

13084



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

Case reference : **LON/00AF/LSC/2018/0195**

Property : **Flat 5, 103 Anerley Road, London SE20
8AP**

Applicants : **Mr P Tudose**

Representative : **In person**

Respondent : **Mr B Stroh**

Representative : **Mr M Lewin of counsel**

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

Tribunal members : **Judge S Brilliant
Mr H Geddes**

**Date and venue of
hearing** : **26 November 2018
10 Alfred Place, London WC1E 7LR**

Decision of the Tribunal

The Tribunal determines that the amounts payable by the Applicant for service charges are as set out in respect of the following periods:

25 March 2013 – 24 March 2014 £4,7844.

25 March 2014 – 24 March 2015 None.

25 March 2015 – 24 March 2016 None.

25 March 2016 - 24 March 2017 None.

25 March 2017 – 24 March 2018 None.

25 March 2018 – 24 March 2019 None.

Introduction

1. On 21 May 2018, the Applicant made an application to the Tribunal for a determination of the reasonableness of and the liability to pay service charges demanded in respect of Flat 5, 103 Anerley Road, London SE20 8AP (“the flat”). References in square brackets below are to pages in the trial bundles.¹

2. The flat is situated in a detached house consisting of ground, first and second floors and a basement (“the building”).

3. Under the lease the Respondent is entitled to charge service charges in respect of services provided and work done.

The lease

4. Although the lease provides that the service charge year runs from 01 January to 31 December (paragraph 12 of the Fourth Schedule [491]) the parties have adopted a year running from 25 March to 24 March. The lease provides for the Applicant to pay by way of advance service charges a fair and reasonable interim payment, to be paid on 25 March and 29 September in each year: clause 3(b) [473].

5. The Applicant’s proportionate part of the service charge is 10.9%. The charge must be paid within 14 days of the service on him of the account of the service charges incurred in the previous accounting year. The costs can include a reasonable part of periodically recurring charges to form a reserve fund: clause 3(a) [382-383].

¹ The Respondent’s bundle is prefixed “R”.

6. By paragraph 12 of the Fifth Schedule, the Respondent is required to have an account taken of costs incurred by him in each accounting year in carrying out his obligations under the lease set out in the Fourth Schedule [491].

7. Paragraph 13 of the Fifth Schedule provides as follows [491]:

*The account taken in pursuance of the last preceding paragraph shall be prepared and audited by a qualified accountant who shall **certify** (our emphasis) the total amount of the costs for the period to which it relates*

The issues

8. In his Scott Schedule the Applicant challenged the following categories of items (not all the items were challenged in each year):

- (1) Advance service charges.
- (2) Gardening and grounds maintenance.
- (3) Repairs and maintenance.
- (4) Health and safety.
- (5) Legal and professional.
- (6) Insurance.
- (7) Managing agent's fee.
- (8) Accountancy fees.
- (9) Electricity.
- (10) Cleaning.
- (11) Window cleaning.

9. The building is managed by Mr Bould, a director of Jennings & Barrett Ltd ("the managing agent").

The hearing

10. The Tribunal did not find it necessary or proportionate to carry out an inspection.

11. At the hearing the Applicant appeared in person. Mr Lewin of counsel appeared on behalf of the Respondent. Mr Bould attended.

25 March 2013 – 24 March 2014

12. The account is at [100]. The Scott schedule is at [547].

Advance service charges

13. The only challenge in this year is in respect of £4,744 demanded as interim service charges [120]. The Applicant's case is that his proportionate part of the total sum of £15,806 actually incurred [100] comes to £1,722, so that he has grossly overpaid.

14. The Respondent's response to this is to point out that £27,366 was transferred in the accounts to the reserves [100]. This is something the Respondent was perfectly entitled to do. On 6 June 2013, the then managing agents wrote to the Applicant explaining that there was a considerable number of repairs required to the building [R/149]. In particular, the foundations under flat 2 required major works. The Applicant accepted that, on principle, the cost of these works was recoverable under the service charge. There is, accordingly, no case made out that the advance service charge was unreasonable. Accordingly, the amount recoverable from the Applicant in this year was £4,744.

15. It is to be noted that the 2014 accounts contain the following certificate made by the accountants, Simpson Wreford & Co ("SW") [104]:

We certify that the above summary is in our opinion, a fair summary complying with the requirements of Section 21(5) of the Landlord and Tenant Act 1985, and is sufficiently supported by accounts, receipts and other documents which have been provided to us.

16. Accordingly, the demand for payment of the 2014 service charges was made lawfully in accordance with the terms of the lease.

25 March 2014 – 24 March 2015

17. The account is at [109]. The Scott schedule is at [548-550].

18. The following items are challenged as not having been correctly demanded:

- (1) Gardening and grounds maintenance.
- (2) Repairs and maintenance.
- (3) Health and safety.

(4) Legal and professional.

(5) Insurance.

(6) Managing agent's fee.

19. In addition, the Applicant demonstrated with the benefit of the photographs that the gardening had not actually taken place. The Respondent accepted this, so the charge made for gardening cannot stand. Apart this item, there was no challenge to the reasonableness of the other actual charges.

20. Also, in this year, the Applicant challenged the advance service charge, in the sum of £4,696, as not being reasonable in amount. In fact, the advance service charge in this year amounted to £4,388 [216]. We do not accept this challenge. The accounts show that £20,000 was transferred to the reserves [109].

21. The wider point being taken by the Applicant was that for this year, and the following years, the accounts had not been certified by accountants as required by the lease. The 2015 accounts are at [106-112].

22. At [108], SW state the basis of their report:

Our work was carried out having regard to (TECH 03/11) Residential Services Charge Accounts published jointly by the professional accountancy bodies with ARMA and RICS. In summary, the procedures were carried out with respect of the service charge accounts were ...

Because the above procedures do not constitute either an audit or a review made in accordance with International Standards on Auditing (UK and Ireland) or International Standards on Review Engagements, we do not express any assurance on the service charge accounts other than in making factual statements set out below.

Had we performed additional procedures or had we performed an audit review of the financial statements in accordance with International Standards on Auditing (UK and Ireland) or International Standards on Review Engagements, other matters might have come to my/our attention that would have been reported to you.

23. In other words, SW were not providing the certificate contemplated and required by the lease.

24. In our judgment, certification of the accounts is a condition precedent to the payment of the service charges. Unless and until the accounts are so certified, there is no liability to pay the service charges. In fact, the certificate will not add anything to the information in the accounts, but will probably add (perhaps substantially) to be accountants' fees to be recovered from the tenants.

25 March 2015 – 24 March 2016

25. The account is at [117]. The Scott schedule is at [551-553].
26. The following items are challenged as not having been correctly demanded:
- (1) Electricity.
 - (2) Cleaning.
 - (3) Window cleaning.
 - (4) Repairs and maintenance.
 - (5) Accountancy fees.
 - (6) Insurance.
 - (7) Cleaning.
 - (8) Managing agent's fees.

27. The managing agent's fees amounted to £200 per annum including VAT for each flat. This is a reasonable amount. However, the appointment was not made until February 2016 [R91], so the amount claimed should be reduced by 8.33%.

28. But again, the point being taken by the Applicant was that, for this year, the accounts had not been certified by accountants as required by the lease. The 2016 accounts are at [115-119]. These accounts do not contain the requisite certificate.

29. Unless and until the accounts are so certified, there is no liability to pay the service charges for this year.

25 March 2016 – 24 March 2017

30. The account is at [123]. The Scott schedule is at [554-557].
31. The following items are challenged as not having been correctly demanded:
- (1) Cleaning.
 - (2) Window cleaning.
 - (3) Repairs and maintenance.

(4) Insurance.

32. In addition, the cleaning costs (£1,440) and the cost of window cleaning (£1,104) [123], were challenged as not being reasonable in amount.

33. In the application form, the Applicant says [14]:

I find the cleaning bill too expensive. I witnessed the cleaning service few times. The vacuuming and dusting of the hallway was done by one person in about 30 minutes, it is a small hallway. Regarding windows cleaning we only saw it being done three times in two years. Cleaning and windows cleaning was done in about two hours in total, it means that we were charged £200 per hour for cleaning.

34. As to the cleaning, we are not persuaded that the work billed for was not carried out. No alternative quotation was provided by the Applicant.

35. In respect of the window cleaning the Respondent accepted that there should be a 75% reduction in the charge. Window cleaning involved 30 windows over four floors. Therefore, a reasonable charge for cleaning windows would be £828.

36. However, the point again being taken by the Applicant was that, for this year, the accounts had not been certified by accountants as required by the lease. The 2017 accounts are at [121-125]. These accounts do not contain the requisite certificate, so no service charges are recoverable for this year.

25 March 2017 – 24 March 2018

37. The Scott schedule is at [R/129].

38. The following items are challenged as not having been correctly demanded:

- (1) Cleaning.
- (2) Window cleaning.
- (3) Insurance.
- (4) Managing agent's fees.
- (5) "Year Service Charge".

39. In respect of the cleaning costs (£1,440) and the window cleaning (£1,104), the Applicant again contended that the amounts charged were not reasonable in amount. In respect of the cleaning we are not persuaded that the work billed for was

not carried out. In respect of the window cleaning the Respondent again accepted there should be a 75% reduction in the charge to £828.

40. However, the point again being taken by the Applicant was that, for this year, the accounts had not been certified by accountants as required by the lease. We have not been shown any accounts containing the requisite certificate. No service charges are recoverable for this year.

25 March 2018 – 24 March 2019

41. The Scott schedule is at [558].

42. The item challenged is for proposed work at flat 2. The total amount of this cost is predicted as £27,000.²

43. In the absence of any assurance that at the end of the service charge year properly certified accounts would be forthcoming, we do not consider it reasonable for this payment to be made.

s.20C and fees refund

44. In the circumstances of this case, we are of the view that it would be just and reasonable to make an order that the costs incurred by the Respondent in these proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of service charge payable. We also order the Respondent to repay the fees incurred by the Applicant.

Name: Simon Brilliant

Date: 19 December 2018

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.

² According to the directions dated 29 May 2018 [22]. The Scott Schedule says £80,000 [558].

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.