



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

Case reference	:	LON/00AM/LSC/2017/0407
Property	:	28 Norris House, Colville Estate, London N1 5PU
Applicant	:	London Borough of Hackney
Representative	:	Mr J. Wenham LLB (Hons), Paralegal; London Borough of Hackney
Respondent	:	Ms S. G. Coombs (deceased)
Representative	:	Mr J B Brown
Type of application	:	Liability to pay annual service charges (Section 27A Landlord and Tenant Act 1985)
Tribunal members	:	Judge Lancelot Robson Mr T Sennett FCIEH
Venue and Hearing Date	:	10 Alfred Place, London WC1E 7LR 17th May 2018
Date of decision	:	22nd May 2018

DECISION

Decision Summary

- (1) The total amount of service charge claimed in this application, as claimed by the Applicant at the start of the hearing, is £4, 963.70.
- (2) The sum of £1,080.10 is reasonable and payable by the Respondent.
- (3) The sum due shall be paid by the Respondent within 21 days of the date

of this decision.

- (4) The Tribunal records that the Applicant stated that it would not seek interest or the costs of this reference to the Tribunal. The Tribunal also records that the county court costs and ground rent are matters reserved to the Court.
- (5) The Tribunal makes the other determinations as set out under the various headings in this decision.
- (6) This case shall now be referred back to the County Court at Clerkenwell and Shoreditch to decide upon costs in the County Court action and any other outstanding matters not within the Tribunal's jurisdiction.

Application

1. The Applicant seeks a determination pursuant to Section 27A of the Landlord and Tenant Act 1985 as to the reasonableness of demands made in respect of service charges falling due in the service charge years commencing on 1st April 2010, 2011, 2012, 2013, 2014, 2015, and 2016 payable pursuant to the terms of a lease (the Lease) dated 20th April 2001.
2. This case was referred to the Tribunal by an order of District Judge Duncan dated 16th October 2017 in the County Court at Clerkenwell and Shoreditch in case no DQ2835Q. In that order Judge Duncan also appointed Mr Brown as the representative of the Respondent's estate for the purposes of the application. The Tribunal was advised that the Respondent had died in January 2017, but the Applicant had only been made aware of this after it had issued the court proceedings.
3. The Tribunal gave Directions on 28th November 2017 supplemented by Directions on 1st March 2018, and 1st May 2018. The effect of the Directions given on 1st May 2018 was to debar the Respondent's representative from taking any further part in the proceedings for failure to comply with the Tribunal's Direction to make a detailed statement of case (having made only very vague submissions in his defence to the court claim, which were too vague to answer)
4. The Applicant had been prevented from making a formal statement of case as a result of the Respondent's failure to state a case, The Tribunal thus relied upon the Applicant's skeleton argument prepared for the hearing dated 16th May 2018, with relevant documents annexed, supplemented by the witness statement of Mr I. Davies, Income and Dispute Resolution Officer dated 10th May 2018, oral evidence and submissions made at the hearing.
5. Extracts from the relevant legislation are attached as Appendix 1 below.

Hearing

6. Mr Wenham presented the case for the Applicant. He submitted that the power to charge the service charge was contained in clauses 2 and 3 of the Lease. The Tribunal questioned the service charge accounts for the period in dispute, and heard evidence and explanations which appeared satisfactory. In reply to questions Mr Davies confirmed that the amount sought by the Applicant totalled £4,963.70, but initially conceded that only sums falling due during the last 6 years would be claimed. Also the following items should be deducted from the sum claimed;

a)	Ground Rent - £9 per annum x6	- £54
b)	County Court costs charged on 9th August 2012	- £259
c)	Interest on sums found due in 2012	- 236.12

		549.12

leaving a balance of £4,414.58.

7. The Tribunal considered the running statement of account for this property provided by the Applicant, and in answer to further questions, the Tribunal queried the details of an opening balance added to the account on 5th April 2010, of £3,451.67. It also was curious as to the costs and interest added to the account in 2012, apparently following a court judgement. Mr Wenham requested a short adjournment to take instructions, as Mr Davies had no personal knowledge of the events or sums involved at that time, having only more recently taken up his present post. The Tribunal was informed that the Applicant had installed a new computer system in 2010, and the entries gave no detailed information relating to sums due prior to that time. Also, until 2014, the system had not recorded outgoings on the estate on a building by building basis, but used a global method of accounting across the whole estate.

8. Upon his return, Mr Wenham advised the Tribunal that it had been discovered from the office that a county court judgement had been made against the Respondent for the sum of £3,334.48 on 9th August 2012 (the amount outstanding at that time). The Applicant conceded that this sum, the interest and costs should have been removed from the service charge account and passed to the relevant department for enforcement. The judgement had not yet been enforced, due to an oversight in the Applicant's office. Nevertheless, the Applicant accepted that it was not entitled to sue for these sums again, but should proceed to enforce the 2012 judgement before it became time barred.

9. In the light of this fresh information, Mr Wenham conceded that the Applicant was only entitled to claim £1,080.10 (i.e. £4,414.58 less £3,334.48) in this application.

Decision

10. The Tribunal considered the evidence and submissions. The Respondent's representative had made a number of informal allegations of wrongdoing by the Applicant's staff, but these had been deemed to lack coherence or any reasonable detail by a procedural judge after due warning,

and had been barred from taking any further part in the case. The Tribunal found that the Applicant's submissions on the service charges demanded were credible and supported by the documentary evidence provided, particularly the Lease and the service charge accounts. The Tribunal decided that the sums demanded were reasonable and reasonable in amount, for the purposes of Section 27A of the Landlord and Tenant Act 1985. The only problem was the running account, as noted above.

11. The Tribunal also noted that the Respondent, and latterly her representative, had been making regular monthly payments during the whole period in dispute, and that these had been taken into consideration. However, the payments were insufficient to cover the full amount of the charges. To avoid further applications, the Respondent's monthly payments need to be increased to a realistic level.

12. The Tribunal thus decided that the sum of £1,080.10, as finally demanded at the hearing by the Applicant, was reasonable and reasonably incurred. The Respondent's estate must pay this sum within 21 days of the date of the Tribunal's letter sending this decision. The Applicant conceded at the hearing that, in the circumstances it would not seek interest or the costs of this application to the Tribunal. For completeness the Tribunal notes that issues relating to Ground Rent and costs incurred in the County Court are matters to be decided by the Court.

13. This case shall now be returned to the County Court for determination of the outstanding issues.

Tribunal Judge: Lancelot Robson

Dated; 22nd May 2018

Appendix 1

Landlord & 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 21B

- (1) A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges.
- (2) The Secretary of State may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.
- (3) A tenant may withhold payment of a service charge which has been demanded from him if subsection (1) is not complied with in relation to the demand.
- (4) Where a tenant withholds a service charge under this section any provisions of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.
- (5) and (6)....

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 leasehold valuation 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 a leasehold valuation tribunal;
 - (b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation 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
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