

12103



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

**Case reference** : LON/00AY/LSC/2016/0491

**Property** : Ground floor flat 6B Pomfret Road,  
London, SE5 9DJ

**Applicant** : Messrs J Posen and Y Filip  
represented by Mr Berger of  
Feldgate Limited managing agent

**Respondent** : Abbey Property Services Limited  
represented by Mr K Islam ,  
director

**Tribunal** : Tribunal Judge Dutton  
Mr K M Cartwright FRICS

**Date and venue of  
Hearing** : 3<sup>rd</sup> May 2017 at 10 Alfred Place,  
London WC1E 7LR

**DECISION**

### **Decisions of the tribunal**

- (1) The tribunal makes the determinations as set out under the various headings in this Decision**
- (2) Since the tribunal has no jurisdiction over interest and ground rent, these matters should now be referred back to the County Court at Clerkenwell & Shoreditch under claim number B7QZ5G7H.**

### **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 Respondent in respect of the service charge years as set out on a demand dated 8<sup>th</sup> June 2015 at page 42 of the Respondent's bundle.
2. Proceedings were originally issued in the County Court at Northampton under claim no. B7QZ5G7H. The claim was transferred to the County Court at Clerkenwell and Shoreditch and then in turn transferred to this tribunal, by order of District Judge Rand on 20<sup>th</sup> April 2016 although not reaching this Tribunal until December 2016.
3. The relevant legal provisions are set out in the Appendix to this decision.

### **The hearing**

4. The Applicant was represented by Mr Berger of Feldgate Limited the managing agents at the hearing and the Respondent appeared by Mr Islam the director accompanied by Ms Khanom.

### **The background**

5. The property, which is the subject of this application, is a ground floor flat in converted property now containing 4 flats, but originally only three. This increase is part of the reasons for the dispute.
6. 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.
7. 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 specific provisions of the lease and will be referred to below, where appropriate.

### **The issues**

8. At the start of the hearing the parties identified the relevant issues for determination as follows:
  - (i) The appropriate apportionment of the service charges. That is to say should they be payable as to one third by the Respondent, or one quarter as the Respondent alleges, the property since, it would seem 1997/8 comprising four, not three flats
  - (ii) Whether the demands comply with the requirements of the Landlord and Tenant Acts 1985 and 1987 in that they include the name of Mr Islam, as well as the Respondent company.
  - (iii) There is no suggestion by the Respondent that the sums being sought for service charges of £599.17 are incorrect.
  - (iv) During the course of the hearing we were asked to consider the Applicants claim for costs of £540 including VAT. These are said, on the claim form to be "*in relation to costs charges and expenses for the contemplation, preparation and service of a County Court Claim*"
9. Having heard evidence, read the papers before us and any submissions from the parties, the tribunal has made determinations on the various issues as follows.

### **The Apportionment of the service charges**

10. The issue raised by the respondent are simply this. The lease provides at paragraph 9 of the Particulars that the apportionment is 1/3<sup>rd</sup>. The lease is dated 25<sup>th</sup> June 1993 for a term of 125 years from 25<sup>th</sup> March 1993. However, at some time, it would seem prior to 1998 as shown in a letter from Lambeth Planning dated 16<sup>th</sup> September 2008, the maisonette on the first and second floor was converted into two separate flats. It does not appear that planning was obtained for this change.
11. It was said by Mr Islam that his company, of which he is the sole director, did not become aware of this until he received the letter from Lambeth. He then attempted to engage with the Applicant, but without success. It seems he continued to pay the service charges on a one third basis until around 2014 and has since then argued that his share should be only 1/4 as there are now four flats.

12. Mr Berger told us that the leases were drawn up when there was this much larger maisonette on the first and second floor. All that has happened is that the Landlord has now created two flats, as they were entitled to do. However, the Respondent is not prejudiced because it is only paying 1/3<sup>rd</sup> as provided for in the lease and the Applicant is not recovering more than 100% of the service charges. Initially Mr Berger denied that two leases had been granted for these two “new” flats. A review of the title numbers at HM Land Registry showed that both leases were separately registered and that the parties to the leases were the Applicants and Landlord and one or other of the Applicants, in their individual capacity was a tenant. It was not possible to tell whether the leases for these two units had repeated the contribution as to 1/3<sup>rd</sup> per flat or whether they, together, paid the 1/3<sup>rd</sup>.
13. No application for a variation of the lease has been made.

### **Tribunal Decision**

14. Whilst we have some sympathy with the Respondent the fact of the matter is that the lease provides for the Respondent to contribute one third of the costs. That is all it is being asked to pay. There is no evidence that the Applicant is recovering more than 100% of the service charge expended.
15. In those circumstances we must find that the correct apportionment for the Respondent is 1/3<sup>rd</sup>. It was stated by Mr Islam that he would seek a variation of the lease to provide that each flat paid 1/4 on the basis that the Applicant was able to vary the lease to enable recovery of the insurance premium, which presently does not require a contribution from the Respondent. We left the parties to see if this was a way forward but for now we find that a 1/3<sup>rd</sup> contribution by the Respondent is correct.

### **Correctness of the demands.**

16. The Respondent’s complaint, or more particularly that of Mr Islam, is that the demand, which is the subject of this dispute, dated 8<sup>th</sup> June 2015, names both Mr Islam and the Respondent. He did not think he should appear on the demand and that this was a fault which rendered the demand ineffective. He pointed out that what appeared to be a “tear off” portion had only his name on it. Further the Applicant had commenced proceedings against Mr Islam and had to seek an amendment at the Court to substitute the Respondent as the correct defendant.
17. Mr Berger told us that Mr Islam’s name only appeared because it was there for clarity and to remove would impact upon their database. Mr Islam was shown as a point of contact.

18. Asked whether the Applicant should resubmit the demand, without his name shown, Mr Islam said they should although in so doing the sum becomes payable.

### **Tribunal decision**

19. We find that nothing in the 1985 Act or the 1987 which renders a demand faulty if a name is included as a point of reference. The onus in 1987 Act is on the Landlord to comply. Section 21B of the 1985 Act requires that a summary of rights and obligations must be included with the demand, and there is no evidence or assertion made that it did not.
20. In those circumstances we find that the demand is effective. However, there is no reason why the Applicant cannot remove Mr Islam's name going forward to ensure that this matter does not arise again.

### **Costs**

21. We were asked by each party to make a determination on the costs of £540 sought in the proceedings. We have set out above at 1(iv) the wording on the claim form.
22. Mr Berger said that the lease at clause 4(9) allowed the recovery of these costs. Mr Berger said that the proceedings were in "contemplation" of any proceedings in respect of the Lease under sections 146 and 147 of the Law of Property Act 1925, to include the preparation of any such notice and service of same to include inspection and the preparation of a Schedule of dilapidation. He accepted that the claim form made no mention of any step to forfeit and nor, it seemed was there any warning in any correspondence that the Applicants intended to take this step.
23. It was conceded by Mr Berger that no other clause of the lease helped him on costs. However, he maintained that the Court action was a step in contemplation of the service of a Notice under the 1925 Act as the Applicant could not do so without a finding from the Court or this Tribunal.
24. Mr Islam said this was just a money claim and that indeed he had tendered a cheque to settle the amount sought for the service charge and ground rent element but this had been returned on the advice of solicitors for the Applicant.

### **Tribunal decision**

25. We have considered the term at 4(9) of the lease and heard all that was said by Mr Berger. We had intended to remit this back to the Court but consider we can deal with this under the provisions of Schedule 11 of the Commonhold and Leasehold reform Act 2002 and, of course, the parties have asked us to do so to save costs.

26. We have borne in mind section 170 of the 2002 Act, which in turn refers to section 81 of the Housing Act 1996.
27. We find that the commencement of the proceedings in the County Court at Northampton, an online facility, makes no mention of s81 of the Housing Act 1996. There is no intimation that these proceedings were in contemplation of the issue of a notice under the 1925 Act. Although Mr Berger sought to argue that they clearly followed there was no evidence to support that this was within the contemplation of the Landlord at the time the proceedings were issued. Accordingly we find that clause 4(9) does not assist the Applicant and that therefore the costs are not recoverable.

Tribunal Judge Dutton

3<sup>rd</sup> May 2017

### **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 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 to 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 (ie 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**

#### **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 a leasehold valuation 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 a leasehold valuation 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.