



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

Case reference : **LON/00AF/LSC/2018/0032**

Property : **Flat B ('flat B'), 51-53 Anerley Road,
London SE19 2AS ('the building')**

Applicant : **51-53 Anerley Road RTM Company
Ltd**

Representative : **Mr R McElroy, Canonbury
Management Ltd ('the management
company')**

Respondent : **Ms Simone Patterson**

Representative : **.....**

Type of application : **Liability to pay service charges**

Tribunal member(s) : **Miss A Seifert FCI Arb
Mr M Cartwright FRICS
Mr A Ring**

**Date and venue of
hearing** : **20th September 2018 at 10 Alfred
Place, London WC1E 7LR**

Date of decision : **15th October 2018**

DECISION

Decision of the tribunal

The tribunal determines that the sum of **£1,026.46**

- (1) is reasonable and reasonable and reasonably incurred and
- (2) is due and owing by respondent, Simone Patterson, to the applicant, 51-53 Anerley Road RTM Company Ltd.

The Tribunal's reasons

The Background

1. On 8th September 2017, the applicant, 51-53 Anerley Road RTM Company Ltd, ('the landlord') issued proceedings in the County Court Money Claims Centre claiming £1,026.46 and court costs of £80. The service charge account for the flat was in balance on 3rd February 2017. The previous service charge arrears had been discharged by a mortgagee.
2. Following the transfer from the Croydon County Court (in the County Court at Croydon, in Claim number D91YX201) by an order dated 18th January 2018, the tribunal is required to make a determination under section 27A of the Landlord and Tenant Act 1985 ('the Act') as to whether the service charges are payable.
3. Section 27A of the Act concerns jurisdiction in respect of liability to pay service charges. Section 18 of the Act provides the meaning of 'service charge' and 'relevant costs'. Section 19 of the Act states that relevant costs shall be taken into account only to the extent that they are reasonably incurred and where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard and that the amount payable shall be limited accordingly.
4. The sum claimed by the landlord represents three sums:
 - (1) overspend for the year ending 30th June 2017: £247.46;
 - (2) bi-annual service charge due on 1st July 2017: £580 (all units schedule);
 - (3) bi-annual service charge due on 1st July 2017: (flats only schedule).

A full statement of the account was attached to the Particulars of Claim.

5. An oral case management hearing took place in the tribunal and directions were made on 27th February 2018. Ms Patterson attended that hearing together with her representative, Mr M Patterson, her uncle. Mr McElroy, a director of the management company, also attended.
6. Directions were issued which were later amended. The hearing was held on 20th September 2018. The respondent landlord has provided a bundle of documents for the hearing, copied to Ms Patterson.
7. The hearing was attended by Mr McElroy. There was no attendance by or on behalf of Ms Patterson.

The Lease

8. A copy of a lease of flat B dated 15th December 2005 ('the lease') was provided to the tribunal.
9. The lease of flat B was for the term of 125 years from 25th December 2002 and was made between Ellenwell Properties Limited as landlord and Simone Patterson as tenant. The lease included an obligation to pay ground rent on a rising scale.
10. Included in the tenant's covenants under the lease was a covenant in clause 4.4 to:

Pay the Maintenance Service Charges at the times and in the manner provided in the Fifth Schedule hereto all such Charges to be recoverable in default as rent in arrears.

11. The landlord's covenants included obligations in respect of maintenance and repair of the building, to insure the building, and in respect of employment of personnel, managing agents and other professionals. The provisions of the lease also included 'General Powers':

Without prejudice to the foregoing to do or cause to be done all such works installations acts matters and things as in the reasonable discretion of the Lessor may be considered necessary or advisable for the proper maintenance safety amenity and administration of the building or any part thereof

12. The Fifth Schedule to the lease included provisions in respect of the service charges. This included provision for an interim maintenance service charge and further interim maintenance charge. Mr McElroy informed the tribunal at the hearing that in practice during the period to which his knowledge related, the tenants were informed of the

budget figure for the service charge costs at the beginning of the service charge year, which ran from 1st July in each year to 30th June in the following year.

13. The lease also contained provisions for a top up charge or credit / transfer to a sinking / reserve fund, if the actual expenditure on service charges items was more or less than the anticipated expenditure / interim charge level. The lease also contained provisions for certification.
14. The tribunal were informed that the relevant percentages for the tenant's contribution to the service charges was 9.09% for 'Internal (Flats Only costs)' and 10% for the 'All Units costs', during the relevant period.

Representations / evidence

15. Further to the directions of the tribunal, the management company on behalf of the landlord, provided copies of service charge documents and accounts. These were included in the hearing bundle.
16. A letter dated 27th March 2018 was received from Ms Patterson and was copied to the management company. This included the following:

Further to the case management conference on 28th February 2018.... the service charges and ground rent has been paid as of the 28th July 2017 to the sum of £2,273.00.

17. The tribunal's comments: No evidence was provided to support this claim. Further, the evidence of Mr McElroy at the hearing was that there was no record of the alleged payment having been made. In the circumstances, and having regard to the lack of evidence of the payment claimed, the tribunal does not accept that a payment was made as claimed.
18. The tenant's letter also stated:

What we are contesting is the absences of evidence to justify the costs, outlined in [the management company's] service charge costs – estimate reference: 118934. Please see attachments of schedule and estimate reference.

19. With her letter dated 27th March 2018, Ms Patterson provided a schedule of Disputed Service Charges (page 177 of the hearing bundle). This set out the items, costs and tenant's comments. The items and figures were the same as those set out under the heading 'Internal (Flats Only) Costs' on page 170 of the hearing bundle in estimate

number 118934. No comments were made in respect of the list of 'All Units costs' on the same page. The schedule of Disputed Service Charges contained requests to provide evidence of the charges and to show contracts. There were no specific challenges to individual charges or items.

20. In his letter in response dated 4th May 2018 Mr McElroy stated as follows:

You've raised a short schedule but these are all for contractual spend which is covered by our management contract, the terms of which are available online and the costs of which have already been shown to you.

You have asked for evidence of the costs of the certificate of expenditure but have already been provided with the certificates which are the result of this work having been undertaken.

The other amounts are all below the statutory threshold at which we would obtain multiple quotes and are costs which have not changed in many years.

21. In his evidence at the hearing Mr McElroy explained that the services provided in respect of the building were provided mainly in house by the management company. There was a lack of persons willing to be directors of the RTM and he described this as 'rudderless'. However previously there had been some leadership and contracts and scope of work had been decided by the client. The scope and content of the works had been continued and he submitted that services and costs were in line with the market. The works included in the in-house contracts for these items was described by Mr McElroy, and also the other items on the schedule.
22. For example, 'Cleaning Internal' was general cleaning of the common parts. This was for one or one and a half hours per week in general. The item 'Cleaning Industrial' was for a deep clean about once a year. 'Access Control' was in respect of the intercoms and door mechanisms etc. Included in the hearing bundle were general lists of items covered by the services provided. However, Mr McElroy said that the lists were not up to date. He said that the landlord named in the lease, Ellenwell Properties Limited, might no longer be in existence, but he did not know the present position
23. Mr McElroy said that at or following the directions hearing, Ms Patterson and or her uncle had indicated that a meeting should be arranged to attempt to resolve the dispute. Mr McElroy referred to his attempts to meet with the tenant / her uncle in order to clarify matters and to resolve the dispute. He referred to emails and telephone calls in

which he / his personal assistant on his behalf, sought to make such arrangements. He explained that the relevant invoices and accounts documents were readily accessible and his office and were available on line to the tenants. However, due to lack of response, it had not been possible to arrange such a meeting.

24. The tribunal's comments: Having considered the evidence, the tribunal considers that sufficient evidence has been provided to support the charges for the service charge items for which payment is claimed.

25. The remaining matters raised in Ms Patterson's letter dated 27th March 2018 were:

We are currently investigating structural issues regarding the building:

(1) The external wall outside Flat B, which has a continuous leak from the positioning of a pipe.

(2) The absence of a fire exit.

(3) In addition, I am currently in legal proceeding with the owner of the freehold and leasehold of Flat D, to acquire access to stop a leak which is damaging my ceiling.

26. These matters were addressed by Mr McElroy in his letter in response dated 4th May 2018, which he referred to in his evidence at the hearing.

In respect of the above 3 items:

(1) Mr McElroy stated in his letter that this was the first the management company had heard of this and they were not aware of any pipe having been relocated. No further details of the allegation had been received.

(2) In respect of this item, there was no fire exit at the building. This was how the building was designed and this was not a management issue.

(3) It was considered that the final matter raised by Ms Patterson in her letter was a matter of private nuisance and did not relate to the service charges claimed.

27. The tribunal's comments: The tribunal, having considered Ms Patterson's letter and the response, do not consider that it has been shown that these matters affect the recoverability or reasonableness of the service charges in this case.

The sums claimed

28. The sums claimed in the County Court proceedings in respect of service charges for flat B:

£

(1) Overspend for the year ending 30 th June 2017	247.46
(2) Half annual charge due 1 st July 2017	580.00
(3) Half annual charge due 1 st July 2017	199.00

Total: £ 1026.46

A schedule was attached to the Particulars of Claim in respect of the above sum claimed (page 48 of the hearing bundle).

29. The sums which had been charged for the interim service charge for the service charge year to 30th June 2017 were shown as:

01/01/17 £447.77 (Bi-annual service charge - All Units Schedule)

01/01/17 £189.00 (Bi-annual service charge – Flats Only Schedule)

30. The schedule showed that a payment was made of £2709.17 on 3rd February 2017 leaving effectively a nil balance (a debit figure of £0.01). Mr McElroy's evidence was that this was paid by Ms Patterson's mortgagee.

31. However, when the actual costs were calculated for the service charge year, in respect of the All Units costs there was an overspend of £2,722.10. The proportion payable for flat B was £247.46. Accordingly, a further figure of £247.46 was due from Ms Patterson in respect of the service charge year to 30th June 2017. (The figures for the All Units costs are shown on page 95 of the hearing bundle. The budget figures are shown on page 160).

32. In respect of the schedule at page 95, Mr McElroy provided an explanation as to the reasons why the figures for Insurance and for Legal Services had increased from the budgeted figures to the actual expenditure shown on the schedule. He said that it had not been possible to pay the insurance charges due to lack of payment of service charges and therefore increased costs had been incurred due to factoring charges to fund the payments for insurance. In respect of increase in the Legal Services, amongst other matters, this was due to costs incurred recovering sums for non-payment of service charges. The

tribunal accepts that an explanation has therefore been provided of the increase between budgeted costs and actual costs.

33. In respect of the charges due on 1st July 2017 of £580 (All Units costs) and £199 (Internal Flats Only Costs), these are the first of the interim charges for the service charge year commencing 1st July 2017 and relate to the schedule at page 170 of the hearing bundle. The amounts claimed reflect the flat B's proportion of the first of these bi-annual interim charges.

Summary

34. Having considered the evidence as a whole, and for the above reasons, the tribunal determines that the sum of £1,026.46 was reasonable and reasonably incurred and is due and owing by the respondent, Ms Patterson to the applicant, 51-53 Anerley Road RTM Company Ltd.

Name: First-tier Tribunal Judge
Seifert

Date: 15th October 2015

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).