



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

Case Reference : **LON/00AP/LSC/2018/0329**

Property : **Flat 3, 146 West Green Road,
London N15 5AE**

Tenant-Respondent : **Anita Browne**

Representative : **In person**

Landlord-Applicant : **Longterm Reversions (Harrogate)
Ltd**

Representative : **Michael Grant of counsel
instructed by Swaine Allen,
solicitors**

Additional Applicant : **Christodoulos Ktorides**

Representative : **No appearance**

Type of Application : **Service charge dispute**

Tribunal Members : **Tribunal Judge Adrian Jack and
Tribunal Member Susan Coughlin
MCIEH**

**Date and venue of
determination** : **19th November 2018 at 10 Alfred
Place, London WC1E 7LR**

Date of Decision : **5th December 2018**

DECISION

Procedural

1. By an application dated 22nd August 2018 the landlord sought determination of the service charges due from the tenant in respect of the years ending 31st December 2016, 2017 and 2018. (The service charge year is the calendar year.) The figures for 2016 and 2017 were final amounts. The figures for 2018 were in respect of service charges payable on account.
2. Subsequently on 26th September 2018 the Tribunal added Christodoulos Ktorides as an applicant on his paper application. He is the lessee of another flat in the block and apparently sought to be added so that he could be involved in the litigation. (The dispute between the landlord and Ms Browne has resulted in major works not yet been carried out, despite the wishes of the lessees of the other three flats in the block that the works be done.) He was not represented by Swaine Allen and did not appear at the hearing or otherwise make submissions. It may be that he should have been added as a respondent, but no one applied for this and the Tribunal made no order to that effect. He thus remains as an additional applicant.
3. The current application is the fourth case which has come before the Tribunal between the landlord (which has changed its name from Regisport Ltd) and the tenant. The previous applications are LON/00AP/LSC/2010/0109 (decision of 16th August 2010), LON/00AP/LS/2012/0265 (decision of 13th August 2012) and LON/00AP/LSC/2015/0464 (decision of 23rd March 2016). Judge Jack chaired the panel in the first of these applications but has no particular recollection of the case. No party suggested that it was inappropriate for him to be sitting in the current case. Tribunal has determined the current case on the basis of the evidence given in the current application and the matters determined in the previous three decisions.
4. By an application received by the Tribunal on 15th November 2018 (the Thursday before the hearing on Monday 19th November 2018), the tenant sought extensive orders under rule 7 of the Tribunal's Rules of Procedure. The landlord responded to the application by a letter from Swaine Allen of 16th November 2018. We refuse the rule 7 application. It is simply too late. No party requested an adjournment. We deal with the costs of the rule 7 application below.
5. The Tribunal heard the matter on 19th November 2018. The landlord had prepared Bundle A for the hearing; the tenant prepared Bundle B for the hearing. In the event, save for some photographs, reference was hardly made to Bundle B.
6. No party sought a site inspection and none was held.

The service charge demands

7. The amounts claimed by the landlord with what we have formulated as the tenant's response are as follows (the tenant is responsible for a quarter of the sums below which are proved due):

2016

Electricity, common parts	£145.67	No issue
General repairs and maintenance	1,143.76	Proof required of items
Health & safety/fire risk/asbestos	273.60	Not needed every year
Management fees	1,078.03	Long-term qualifying agreem't
Out of hours emergency service	57.60	No invoice
Major works (pending)	26,891.38	See discussion below

2017

Electricity, common parts	£179.38	No issue
General repairs and maintenance	539.76	Proof required of items
Health & safety/fire risk/asbestos	387.00	Not needed every year
Management fees	1,115.12	Long-term qualifying agreem't
Insurance – valuation fee	120.00	PM Management collect ins'rce
Out of hours emergency service	57.60	No invoice
Major works	358.62	Accounting for this unclear

2018 (on account)

Cleaning, common parts	£240.00	No issue
Electricity, common parts	250.00	No issue
Garden/estate maintenance	200.00	No issue
General repairs and maintenance	1,000.00	No issue
Health & safety/fire risk/asbestos	450.00	Not needed every year
Management fees	1,139.24	Long-term qualifying agreem't
Out of hours emergency service	57.60	No invoice

General repairs and maintenance

8. The issues in relation to the 2016 head of general repairs and maintenance were substantially narrowed in the course of the hearing. There had been an issue going back to 2008. A tenant in the block had used a flat for drug-dealing. The police raided the flat. In the course of the raid they broke through the front door of the block causing substantial damage. There was other damage caused by this tenant's illegal activities. The landlord accepted that it should pursue that tenant for the costs of remediation and that such items should not be put through the service charge. (The damage from 2008 has to this day not been completely repaired.) In the light of that admission the landlord conceded that a sum of £186.76 claimed in 2017 for locks should be disallowed.
9. The expenditure on the other items were adequately proven by the production of invoices.

10. The only remaining issues were two. Firstly, there was a complaint by the tenant of inadequate work. She said that, when the guttering was mended, clips were not put in place to hold the guttering together. This meant that water escaped where two pieces of guttering met. This complaint is borne out by the photographs produced by the tenant. We consider that an allowance of £100 should be made for this defect.
11. Secondly, the tenant said that a coping stone had fallen. The evidence as to what had happened and why was unclear. However, any defects will be fixed in the major works and the cost as part of those works will be negligible. We therefore make no disallowance.

Health and safety

12. It is now a requirement for landlords to obtain health and safety reports regularly. Once every two years is a reasonable frequency. In the current case, the 2016 report recommends that smoke alarms and emergency lighting be installed in the common parts. We suspect that this recommendation would have been made in the 2014 health and safety report, but without sight of the 2014 report this suggestion is not proven. Accordingly, we consider that the tenant has benefited from the 2016 report and we disallow nothing in this year.
13. In 2017, there was a fixed wiring test on the electrics carried out at a cost of £167. This was not controversial. There was also an asbestos survey for which the landlord sought to recover £222. The 2016 report had already reported that no asbestos was obvious on inspection. This does not mean that asbestos could not have been present in a concealed form. The 2017 report reaches the same conclusion, however, no samples were taken, so the 2017 report takes the matter no further forward than the 2016 report. In our judgment, the 2017 report was unnecessary and brought no benefit to the tenants. Unless the investigator was instructed to take samples, it was inevitable that the report would reach the same conclusion as the 2016 report. Accordingly we disallow £222 in the 2017 service charge accounts.
14. In 2018 the landlord seeks a payment on account of £450 for health and safety. In our judgment this is excessive, if the landlord had complied with the previous recommendations of the reports. It is more than the actual cost in the previous two years. We allow £250.

Management fees

15. The only issue on the management fees was whether the contract between the landlord and Countrywide, the managing agents, was a long-term qualifying contract. Such an agreement is defined in section 20ZA(2) of the Landlord and Tenant Act 1985 as "an agreement entered

into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.”

16. The original contract was entered in October 2008 and the landlord conceded that that contract was a long-term qualifying contract. However, the landlord’s case is that the agreement was subsequently varied so that it was renewed every year for a term of 364 days.
17. The landlord was able to show the relevant letters of variation. We accept that these letters reflect the actual agreement between the landlord and the management agent. This in our judgment means that the contract was not a long-term qualifying contract, so that the £100 per tenant cap on the recovery of such expenditure does not apply. No authorities were cited to us, but this conclusion is in accordance with *Corvan (Properties) Ltd v Abdel-Mahmoud* [2018] EWCA Civ 1102 and *Bracken Hill Court at Ackworth Management Co Ltd v Dobson* [2018] UKUT 0354 (LC).
18. We disallow nothing under this head.

Out of hour emergency service

19. The 2016 and 2017 service charge accounts include the sum of £57.60 for an out of hours emergency service. This service was provided by a firm called Adiuvo. The tenant’s sole point was a desire to see the invoices for this service. The landlord had produced the invoices showing a cost of £12 per flat plus VAT. No uplift is claimed. Accordingly, we disallow nothing.
20. The 2018 demand is on account in the same sum. For the same reason we disallow nothing.

Major works

21. It was common ground that the block has required major works for many years. As long ago as 2008 the landlord had obtained a report which recommended accepting a tender for £12,428 for major works. In 2015 the landlord started a section 20 consultation. In that year it sought to recover £23,550 on account of the major works.
22. The tenant opposed her liability for a quarter of that figure. Her argument was that the cost of the work had been inflated as a result of the long-term neglect of the building by the landlord.
23. These arguments were considered by this Tribunal in its third decision of 23rd March 2016. It rejected the tenant’s case and held that the full £23,550 was recoverable through the service charge account.

24. By the time the Tribunal made this decision, the position was that the other three leaseholders in the block had paid their share of the proposed major works. Only the current tenant had refused to pay. The landlord says that without payments from all four lessees it was not prepared to let the contract and that the six month validity of the quotation it had obtained had lapsed.
25. We note that this is contrary to the terms of the leases. Under clause 6, the landlord is entitled to refuse to carry out works required, if the tenant *who is the lessee under that lessee's lease* had not made the relevant contribution to the service charge. In the current case, three tenants paid the service charge for the major works, so the landlord was obliged vis-à-vis *those* three tenants to carry out the works.
26. Be that as it may, the landlord, after achieving success against this tenant in the 2016 decision, did not take any steps to enforce the Tribunal's decision. Instead the landlord withdrew that element of the service charge and reccredited the tenant with her contribution to the £23,550.
27. The landlord then charged £26,891.38 in the 2016 service charge on account of the major works. Despite the increase from £23,550, the tenant told us that she took no issue on the amount or any other issue as to this head.
28. It follows that we allow the £26,891.38 in full. We make it clear that this determination supersedes the £23,550 figure which this Tribunal allowed in its 2016 decision. There can be no double-recovery.
29. The 2017 major works figure of £358.62 is based on the installation of emergency lighting at a cost of £750. £391.38 was taken from the major works budget leaving £358.62 to be paid from the 2017 service charge account. This is hardly transparent, but the sum claimed has been adequately proven. We disallow nothing.

Valuation report

30. Insurance matters were dealt with by PM Management, not by Countrywide. It is good practice to obtain regular valuations of rebuilding costs for insurance purposes and in fact this valuation (unusually) resulted in a reduction of the rebuilding costs. The cost of the revaluation is reasonable. The fact that Countrywide organised the valuation rather than PM Management is in our judgment irrelevant. We disallow nothing.

Conclusion on service charge accounts

31. Accordingly, in 2016 and 2017 we allow the following sums:

2016

Electricity, common parts	£145.67
General repairs and maintenance	857.00
Health & safety/fire risk/asbestos	273.60
Management fees	1,078.03
Out of hours emergency service	57.60
Major works (pending)	26,891.38

2017

Electricity, common parts	£179.38
General repairs and maintenance	353.00
Health & safety/fire risk/asbestos	165.00
Management fees	1,115.12
Insurance – valuation fee	120.00
Out of hours emergency service	57.60
Major works	358.62

32. The on account payment for Health and Safety/Fire risk survey in 2018 is reduced to £250. No other sum in 2018 is disallowed.

Landlord's claim for costs

33. The landlord sought an order for its legal costs against the tenant in the sum of £8,805.80 under rule 13(1)(b) of the Tribunal's Rules of Procedure on the grounds that she has "acted unreasonably in bringing, defending or conducting proceedings". This comprised firstly the costs of the claim and secondly the cost of responding to the rule 7 application. The total sum of service charges sought against the tenant in the three service charge years was £8,921.09 (a quarter of £35,584.36). The amount of costs is therefore close to the total service charges claimed.
34. As regards the costs of the claim the landlord puts its case on the basis that the tenant has increased the cost to the landlord by her prolix style and by the generation of Bundle B, which contained an enormous amount of irrelevant material. She should be liable for the increased costs caused by her unreasonable conduct.
35. It is true that the tenant has been prolix. The criticisms made of her Scott schedule by the Tribunal in the 2016 decision can equally be levelled at the Scott schedule prepared in the current case. We must, however, bear in mind that the tenant is a litigant-in-person. She was in our judgment doing her best. She did not seek to relitigate the matters determined adversely to her in the 2016 decision. Overall she has not in our judgment acted unreasonably in defending the proceedings.
36. The criticisms of the tenant are, in any event, massively outweighed by the landlord's conduct. It obtained a determination in its favour in the

2016 decision as regards the major works, no doubt at significant cost. It is baffling that the landlord then decided to do nothing with that award. It would have been a simple matter to enforce the Tribunal's award. Instead the landlord has come back for a second determination of the tenant's liability for major works. That in our judgment is unreasonable. We have concluded that the tenant has not generally behaved unreasonably, so we must refuse the first part of the landlord's application. However, if we are wrong about that, then we would have to exercise a discretion whether to award costs. Considering the landlord's unreasonable relitigation of the major works, we would refuse the landlord's costs application as a matter of discretion.

37. In any event we consider the sum claimed to be wholly excessive. The landlord's incurring of these costs is in our judgment *in terrorem*, designed to dissuade the tenant from exercising her rights. There has been a breakdown in trust between the parties. This, however, is by no means solely the tenant's responsibility. As this Tribunal noted in its 2010 decision, the landlord went in that case to extraordinary lengths to prevent the tenant seeing the documents which justified the service charges in dispute. In the current case, it would have been a simple matter for the landlord, when it served its service charge demands, to attach the handful of invoices which made up the repair bill. Ms Vigeon, who manages the block, said that she knew the tenant would want to see these in due course. Countrywide's photocopying charges are ten pence per sheet. Rather than spend 50 or 60 pence on photocopying, the landlord preferred to stand on its rights and refused to do more than it was required to do by law.
38. It is hardly surprising in these circumstances that the tenant was suspicious of the landlord's behaviour and wanted proof of expenditure put through the service charge accounts.
39. The second part of the landlord's application, in respect of the tenant's late rule 7 application, is by contrast well founded in our judgment. The tenant must have known that her rule 7 application could not have been dealt with without an adjournment. There was no reason for her to make the application as late as she did. Her conduct in our judgment was unreasonable.
40. That said, we need to consider what, if any, costs order we should make in respect of the rule 7 application. The proper starting point in our judgment is that the only justification for the landlord to employ solicitor and counsel was the issue of the major works. However, as we have noted, the landlord already had a determination in its favour. We consider that the cost of solicitor and counsel cannot be justified. Accordingly, the landlord's costs of responding to the late rule 7 application should be limited to the costs which would have been incurred if the case had been argued by the managing agents alone.

41. Doing our best we consider that the costs which would have been incurred on this basis in responding to the rule 7 application would be £100. We have considered whether in our discretion we should refuse to make an order in that sum. In our judgment it is appropriate to do so. The tenant must have realised her rule 7 application was unreasonable and inappropriate. In respect of the rule 7 application, there are no countervailing considerations.

Fees payable to the Tribunal and section 20C

42. The Tribunal has a discretion as to who should pay the fees payable to the Tribunal. These amount to £300. For the reasons already given, we do not take the major works into account in determining liability for these. As regards the other items, the tenant has reduced some sums, but in our judgment the landlord has greater success. We consider that the tenant should pay £200 to the landlord.
43. We turn to the tenant's application to limit the sums which the landlord can claim through the service charge against all the tenants in the block. The important consideration in our judgment is that the landlord's costs have been unnecessarily increased by employing solicitor and counsel. In our judgment the costs which the landlord can properly put through the service charge account should be limited to £2,000 and to that extent the section 20C application is allowed.

DETERMINATION

- 1. The figures set out in paragraph 31 are recoverable through the service charge account.**
- 2. The tenant shall pay the landlord £100 pursuant to rule 13(1)(b) of the Tribunal's Rules of Procedure and £200 in respect of the fees payable to the Tribunal.**
- 3. Pursuant to section 20C of the Landlord and Tenant Act 1985 the amount of legal costs which the landlord is entitled to put through the service charge account in respect of the current proceedings be limited to £2,000.**

Judge Adrian Jack, 5th December 2018

ANNEX: The law

The Landlord and Tenant Act 1985 as amended by the Housing Act 1996 and the Commonhold and Leasehold Reform Act 2002 provides as follows:

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, improvement 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 of 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 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 provision 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 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) a leasehold valuation 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 20B

- (1) If any of the relevant costs taken into account in determining the amount of any service charges were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charges as reflects the costs so incurred.
- (2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

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 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.”

Sections 47 and 48 of the Landlord and Tenant Act 1987 require a landlord to give his name and address and to give an address for the service of notices by the tenant on him. The Service Charges (Summary of Rights and Obligations, and Transitional Provision) (England) Regulations 2007 requires a landlord to serve a summary of tenants' rights and obligations with any demand for service charges on pain of irrecoverability of the service charges demanded.