



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

**Case reference** : **LON/00AF/LSC/2017/03652**

**Property** : **10 Anerley Station Road, London,  
SE20 8PT**

**Applicant** : **Sarah Minchin**

**Representative** : **In person**

**Respondent** : **Hunterquick Ltd**

**Representative** : **In person**

**Type of application** : **For the determination of the  
reasonableness of and the liability  
to pay a service charge**

**Tribunal Members** : **Judge Robert Latham  
Michael Taylor FRICS**

**Venue** : **10 Alfred Place, London WC1E 7LR**

**Date of decision** : **9 April 2018**

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**DECISION**

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## **Decisions of the tribunal**

- (1) The Tribunal finds that the following sums are not payable:
  - (i) 2013: Interim service charge of £300; Management Charge of £125 demanded on 16 September 2013 (see [15] and [16] below);
  - (ii) 2014: Interim service charge of £300; Management Charge of £125 demanded on 23 August 2015 (see [17] and [18] below);
  - (iii) 2015: Interim service charge of £300; Management Charge of £125 demanded on 27 April 2016 (see [19] and [20] below);
  - (iv) 2016: Management Charge of £125 demanded on 13 April 2017 (see [21] and [22] below);
  - (v) 2017: Management Charge of £125 demanded on 2 May 2017 (see [23] and [24] below);
- (2) The Tribunal determines that the Respondent shall pay the Applicant £100 within 28 days of this Decision, in respect of the reimbursement of the tribunal fees paid by the Applicant.
- (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 lessees through any service charge. The Tribunal further makes an order under paragraph 5A of Schedule 11 of the Commonhold and Reform Act 2002 so that none of the landlord's costs of the tribunal proceedings may be passed to the lessee through any administration charge in respect of litigation costs.

## **The Application**

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("Act") as to the amount of service charges payable by the Applicant in respect of the service charge years 2013 to 2017.
2. The application relates to the Ground Floor Flat at 10 Anerley Station Road, SE20 8PT ("the flat"). The property is a four storey terraced house which has been converted into three flats. The Applicant does not reside at her flat. There are two other flats at the property: Flat 10b, in the basement, is occupied by Mr Mark Dooley; Flat 10a, on the first and second floors, is occupied by Mr Oliver Whittaker.
3. The Tribunal initially gave Directions on 25 September 2017. However, further Directions were required on 9 October 2017 and 30 January

2018. The registered address provided by the Company is 446 Edgware Road, London W2 1EG. This is also the address of Anglefarm Ltd (“Anglefarm”), its managing agents. A problem has arisen because a number of letters sent both by the Tribunal and by the Applicant to the Respondent at this address have been returned by the Royal Mail marked “Gone Away”. In a letter dated, 9 February 2018, K Alhalak, on behalf of the Respondent, wrote to the Tribunal stating that they were taking steps to rectify whatever problem exists in relation to the receipt of post at their registered address. The Respondent has not appointed any agent to act on its behalf.

4. Pursuant to the Directions, both parties have completed a Schedule setting out the issues in dispute. The Applicant has also provided two Bundles of Documents which were received on 11 January and 22 March 2018. We have also had regard to the documents provided by the Respondent on 6 November 2017 and 6 March 2018.
5. On 2 October 2017, Mr Whittaker applied to be joined as a party to the application. However, he has not sought to play any active role, but has rather sought to be informed of the progress of the case.
6. In her application, the Applicant stated that she was content for the application to be determined on the papers. No party has requested an oral hearing.
7. The relevant legal provisions are set out in the Appendix to this decision.

### **The Lease**

8. The Applicant occupies the flat pursuant to a lease dated, 8 July 2011. The Applicant was the original tenant, albeit that at that time she used her maiden name “Partanen”. The Respondent acquired the freehold interest in about 2013. The lease is for a term of 125 years. The ground rent is £250 which doubles every 25 years.
9. The Sixth Schedule of the lease defines the items falling within the Service Charge as “the obligations on the part of the landlord in Part II of the Fifth Schedule”. Part II of the Fifth Schedule imposes two obligations on the landlord:
  - (i) to insure the building; and
  - (ii) to maintain and keep in good and substantial repair and condition the main structure of the Building including its foundations, the roof (including its gutters and rain water pipes) and the service conduits therein other than those which exclusively serve the flat or an other flat in the building.

10. The tenant covenants to keep the flat (described as “the Premises” in the lease) in good and substantial repair. The “Premises” includes the floorboards, doors and windows, internal plaster surfaces, the ceiling, one half in width of non-structural walls shared in common with other parts of the building, but the whole of non-structural walls within the flat, and all conduits, pipes, cables and drains which exclusively serve the flat.
11. By paragraph 29 of the Fourth Schedule, the tenant’s share of the service charge expenditure is to be “a fair proportion to be determined by the Surveyors for the time being of the Landlord”. The landlord has required the tenant to pay 33.33%. The Applicant has not objected to this apportionment. By Clause 2 of the lease, the landlord’s covenants are “subject to the payment of the service charge”.
12. Three issues arise from the construction of the lease:
  - (i) Is the landlord entitled to engage managing agents and pass on the cost through the service charge?
  - (ii) Is the landlord entitled to establish a reserve fund?
  - (iii) Is the landlord entitled to collect an advance service charge?
13. The landlord’s obligations under the lease are extremely limited. The tenants’ obligations extend not only to the interior of their flats, but also to the windows. It would seem that since the landlord acquired the freehold interest in 2013, it has done little more than insure the building and process a few insurance claims. There is no evidence that the landlord has expended any sums on external repairs and decorations.
14. Woodfall “Landlord and Tenant” provides the following guidance:
  - (i) “As a general rule the cost of employing managing agents will not be recoverable by way of service charge unless the lease expressly so provides” (at [7.170]).
  - (ii) In the absence of express provision to the contrary, the obligation to provide services is independent of the obligation to pay a service charge, so arrears of service charges will not entitle the landlord to cease providing services” (at 7.185]).
  - (iii) Most modern leases provide for payment by the tenant of an advance service charge at intervals during the accounting period” (at [7.178]). This lease makes no such provision. Neither does it make

provision for the establishment of a reserve fund. This is a pre-requisite to the right to operate such a fund (at [7.179.1]).

### **The Service Charge Items in Dispute**

15. On 16 September 2013, Anglefarm demanded the following sums:
  - (i) Ground Rent (1.1.13-31.12.13): £250. This item is not challenged.
  - (ii) Insurance (30.10.12): £259.33 is claimed (33.33% of the total of £778.70) against which a credit of £71.54 is given. Again, this item is not challenged.
  - (iii) Interim Service Charge for 2013: £300.
  - (iv) Management Charge: £125.
16. The Applicant challenges both the interim service charge (£300) and the management charge (£125). We disallow both service charges:
  - (i) The lease does not permit the landlord to charge an interim service charge. There has been no reconciliation between estimated and actual expenditure. The Respondent states that this charge covers the insurance premium and the management charge. However, both these items are charged separately. The Respondent has failed to identify any actual expenditure incurred in repairing the main structure of the building.
  - (ii) The lease does not permit the landlord to charge a management charge. The landlord has not adduced any evidence or made any submissions as to why the general rule should not apply.
17. On 23 August 2015, Anglefarm demanded the following sums:
  - (i) Ground Rent (1.1.14-31.12.14): £250. This item is not challenged.
  - (ii) Insurance (30.10.13): £264.61 is claimed (33.33% of the total of £793.83). Again, this item is not challenged.
  - (iii) Interim Service Charge for 2014: £300.
  - (iv) Management Charge: £125.
18. We disallow both the interim service charge (£300) and the management charge (£125) for the reasons specified above.

19. On 27 April 2016, Anglefarm demanded the following sums:
- (i) Ground Rent (1.1.15-31.12.15 and 1.1.16-31.12.16): £500. These items are not challenged.
  - (ii) Insurance (30.10.14): £311.17 is claimed (33.33% of the total of £933.52. Again, this item is not challenged.
  - (iii) Interim Service Charge for 2015: £300.
  - (iv) Management Charge: £125.
20. We disallow both the interim service charge (£300) and the management charge (£125) for the reasons specified above.
21. On 13 April 2017, Anglefarm demanded the following sums:
- (i) Insurance (30.10.15): £316.73 is claimed (33.33% of the total of £950.19. Again, this item is not challenged.
  - (ii) Management Charge (for 2016): £125.
  - (iii) Interim Service Charge for 2016: £300, against which a credit of £300 is provided in respect of the interim service charge for 2015.
22. We disallow the management charge (£125) for the reasons specified above. No net service charge is demanded.
23. On 2 May 2017, Anglefarm demanded the following sums:
- (i) Insurance (30.10.16): £257.17 is claimed (33.33% of the total of £771.50). Again, this item is not challenged.
  - (ii) Management Charge (for 2017): £125.
  - (iii) Interim Service Charge for 2017: £300, against which a credit of £300 is provided in respect of the interim service charge for 2016.
24. We disallow the management charge (£125) for the reasons specified above. No net service charge is demanded.
25. The Schedule also seeks to challenge an administration charge demanded and paid for a management pack which the Applicant required as she was planning to sell her lease. In the event, the proposed sale aborted. This claim is not included in the application form. The evidence is far from satisfactory:

(i) The Applicant's case, as set out in an e-mail dated 17 November 2017, is that she paid £250 for the management pack on 19 September 2017. This was not provided. She therefore demanded repayment of £250.

(ii) The Respondent's case is that the money was not paid until 19 October 2017. This seems to be correct and is corroborated by a letter from the Applicant's Solicitor dated 28 September 2017. The Respondent states that the enquiry was sent, duly completed, shortly after 19 October.

We are not required to determine this issue and we decline to do so. We are satisfied that an administration charge of £250 would be reasonable for a management pack. If the landlord supplied this, then the Applicant has no right to demand repayment of the sum of £250 which had been paid. If no management pack was provided, she would be entitled to be repaid. It is for the landlord to adduce evidence that the management pack was provided. The relevant copy correspondence must be available.

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

26. The Applicant applies for a refund of the fee of £100 that she has paid in respect of the application. Having regard to the determinations above, the Tribunal orders the Respondent to refund any fees paid by the Applicant within 28 days of the date of this decision.
27. In the application form, the Applicant further applies for orders under (i) 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; and (ii) Paragraph 5A of Schedule 11 of the 2002 Act, so that the Respondent may not pass any of its costs incurred in connection with the proceedings before the tribunal through any administration charge. We are of the view that such orders are not necessary given the terms of the lease. However, for the avoidance of any doubt, we make such orders.

**Judge Robert Latham**  
**9 April 2018**

## **Rights of appeal**

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

## **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 20**

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
- (a) complied with in relation to the works or agreement, or
  - (b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .
- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
- (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
  - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
- (a) an amount prescribed by, or determined in accordance with, the regulations, and
  - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

### **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.