



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

**Case Reference** : LON/00BB/LLC/2017/0001

**Property** : 3 Maplin Road & 1 Widgeon Close,  
London E16

**Applicants** : (1) Nana Aggrey  
(2) Ademola Giwa

**Representative** : In person

**Respondents** : Firstport Property Services Limited

**Representative** : Mr Adam Fotiou –in house solicitor

**Type of Application** : For the determination of the  
reasonableness of and the liability  
to pay a service charges and  
administration charges

**Tribunal Members** : Judge Daley  
Mr M Taylor FRICS

**Date and venue of  
Hearing** : 11 May 2017 at 10 am 10 Alfred  
Place, London WC1E 7LR

**Date of Decision** : 11 May 2017

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**DECISION**

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## **Decisions of the tribunal**

The tribunal makes the following determination-:

- (1) That on the agreement of the parties, the management charges are agreed for each of the years 2013-2017, and that the formula of annual increases capped at 3% per annum are agreed by the parties (save that the parties, may still raise any issues as to the payability of the sum based on the performance of the management agents in any subsequent years).
- (2) That the sum of £125.00 be credited to each of the leaseholders, on account of management charges for the periods in excess of the agreed formula.
- (3) That for the periods 2014-2017; the costs of the insurance, is conceded as reasonable and payable.
- (4) That the sum of £667.14 be credited to the first applicant on account of administration charges payable by him.
- (5) There was a matter outstanding in respect of administration fees which had been claimed by the respondent for the recovery of ground rent, which was not before this tribunal and accordingly is not included in the sum agreed at (4) above.
- (6) The Tribunal finds in relation to the sum of £1,825.95 that was determined as payable to the reserve fund in accordance with paragraph 1.4, of the determination of the Tribunal LON/00BB/LSC/2010/0428, that the sum was credited to the reserve account, (as shown in the audited service charge accounts for the year ending 31 December 2013), in compliance with the tribunal's decision.
- (7) The Tribunal makes an order under section 20C in respect of the landlord's costs.
- (8) The Tribunal makes no order for the reimbursement of the Applicants cost of the application.



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## **The application**

1. On 4 January 2017, the first applicant sought a determination pursuant to s.27A of the Landlord and Tenant Act 1985 (“the 1985 Act”) as to whether service charges are payable for the periods 2014, 2015, 2016, and 2017. The Applicant also sought a determination in respect of the respondent’s compliance with paragraph 1.4 of an earlier tribunal decision in respect of liability of the respondent to re-credit the reserve fund account in the sum of £1,825.95.
2. The Applicant also sought an order under section 20C of the Landlord and Tenant Act 1985 (so that the costs of the tribunal hearing would not be recoverable as a service charge).
3. On 27 January 2017, pursuant to a written request, the Tribunal determined that Mr Ademola Giwa, be joined as the second applicant in these proceedings. In accordance with rule 10 of The Tribunal Procedure (First –tier Tribunal) (Property Chamber) Rules 2013.
  - Directions were given at a case management conference, on 9th February 2017 setting out the issues for each of the years in question, which were the extent to which the respondent had complied with the Tribunal’s determination in relation to the reserve fund, and the reasonableness and payability of service charges for the management fee and the insurance for the premises.

## **The background**

4. The Applicants are the leaseholders of the above premises.
5. The Leaseholders flats are situated in a purpose built block, comprising two flats located at the corner of two roads Maplin Road and Widgeon Close. The premises are subject to a lease agreement dated 25 June 1993, which provides that the respondent will provide services, the costs of which are payable by the applicants as a service charge.

## **The Hearing**

6. At the hearing the Applicants appeared in person, the respondent was represented by Mr Adam Fotiou. Mr Fotiou informed the Tribunal that there was a history of previous proceedings between the respondent and the first applicant Mr Aggrey, proceedings having been issued in 2010 and 2013. However Mr Fotiou inform the Tribunal that he had been in discussion with the Applicants and was hopeful that with a brief adjournment, it may be possible for the parties to reach an agreement, or at the very least narrow the issues.

7. After an hour, he informed the Tribunal that an agreement had been reached on all of the issues save 1 that was the crediting of the sum of £1,825.95, to the reserve account. He stated that the respondent's case was that this had occurred. The applicant's case was that this sum ought to have been credited to his account as this payment had been made solely on his account following this sum having been paid out by his mortgagor.
8. In respect of the matters agreed the applicants wanted to set out that although they had agreed a formula for the management fees, this did not mean that they accepted that the management had been undertaken, it was however a pragmatic approach to resolve the issue, and should the management fall short in their view in future years, they would still have the right to seek a determination from the tribunal as to the payability of the sums demanded. They also wished to see, whether going forward they could find cheaper like for like insurance in the coming years.
9. Mr Fotiou accepted that this was their right in accordance with section 27A of the 1985 Act.
10. The Tribunal asked the parties to draft an agreement, the terms of which are set out in paragraphs Para (1) – (4) above.
11. In respect of the remaining issue, set out in paragraph 7 above. Mr Fotiou informed the tribunal that following the determination in 2010 it was accepted that the landlord had not credited this sum as required, and that this remained the position at the hearing in 2013. The Tribunal also noted that once this sum was credited this would provide a reserve fund which might exceed the needs of the property. At paragraph 35 of the decision dated 4.9.2013 (LON/00BB/LSC/2013/0240). The Tribunal noted-: *“The property is small, recently built, has PVCu windows, and calls for only a modest reserve. The Tribunal is satisfied that the decision to build the reserve to its present level of some £2,680.00 was reasonable but notes that this would have been achieved without the demands in 2011 and 2012, if the Company had restored the amounts taken out of the reserves for works which were not actually undertaken, in accordance with the LVT decision dated 29 November 2010 consequently the balance of funds would have been in excess of the actual balances as at 31 December 2011 and 2012. 36. The Tribunal welcomes the Applicant’s undertaking to reconsider the 2013 demand of 2013...”*
12. Mr Fotiou stated that following this decision, on 12 September 2013, the property manager Sharon Brandelli wrote to Mr Aggrey setting out her estimation of the likely maintenance cycle for the property and costings, and proposal to credit each of the leaseholders with the sum of £1,383.50.

13. Mr Fotiou referred to the service charge accounts for the year ending 2013, which provided proof of the sum of £1825.95, having been credited to the reserve account, and also provided copies of the statements of each applicants' accounts together with credit notes which provided evidence for the credit of the sum of £1383.50 to each applicants' service charge account.
14. Mr Aggrey stated that the sum of £1825.95, had been demanded solely from him, and had been paid by his mortgagor on his behalf; however he provided no evidence for this assertion. He accepted that there was a difficulty in proving this as he had changed mortgage companies, and the property managers had changed. Although he did not ask for an adjournment, the tribunal noted that as applicant he was responsible for proving his case, and that in any event the difference between the sum claimed by him and the sum credited was £471.67 and that it would be disproportionate for the Tribunal to allow additional time for this information to be provided as clear directions had been given as to the sums and issues before the Tribunal on 9 February 2017.
15. Both Mr Giwa and Mr Aggrey were concerned that following the sums being credited to their account the sum of £4,813.00 had been used from the reserve account, and they were not sure what this related to, as this matter was not before the Tribunal, the tribunal noted that the applicants could inspect the invoices on request and discuss this matter further with the respondent's representative.
- 16. The Decision of the Tribunal**
17. The tribunal on hearing from the parties, and considering the evidence, are satisfied that the respondent has complied with 1.6 of the decision of the Tribunal made on 29 November 2010, and that the sum having been credited to the reserve account on 10 October 2014, no further sum is payable.
18. The Tribunal finds that the service charges payable for the periods 2014-2017 have been agreed in accordance with the terms of the agreement set out in paragraphs (1) to (4) above.

### **Application under s.20C and refund of fees**

19. The Applicants sought an order under section 20c, and Mr Fotiou noted that in the interest of taking this matter forward, he would not oppose the application.
20. Having heard the submissions from the parties and 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.
21. The Tribunal makes no orders for the leaseholder applicants' fees to be refunded by the landlord.

**Name:** Judge Daley

**Date:** 11 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 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.



## Appendix of relevant legislation

### Landlord and Tenant Act 1985

#### (1) 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.

## **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.

## **Leasehold Valuation Tribunals (Fees) (England) Regulations 2003**

### **Regulation 9**

- (1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.
- (2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).

of any question which may be the subject matter of an application under sub-paragraph (1).

**Schedule 12, paragraph 10**

- (1) A leasehold valuation tribunal may determine that a party to proceedings shall pay the costs incurred by another party in connection with the proceedings in any circumstances falling within sub-paragraph (2).
- (2) The circumstances are where—
  - (a) he has made an application to the leasehold valuation tribunal which is dismissed in accordance with regulations made by virtue of paragraph 7, or
  - (b) he has, in the opinion of the leasehold valuation tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.
- (3) The amount which a party to proceedings may be ordered to pay in the proceedings by a determination under this paragraph shall not exceed—
  - (a) £500, or
  - (b) such other amount as may be specified in procedure regulations.
- (4) A person shall not be required to pay costs incurred by another person in connection with proceedings before a leasehold valuation tribunal except by a determination under this paragraph or in accordance with provision made by any enactment other than this paragraph.