

12627



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

Case reference : **LON/00AY/LSC/2017/0274**

Property : **Flat A 779 Wandsworth Road
London SW8 3JG**

Applicant : **V & J Investments Limited**

Represented by : **Bowood Commercial**

Respondent : **Mr Michael Morgan
Mrs Barbara Morgan**

Represented by : **The respondents did not appear
and were not otherwise
represented**

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

Tribunal member(s) : **Ms M W Daley LLB(hons)
Mr S Mason BSc FRICS FCI Arb**

**Date and venue of
hearing** : **15 January 2018 at 10 Alfred Place,
London WC1E 7LR**

Date of decision : **12 February 2018**

DECISION

Decisions of the tribunal

(1) **The Tribunal's decision is set out at paragraphs 52-65**

The application

The background

1. By an application dated 27 July 2017 the applicant sought determination of the reasonableness and payability of the service charges in the sum of £16,214.96
2. Directions were given at a case management conference, on 5 September 2017, where it was stated that the following matters were in issue:- Whether the service charges in the sum of £16,214.96, for the periods listed above are reasonable and payable. Whether an order under section 20C of the 1985 Act should be made, whether an order for reimbursement of application/ hearing fees should be made.
3. The premises which is the subject of this application, is a flat situated in a converted mid terrace three storey Victorian building comprising 3 floors.
4. The premises are subject to a lease agreement dated 26 February 1999, which provides that the Applicant will provide services, the costs of which are payable by the leaseholders, (40% contribution) as a service charge.
5. Where specific clauses of the lease are referred to, they are set out in the determination.

The Hearing

Preliminary matters

6. At the hearing the Applicant was represented by Ms Kate Mc Mackin property manager on behalf of Bowood Commercial, The Respondent did not appear. As the Tribunal had sight of a Statement of Case from the Respondents and as there was no explanation for the Respondents absence. The Tribunal delayed the start of the hearing to 10.30 am to enable enquires to be made.
7. The Tribunal was informed that the clerk for the case had contacted the Respondents by telephone and had been informed that Mr Morgan had not attended as he was unaware of the hearing.
8. The Tribunal asked the Applicant whether they wished to make any representations concerning proceeding in the Respondents' absence.

9. Ms McMackin stated that the leaseholders had not engaged with the hearing and had not attended the case management hearing and had been late in complying with the Directions. She asked that the Tribunal continue to hear this matter in the absence of the Respondents. Within the bundle she had also included a Certificate of Posting in relation to the hearing bundle.
10. The Tribunal determined that this matter should proceed. It noted that the Directions dated 5 September 2017 had provided for this matter to be heard on 15 January 2017. This had been clearly set out in the directions. The Tribunal also noted that the Respondent's had provided a Statement of Case which appeared to indicate to the Tribunal that they had received the directions.
11. The Respondents had not sought an adjournment and in accordance with the Overriding Objectives rule 3 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) rules 2013, it would cause delay, incur additional costs and it would therefore not be proportionate for this matter to be adjourned.
12. The Tribunal noted the limited scope of the Statement of Case, However it was satisfied that it could deal with the matters the Respondents had raised on the papers before it.
13. The Tribunal determined that it would hear this matter in the absence of the Respondents. It would however put the Applicant to strict proof of the reasonableness and payability of the service charges.
14. After the hearing of this matter the Tribunal received further correspondence from the parties, namely two emails from Mrs Morgan dated 16 January 2018, and the other a longer email sent later on the same day.
15. Both emails stated that the Respondents were unaware of the hearing and set out that between July and end of November 2017, in the longer email, Mrs Morgan noted that arrangements had been made to ensure that correspondence was forwarded to them, and that they had been unaware of the hearing or indeed that the case conference had taken place.
16. The Tribunal considered it appropriate to review, whether in the light of these additional representations, it ought to revisit its decision to deal with this matter in the absence of the parties. In doing so it again considered the overriding objectives, and whether in the light of the Respondents' response in their Statement of Case there were issues set out that indicated that failure to consider the evidence of the respondents at an order hearing would result in prejudice to them such as to affect the proper determination of their case.
17. The Tribunal considered that having put the Applicant to proof of each of the charges, and having considered the merits of their response in their statement of case it remained satisfied that it was reasonable and proportionate to consider this matter in the absence of the Respondents.

The Applicant's case

18. Ms McMackin referred to the service charge statement. The total sum outstanding was £11,324.96. She explained that the last occasion upon which payment had been received was on 7 April 2010 in the sum of £2650.00. She stated that no further payment had been received since then and that the reason why the figure was lower at the hearing on 15.01.17 was that the Applicant who had purchased the freehold in the early 2000's had decided to write off part of the arrears that had accrued prior to Bowood managing the property.
19. The arrears written off were in the sum of £3375.21. The Tribunal accordingly considered the service charges for 2011 onward.

Service charges for year ending 31 December 2011

Item	Total Cost	Tenant's share	
Insurance	1,010.52	£404.21	
Electricity	£67.63	27.05	
Managing Agent's fee	£972.00	388.80	
Audit & Accounts	£150.00	60.00	
Reserve	£1,000.00	400.00	
Maintenance	£80.00	£32.00	
Repair	£696.00	278.40	
Repair	£110.00	44.00	
Test fire safety equipment	£96.00	£38.40	
Cleaning	£180.00	72.00	

20. The Tribunal asked the Applicant's representative to provide details including copies of the invoices for each of the items listed above. In the schedule provided to the Tribunal, the Applicant's representative had also set out the relevant clauses of the lease, which were relied upon in support of the charges.
21. The Tribunal asked about the insurance. The Tribunal was provided with invoices from the broker Insurance Tailor. The Tribunal was informed that the freeholder contacted the broker directly and made the arrangements for insurance of the premises. Ms McMackin was not able to provide details of who the insurance was provided by although she stated that to her knowledge it was normally firms such as Royal Sun Alliance and Aviva. She was asked whether Insurance Tailor were paid commission for arranging insurance. She stated that she was unaware of commission being paid.
22. The Tribunal directed that copies of the policy should be made available to the leaseholders on request.
23. The Tribunal noted that the arrangements which were in place for insurance were the same for all of the years in issue, and that there were invoices from Insurance Tailor in support of the sums demanded

for each of the years in issue. The Tribunal also noted that there was nothing in the Respondents' Statement of Case, to suggest that these charges were in issue.

24. *The Electricity*:- The Tribunal noted that there were electricity bills provided, in the support of these charges, and that where there was an estimated sum the bills were supported at some point in the year by an actual reading.
25. The Tribunal asked for details as to what services were provided under the heading communal electricity.
26. Ms McMackin informed the Tribunal that this was for electricity for the common parts which consisted of two bulbs which were operated by a timer switch.
27. The Tribunal noted that there were bills for each of the periods in issue.
28. *The Managing agent's fees*:- Ms McMackin noted that the Respondents had claimed that the charge for this had risen by 300%. This was disputed by her. She stated that it had risen by 50% since 2006 when Bowood had started to manage the premises. She also did not accept that the fee was unreasonable. Ms McMackin stated that the managing agents dealt with repairs and maintenance as reported by the leaseholders, and that they managed the client accounts by paying bills, making demands and preparing the budget. The managing agent was also responsible for dealing with queries and arrears and also commissioning work and dealing with contracts on behalf of the landlord.
29. She stated that the charge was based through out the period on a per unit figure for the current period it was £75.00 per unit per quarter which was then aggregated and divided so that each leaseholder paid their portion due under the lease.
30. The Tribunal noted that although the reasonableness of the managing agent's fee had been called into question. No alternative fee had been suggested. The Tribunal noted that there was a complaint about the repairs at the property however the complaint appeared to be about the increase in the charges over the years rather than a particularised complaint about failures of management of the premises.
31. *The Audit and accountancy fees*:- The tribunal was provided with copies of the latest service charge account which had been certified by the accountant. Ms McMackin stated that the accountant inspected the invoices and vouchers. The Tribunal was told that Bowood's had had a 20 year plus working relationship with the accountants Stephen Clerk & Co. The sum charged for accounts and audit for the building for that period was £144.00. The Tribunal was provided with invoices for the relevant period.
32. *The reserve fund*:- The Tribunal asked whether the lease provided for the payment of sums into a reserve account. Ms McMackin referred to clause 15 of schedule 8 of the lease, which provided for a reserve as set by the managing agent's Ms McMackin submitted that as the respondents had not paid their service charges and as such they had effectively been subsidised by the freeholder who had been forced to contribute to the repairs for the premises. She also submitted that this

was why very little planned maintenance could be carried out as there were no funds available for this.

33. The other items of maintenance related to the painting of the front door which was supported by an invoice and two items of work to the roof. One was the cleaning of the gutter and the other was relating to selective roof works. The Tribunal noted that works had been undertaken on the roof in subsequent years in particular 2012 and 2013. The Tribunal wanted to be satisfied that the appropriate consultation had taken place, and that undertaking the work in two tranches was not an attempt to avoid the consultation process.
34. Ms McMackin stated that there were no funds for a more systematic wholesale repair and as a result the applicant dealt with leaks as and when they arose. She stated in answer to the Tribunal question concerning the type of roofing that it was a pitched roof at the front with lower flat roof at the rear. Ms McMackin provided copies of the invoices for these works. She stated that the applicant had also used the same company London Roofs to carry out repairs and directed the Tribunal to an invoice in support of this.
35. The Tribunal noted that there was also an invoice in relation to the inspection of the fire safety equipment.
36. Ms McMackin stated that this had been installed in the previous year. There was a requirement for this to be inspected on an annual basis. There had also been a one off clean.

Service charges for year ending 31 December 2012

<u>Item</u>	<u>Total Cost</u>	<u>Tenant's share</u>	
Insurance	£581.95	£232.78	
Electricity	£89.47	£35.79	
Managing Agent's fee	£1008.00	£403.20	
Audit & Accounts	£198.00	£79.20	
Reserve	£1,000.00	400.00	
Repairs & Maintenance	£260.00	£104.00	
Test fire safety equipment	£96.00	£38.40	

37. The Tribunal noted that for this period the same heads of service charge were set out although the sums were different. The Tribunal had in considering the period 2012, gone through and satisfied itself that there were invoices for these items in the same way as had been the case for 2011.
38. The only difference related to a lock repair from Goldie Lock. This was for the cost of getting additional keys.

Service charges for year ending 31 December 2013

Item	Total Cost	Tenant's share
Insurance	£971.72	£388.69
Electricity	£112.87	£45.15
Managing Agent's fee	£1,044.00	£417.60
Audit & Accounts	£204.00	£81.60
Reserve	£1,000.00	400.00
Repair-Roof	£110.00	£44.00
Repair-lock	£78.00	£31.20
Test fire safety equipment	£96.00	38.40

Service charges for year ending 31 December 2014

Item	Total Cost	Tenant's share
Insurance	£909.23	£363.69
Electricity	£126.30	£50.52
Managing Agent's fee	£1080.00	£432.00
Audit & Accounts	£210.00	£84.00
Reserve	£1,000.00	400.00
Repairs roof and gutter	£280.00	£112.00
Repairs hallway Lighting	£72.00	£28.80
Test fire safety equipment	£96.00	£38.40
Surveyor's fee subsidence questionnaire	£90.00	£36.00

39. The Tribunal inspected these invoices for this period which included an invoice for True Associates dated 2 July 2014, this was for a subsidence survey to comply with a request from the insurance company to carry out a survey for a subsidence declaration form.
40. The Tribunal noted that for the period 2015, and 2016, there was a survey, surveyor's fees and a sum for major works in relation to the boundary wall. As these costs were across a number of years, the Tribunal considered that the issues should be considered together.
41. Ms McMackin informed the Tribunal that a complaint was received from the neighbouring property concerning damage to the boundary wall caused by a self seeding of a Buddleia shrub. She stated that a surveyor, from the company *True Associates* had been engaged to inspect the wall. There had been a dispute concerning responsibility and once it was established that it was the Applicant's responsibility.

True Associates had been engaged to carry out the section 20 consultation process.

42. The Section 20 notices had been given to the leaseholders, who had been given the opportunity to consult and to nominate a contractor.
43. Ms McMackin provided details of the consultation process (including copy documents). She stated that the landlord had accepted the lowest tender. The post work inspection had also been undertaken by the surveyor.
44. The Tribunal asked whether the respondents had provided any representation or made any written observations during the section 20 procedure. Ms McMackin stated that they had not.
45. The Tribunal noted that in respect of the other heads of service charges for the years 2015-2016 they were for broadly the same heads of charge for the previous years. However the service charges had also covered the costs of the work to the boundary wall which had been damaged by the shrub this included the costs of the surveyor's fees in the sum of £426.00 (the Respondents' share was £170.40) The actual costs of the work to the wall which was incurred in 2016 was £2,580.00, the Respondents' share was £1,032.00, less the reserve fund contribution of £3,012.00. The Tribunal noted that the Respondents had not contributed to the reserve fund. Ms McMackin explained that the landlord had made up the short fall of the contributions.
46. In relation to the 2017 charges, these were estimated sums which were based on the accounts for the previous year and had been prepared by the managing agent's using their experience of previous years.
47. The Tribunal invited the Applicant's representative to comment on the Respondents' case. She noted that the complaint concerning the bathroom window and the boiler were complaints concerning the workmanship of the original builder rather than service charges, she noted that in her view, these were matters which should have been raised with the builder. She also noted that they were not the responsibility of the landlord.
48. She did not accept that the respondents had attempted to meet with the managing agent's and had been frustrated in their efforts. She stated that in the early days the managing agents had been willing to meet, however she accepted that the managing agent's had not offered to meet with the respondent's in recent times.
49. She stated that the freeholder had shown good faith by writing off the earlier years arrears however the respondents had not paid their service charges and that this was frustrating their efforts to manage the building.
50. In relation to the other issues Ms McMackin sought reimbursement of the application fee (£100.00) and also the hearing fee (£200.00) Ms McMackin stated that she opposed the application for a Section 20C, in respect of her costs, she would be seeking to be reimbursed the costs of photocopying.
51. she referred to sub clause 4 the fifth Schedule of the lease in support of her submission that the costs could be recovered

The Decision of the Tribunal on the Reasonableness and payability of the service charges

52. The Tribunal having heard from Ms McMackin and also having carefully considered the Statement of Case provided by the Respondents have made the following findings:-
53. On the issue of the Insurance charges for the years in issue. The Tribunal was concerned that copies of the schedules of insurance were not included in the bundle, it did however note the sums claimed for insurance for each of the years in issue, the Tribunal noted that no objections had been made to the reasonableness of this sum neither had alternative quotations been provided. Accordingly the Tribunal determines that subject to the Respondents being provided with the opportunity to inspect the policy schedule the sums claimed for each of the years in issue is reasonable and payable.
54. The tribunal noted that in respect of the electricity charges, save for the period 2017, where the audited service charges had not yet been produced and the sum claimed was estimated, the sums claimed for electricity were supported by electricity bills. Accordingly the Tribunal determines that the sum claimed for electricity for the periods 2012-2017 is reasonable and payable.
55. The Tribunal noted that throughout the periods in issue that repairs had been undertaken to the premises on an ad hoc basis, the Applicant's representative explained that this was due to a lack of funds as a result of non payment of the service charges. However where repairs had been carried out, the Applicant's representative was able to produce invoices in support of the payments made. The Tribunal had considered the sums demanded and in the absence of detailed objections from the Respondent in their statement of case, had used its knowledge and experience and in so doing had considered whether the sums claimed were reasonable for the work which was set out as having been undertaken. The Tribunal also noted that where necessary appropriate consultation had been undertaken in respect of the work which was above the £250.00 threshold.
56. The Tribunal noted that no issues had been raised by the Respondents concerning the standard of workmanship. The Tribunal also noted that the Applicant provided audited service charge accounts in respect of this and all the other charges. Accordingly the Tribunal finds that the sums claimed for repairs for all of the periods in issue are reasonable and payable.
57. The Tribunal noted that costs had been incurred in 2015 in relation to a surveyor's report. The Tribunal had seen a copy of this report and was satisfied that the sums claimed for this report were reasonable and payable.
58. The Tribunal noted that costs had been incurred for testing fire safety equipment and that where tests had been carried out the costs of this work was supported by invoices. Accordingly the Tribunal finds the costs incurred were reasonable and payable.

59. The Tribunal has noted the sums claimed for accounts and auditing. The Tribunal was satisfied that accounts had been produced which provided evidence in support of this charge accordingly the Tribunal is satisfied that costs incurred for accounts and auditing are reasonable and payable.
60. The Tribunal was informed that the lease provided for payments into a reserve fund. The Tribunal was satisfied that clause 15 of schedule 8 of the lease provided for a reserve fund. The Tribunal having considered the wording of the lease which states:- "...Such sum or sums from time to time as the Lessor's Managing Agent shall at their discretion consider desirable to be paid to the Lessor for the purpose of accumulating a reserve fund as a reasonable provision in the immediate or any future Maintenance years..." The Tribunal are satisfied that the costs claimed for the reserve fund are reasonable and payable.
61. The Respondents' in their Statement of Case set out that there were concerned about the sums charged which the Respondents' stated averaged £330.00 for "an 11 year period." No information was provided by the Respondent of alternative costs for management. The Tribunal also noted that the Respondent had not substantially disputed that the services claimed had been provided. Accordingly the Tribunal are satisfied that the sums claimed for management for the periods in issue are reasonable and payable.
62. The Tribunal noted that there was no objection to the fire safety tests, and the subsidence survey which were supported by invoices. The Tribunal finds the sums claimed for these items reasonable and payable.
63. The Tribunal having considered each of the charges in detail finds that the sum claimed of £11,324.96 are reasonable and payable by the Respondents.

Application under s.20C and refund of fees

64. The Tribunal is satisfied that in all the circumstances of this case, that it is reasonable to make an order for the refund of the hearing and application fees in the sum of £100.00 for the Application fee, and £200.00 for the hearing fee should be paid by the Respondents as reimbursement to the Applicant.
65. The Tribunal makes no order under Section 20C.

Name: Judge Daley

12 February 2018

Date:

ANNEX - RIGHTS OF APPEAL

1. 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.

2. 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.
3. 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.
4. 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.

Appendix of relevant legislation

Landlord and Tenant Act 1985

(1) 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 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.

Leasehold Valuation Tribunals (Fees) (England) Regulations 2003

Regulation 9

- (1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.
- (2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).

of any question which may be the subject matter of an application under sub-paragraph (1).