 and £18.79. However, the bill for 2014 -2015 was £97.10. The Respondent stated that this was excessive for supplying communal lighting with automatic switch off. There were 106 flats in the block; more than £10,000 for temporary bulb lighting was unreasonable. The cost in 2015 - 2016 was £53.29 which again the Respondent considered to be excessive. The budget for 2015 - 2016 and 2016 - 2017 of £106.84 and £64.20 respectively were again considered to be excessive.

The decision of the Tribunal

38. The actual electricity charges and the budget for 2016 - 2017 are reasonable and payable. However, the budget figures were excessive and should be reduced to £53.50 and £55 for 2015-16 and 2016-17 respectively.

Reasons for the Tribunal's decision

39. The actual charges were based upon the usage and spread over three years were reasonable. However, it is unfortunate that the bills were not properly monitored which resulted in a greatly increased amount payable in 2014–2015 and an inflated budget figure for 2015–2016 because it was based on the charge for 2014–2015 which was higher than the norm. The Tribunal has estimated the budget figure for 2015-2016 based on the charges for earlier years, excluding the two years where there was an undercharge.

Estate Maintenance

40. The Applicant explained that the items shown on the schedule as estate maintenance were in fact block matters including quarterly water testing the five tanks in Block B, changing light bulbs as necessary and one-off minor repairs which were carried out in accordance with the obligations in the lease. Copies of various invoices were presented to the Tribunal.

41. The Respondent queried the charge of £34.73 in 2014-2015 and £39.40 in 2015-2016 stating that cleaning and estate repairs were charged elsewhere in the accounts.

The decision of the Tribunal

42. The amounts charged are reasonable and payable.

Reasons for the Tribunal's decision

43. The amounts charges were incurred in carrying out the landlord's repairing obligations. However, the wrong label on the accounts goes to the standard of management.

Communal Heating

44. The Respondent commented that there was no communal heating in the block.

45. The Applicant confirmed that this was indeed the case. The flats originally had gas boilers installed however most were removed 2008 to 2010 following problems with carbon monoxide. The charges relate to plant room maintenance, water pumps and call out charges relating to carbon monoxide alarms.

The Tribunal's decision

46. The sums are not payable.

Reasons for the Tribunal's decision

47. There is no provision in the lease which allows inclusion in the service charge account of the cost of communal heating nor is there any communal heating within the block.

Administration charges

48. Mr Okafor's application under Schedule 11 does not refer to any specific charges.

49. The history of the account provided by the landlord showed that no administration charges had been added to the Respondents' account. There are no charges upon which the Tribunal may make a determination.

Section 20c Application

50. The Respondent defended the county court application on the grounds that all the charges had been paid and made an application for the years not covered by the landlord's applications.

51. The Applicant accepted that there was no provision in the lease under which its charges could be recovered via the service charge account.

The decision of the Tribunal

52. 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 Applicant may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge.

Reasons for the Tribunal's decision

53. The Applicant's management of the service charge account was not clearly explained to the Respondent. There were items which ought not to have been included, some wrongly identified and other items which were not properly monitored. The lease does not provide for the costs to be added to the service charge account.

The next steps

54. The tribunal has no jurisdiction over county court costs and statutory interest. This matter should now be returned to the Bow County Court.

Name: Evelyn Flint

Date: 30 August 2017

Case Reference: LON/00AT/2017/
0190, 0166 & 0176

259 Wooldridge Close Feltham TW14 8BY

date	item	cost	Tribunal's decision
October 2007 - September 2008	Estate costs (incl management fees)	£214.57 (£62.15)	£204.25 (£62.15)
October 2008 - September 2009	Estate costs (incl management fees)	£133.69*(£31.97)	£127.74* (£31.97)
April 2009 - March 2010	Estate costs (incl management fees)	£261.93 (£66.89)	£245.84 (£66.89)
April 2010 – March 2011	Standard management fee	£203.28	£162.62
	Managing agent's costs (estate)	£87.32	£71.59
April 2011 – March 2012	Standard management fee	£299.43	£239.54
	Managing agent's costs (estate)	£88.25	£72.00
April 2012 -March 2013	Standard management fee	£316.44	£253.15
	Managing agent's costs (estate)	£95.68	£81.60
	Fire system repairs	£111.55	£111.55

April 2013 – March 2014	Standard management fee	£316.44	£253.15
	Estate Managing agent's costs (management fee)	£152.23	£138.23
April 2014 – March 2015	Standard management fee	£326.56	£261.25
	Estate Managing agent's costs (management fee)	£273.06 (£75.29)	£258.06 (£75.29)
	Communal water charges	£264.01	£264.01
	Electricity (Block B only)	£97.10	£97.10
	Estate maintenance	£34.73	£34.73
	Fire system repairs	£30.31	£30.31
	Water	£4.49	£4.49
April 2015 – March 2016	Standard management fee	£326.56	£261.25
	Estate Managing agent's costs (management fee)	£342.57 (£94.45)	£312.12 (£80.00)
	Communal water	£298.62	£298.62
	Electricity (Block B)	£53.29	£53.29
Budget April 2016 – March 2017	General repairs (Block B)	£21.40	£21.40
	Estate Managing agent's costs (Management fee)	£300.36 (£94.45)	£270.55 (£80.00)
	Standard management fee	£327.78	£262.22
	Communal water(Estate)	£290.36	£290.36

	Communal heating	£43.34	£0
	Communal water (Block B)	£4.94	£4.94
	Electricity (Block B)	£106.84	£53.50
	Fire Alarm maintenance	£74.90	£74.90
Budget April 2017 – March 2018	Estate Managing agent's costs (Manageemt fee)	£359.7 (£94.45)	£330.55 (£80.00)
	Standard management fee	£327.78	£262.22
	Communal water (estate)	£313.54	£313.54
	Communal heating (Block B)	£40.66	£0.00
	Communal water (Block B)	£4.28	£4.28
	Electricity (Block B)	£64.20	£55.00
	TOTAL	£6,592.69	£6,032.29

* annual costs apportioned to cover period when accounting year changed to commence in April

ANNEX - RIGHTS OF APPEAL

- i. 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.
- ii. 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.
- iii. 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.
- iv. 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.

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.