



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

Case reference : **LON/00BB/LSC/2017/0457**

Property : **2 Falmouth Street, London, E15 1JQ**

Applicant : **Simply Property (London) Limited**

Representative : **Mr L Gibson
Solicitor agent for SLC Solicitors**

Respondent : **Mr Mamoun A Gadir**

Representative : **Ms Kumar of counsel**

Type of application : **Liability to pay and/or the
reasonableness of service charges
and administration charges**

Tribunal members : **Judge Pittaway
Mr J F Barlow FRICS**

**Date and venue of
hearing** : **30 April 2018
10 Alfred Place, London WC1E 7LR**

Date of decision : **17 May 2018**

DECISION

Decisions of the tribunal

1. The following sums are payable by the respondent tenant to the applicant landlord by way of service charge;
 - a. Service charge for the year from 1 January 2014 £ 532.00
 - b. Service charge for the year from 1 January 2015 £ 557.34
 - c. Service charge for the year from 1 January 2016 £ 567.17

TOTAL £1656.51
2. The tribunal determines that the administration charge of £170 is not payable.
3. The costs incurred by the respondent 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.

Background

- (1) The applicant seeks and, following a transfer from the county court, the tribunal is required to make a determination under section 27A of the Landlord and Tenant Act 1985 (as amended) as to whether certain service charges are reasonable and payable; and under Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (the “**2002 Act**”) as to whether certain administration charges are payable and reasonable.
- (2) The Service charges in question are
 - a. Service charge for the year from 1 January 2014 £672.67
 - b. Service charge for the year from 1 January 2015 £1,270.00
 - c. Service charge for the year from 1 January 2016 £1,360.00
- (3) The administration charges in question are claimed contractually under variously clauses 9.12.1, 3.1.1 and 3.1.9 of the respondent’s lease and are in the sum of £195.00, relating to the issue of various arrears letters.
- (4) The original proceedings were issued in the county court under claim no. D92YJ754 and were transferred to the tribunal by Deputy District Judge Smith by order dated 9 November 2017.
- (5) Directions were issued by the tribunal on 16 January 2018. These noted that the respondent had also made an application under section 20C of the 1985 Act.
- (6) The hearing was held on 30 April 2018. The tribunal had before it a bundle of documents which included the applicant’s statement of

case (including a copy of the respondent's lease) and the respondent's statement of case. On the day of the hearing the tribunal was provided with a skeleton argument prepared by Ms Kumar on behalf of the respondent and heard submissions by Mr Gibson. They also heard evidence from the respondent and Mr Zeki, the tenant of Flat 4 in the same building. As Mr Gibson referred to it in his submissions the tribunal requested (and received immediately after the hearing) a copy of the Upper Tribunal decision in *Barrett v Robinson* [2014] UKUT 0322 (LC). (the "**Barrett** case"). A copy had been provided to Ms Kumar at the hearing. The tribunal had regard to all the above in reaching its decision.

- (7) The tribunal was asked to determine the following
- a. Were the invoices served in accordance with the requirements of the lease and relevant statutory provisions.
 - b. Did the invoices comply with the requirements of the lease. In particular were they certified as required by clause 9.6.
 - c. Were the service and administration costs demanded reasonable? And what proportion of the administration charge was payable by the respondent.
 - d. The effect of the alleged failure by the applicant to provide the insurance schedule and evidence that the insurance premium had been paid, as by reference to the provisions of clause 5.5.13.2 of the lease.
 - e. Should the tribunal make an order under section 20C of the Landlord and Tenant Act 1985 (the "**1985 Act**").

The parties' cases.

Had the demands for payment been served correctly

1. Mr Gibson referred the tribunal to the clauses 7.6.1 and 7.6.2 of the lease as the basis for the respondent sending the invoices to the property rather than the address in Kings Lynn which the respondent submitted was the correct address to which to send them.
2. It was Ms Kumar's submission that as the notice of assignment of the lease had given the Kings Lynn address, and that the letterhead on Mr Gadir's letter to the applicant of 8 July 2015 gave the address for correspondence as the Kings Lynn address invoices should have been sent to that address. She relied on section 21 of the 1985 Act as amended by section 152(6) of the 2002 Act, which provides;

"If the landlord has been notified by the tenant of an address in England and Wales at which he wishes to have supplied to him

documents required to be so supplied under this section, the landlord must supply them at that address”

as justifying Mr Gadir having withheld his service charge payments.

3. Mr Gibson submitted that giving the Kings Lynn address in the notice of assignment did no more than serve to identify the tenant; it did not amount to notice that documents should be supplied to the tenant at that address; nor did a printed statement on MrGadir’s letterhead that the Kings Lynn address was the address for “*Correspondence & Appointments*”. He maintained that it was sufficient for the invoices to be sent to the property, although from the bundle it is clear that the applicant had sent some demands to the Kings Lynn address on 20 July 2015.
4. During the hearing Ms Kumar conceded that by 8 July 2015 Mr Gadir had received the demands for the years 2014 and 2015 (although it was not clear at which address) as his letter of that date to the applicant (the “**8 July Letter**”) referred to Invoices “02-Fal-E15/SC14” and 02-Fal-E15/SC15”. Mr Gadir confirmed that by 8 July 2015 he had received demands in the form dated 20 July 2015 contained in the bundle before the tribunal. Neither party had an explanation for why the invoices in the bundle were post dated to the date upon which Mr Gadir had received them. The applicant claimed that the demands dated 20 July 2015 had been sent to both the property and the Kings Lynn address. Mr Gadir believed that only one of the invoices had been included in the covering letter inclosing the invoices dated 20 July 2015.
5. Ms Kumar’s concession did not extend to the demand for the 2016 service charge to which, she submitted section 156(2) of the 2002 Act applied.

Did the invoices comply with clause 9.6 of the Lease

6. It was Mr Gibson’s submission that the certificates for the three service charge years contained in the bundle complied with clause 9.6 of the lease. In response to a query on why the certificates were headed “*Service charge statements re 53 Maryland Road*” and did not expressly refer to 2-10 Falmouth Street he pointed to the description of the property in the official copies for the applicant’s freehold title which described the property as “53 Maryland Road”.
7. It was Ms Kumar’s submission that the applicant had not provided audited accounts, nor the certificate required by clause 9.6. She also pointed to the fact that the certificates were not specifically addressed to Mr Gadir.

Reasonableness of the service charge demanded.

8. Mr Gibson drew the tribunal’s attention to the fact that a significant part of the total expenditure is formed by the contribution to the

reserve fund; £2,100 in each year; of which the respondent is responsible for £350 per annum. He conceded that it was unfortunate that in respect of all the other items of expenditure there were no supporting invoices in the bundle (except for the insurance premium) and no explanation as to how they were reasonably incurred or why they are reasonable in amount.

9. In relation to the administration charges claimed at the hearing it was agreed that these amounted to £170 and not £195. In its statement of case the applicant submitted that its administration charges are reasonable due to the length of time taken to issue its claim and that it had limited these to the costs that they believe fall within the ambit of the administration charges.
10. The tribunal heard evidence from Mr Gadir and Mr Zeki as to the complete absence of any services provided by the landlord. They explained that when there was works needed to be carried out to the property these were undertaken by the tenants. Each also confirmed that they had taken out their own insurance of their respective flats as they were concerned that the landlord was not effecting insurance. Insofar as management was concerned Mr Gibson (having consulted Ms Griffith) confirmed that the property was managed by the landlord in-house.
11. There were no submissions from either party as to the reasonableness of the administration charge.

Proportion of the administration charges payable by the Respondent.

12. Mr Gibson argued that the whole of the administration charge was payable by the respondent under clause 3.1.9 of the Lease which obliges the tenant to pay the Landlord

“costs charges and expense including Solicitors’ Counsels’ and Surveyor’s costs and fees at any time during the said term properly incurred by the Landlord in or in contemplation of any proceedings in respect of this Lease under sections 146 and 147 of the Law of Property Act 1925...”

He relied on the Upper Tribunal decision in the Barrett case, arguing that here the proceedings before the tribunal for the determination of the amount of a service or administration charge was a prelude to forfeiture proceedings. He submitted that a statement in a letter from SLC solicitors of 26th November 2015, *“if you wish to avoid court proceedings that may culminate in forfeiture of the lease and eviction....”* was evidence that the applicant was contemplating forfeiture proceedings.

13. Neither Mr Gibson nor Ms Kumar invited the tribunal to find that if the administration charge was not recoverable under clause 3.1.9 of

the lease it could be recovered by way of the service charge provisions.

The effect of the alleged failure by the applicant to provide the insurance schedule and evidence that the insurance premium had been paid.

14. It was Ms Kumar's submission that the respondent did not have to pay the insurance premium unless the applicant had provided the respondent with a copy of the building insurance schedule and receipt for the insurance premium and that provision of these was a requirement under clause 5.5.13.2 of the Lease.
15. Mr Gibson drew the tribunal's attention to the requirement in clause 5.5.13.2 that the obligation is on the landlord only if it receives a demand and that no demand had been received.

Order under section 20C Landlord and Tenant Act 1985

16. Mr Gibson submitted that it was not appropriate to make an order under section 20C; that it was reasonable for the applicant to seek to recover its costs incurred in connection with the proceedings before the tribunal through the service charge, as without the proceedings having been commenced the respondent would not have paid its service charge (other than one payment made in 2015). He submitted that until the day of the hearing the respondent had not challenged the individual items of service charge.
17. For the applicant Ms Kumar considered that an order would not be appropriate if the tribunal found for the respondent. Otherwise she reserved her position on costs.

Rule 13 costs

18. The parties reserved their position on the issue of costs under Rule 13 of the Tribunal Procedure (First-Tier Tribunal) (Property Chamber) Rules 2013

Reasons for the tribunal decision.

Had the demands for payment been served correctly

19. The substituted Section 21 of the 1985 Act, to which Ms Kumar referred the tribunal, is not yet in force in relation to England (although it is in relation to Wales). Accordingly the tribunal have to look to the provisions of the lease as to whether the demands had been correctly served.
20. Clause 7.6.1 of the lease provides that

“any notice in writing certificate or other document required or authorised to be given or served hereunder shall be sufficient although only addressed to the tenant without his name or generally to the person interested without any name and notwithstanding that any person affected thereby is absent under disability or unascertained and shall be sufficiently given or served if it is left at the last known place of abode or business of the tenant or other person to or upon whom it is given or served or is affixed or left on the property”;

and clause 7.6.2 provides that

“any such notice in writing certificate or other document as aforesaid shall also be sufficiently given or served if it is sent by ordinary post in a prepaid envelope addressed to the person upon whom it is given or served by name at the aforesaid place of abode or business and if the same is not returned through the Post Office within seven days of posting it shall be deemed to have been received or served at the time at which it would in ordinary course have been delivered.”

21. Ms Kumar did not challenge the applicant's submission that the invoices had been served at the property and there was no suggestion that they had been returned to the applicant as contemplated by clause 7.6.2 of the lease. Accordingly the tribunal consider that the invoices had been served correctly by being sent to the property. It would also have been sufficient if they had been sent to Mr Gadir at his King's Lynn address (and indeed it would appear that some had been) but failure to send the invoices to Kings Lynn did not prevent them having been correctly served.

The absence of communication from the landlord to Kings Lynn may be poor management but unfortunately that does not obviate the obligation in the lease to pay the service charge. While it would have been helpful if the landlord had communicated to the respondent at the address in Kings Lynn it is not obliged to do so under the terms of either the lease.

22. In any event from the evidence it is apparent that by 8 July 2015 Mr Gadir had received invoices for 2014 and 2015 (the latter presumably a demand on account of service charge), and that by the time the proceedings were issued in the county court Mr Gadir had actual notice of the amount of service charge demanded for 2016.

Did the invoices comply with clause 9.6 of the Lease

23. Clause 9.6 of the lease requires the certificates to contain the following information; the total expenditure for the relevant service charge year, the amount of any interim service charge paid on account by the tenant for that service charge year, the service charge payable by the tenant for that year and any excess or

deficiency of the service charge payable by the tenant over the interim service charge which the tenant has paid.

The certificates provided by the landlord appear to contain all the required information. There is no requirement in the lease for the certificates to be audited; they just have to be signed by the landlord or his "Agent" (which term is not defined in the lease). The certificates have been signed by a director of the applicant.

As to the reference to 53 Maryland Road rather than 2-10 Falmouth Street the tribunal is satisfied that the certificate combined with the covering letter which does refer to 2-10 Falmouth Street sufficiently link the certificate to the property. And while the covering letter was not address to Mr Gadir by name it was addressed to the "Leaseholder" which the tribunal considers complies with the requirements of clause 7.6.1 as it is addressed to "*the tenant without his name*".

Reasonableness of the service charge demanded.

24. In the absence of any specific submissions to the contrary the tribunal consider that the contribution to the reserve fund of £350 per annum is reasonable. The tribunal heard evidence that the electricity to the common parts is separately metered and although it is unfortunate that none of the utility bills were included in the bundle consider that charges of £72 for the part year 2014; £200 for the year 2015 and £208 for the year 2016 to be reasonable.

25. Details of the insurance premiums paid by the landlord are evident from the certificates of insurance provided in the bundle. The tribunal note that the applicant does not appear to have apportioned the insurance premium to each service charge year but to have demanded the whole premium for the year to 22 August 2015 in the 2014 service charge year, the whole of the premium for the year to 22 August 2016 in the 2015 service charge year and the whole of the premium to 21 August 2017 in the service charge year 2016. While not strictly correct the difference between what is charged and what should be charged is minimal. The tribunal find the insurance premiums to be reasonable.

That the tenants may have elected to effect their own insurance does not make these premiums unreasonable nor does it entitle the tenants to offset the premiums they pay against the premium forming part of the service charge.

26. The tribunal have no reason to doubt the evidence they heard from Mr Gadir and Mr Zeki as to the total lack of services provided by the landlord and therefore consider that there should be no charge for "property maintenance" in any of the service charge years.

27. Similarly there should be no charge to any of “general admin expenses”, “admin expenses”, “general expenses” in the absence of any evidence as to these sums having been incurred.
28. The lease does not permit the recovery of a management fee where the property is being managed by the landlord in-house, as was admitted at the hearing. Clause 5.5.6.1 only contemplates a management fee being paid to a firm of managing agents employed by the landlord. No such firm is employed here. The landlord has provided no evidence of any administration by it of the building such as would entitle it to recover these sums under clause 5.5.11.
29. The landlord has provided no evidence as to how any legal and professional fees were incurred, to what they related or why they are recoverable under the service charge provisions. The tribunal therefore considers that they should not be included as items of expenditure.
30. In the absence of any submission to the contrary the tribunal consider the administration charge of £170 to be reasonable, subject to it being recoverable under the terms of the lease.

Proportion of the administration charges payable by the Respondent.

31. The tribunal are not persuaded that the reference in the letter of 26th November 2015 to which Mr Gibson referred them to was sufficient evidence that the applicant was contemplating forfeiture proceedings, not least because the tenor of the letter as a whole contemplates recovery of the outstanding costs rather than forfeiture of the lease and the claim for service charge commenced in the county court did not include a claim for forfeiture. In this regard the tribunal have had regard to paragraphs 51 and 52 of the Barrett case decision, to which Mr Gibson made particular reference.
32. Given that neither party made any submission as to its recoverability under any other clause of the lease the tribunal therefore do not consider that it is otherwise recoverable under the lease.

The effect of the alleged failure by the applicant to provide the insurance schedule and evidence that the insurance premium had been paid.

33. Clause 5.5.13.2 of the Lease contains a covenant by the Landlord, “to produce *on demand (but not more often than once a year)* the insurance policy and receipt for the last premium paid thereon or (at the option of the landlord) evidence from the Insurers of the full terms of the policy and that the same is still in force”

34. The obligation on the landlord to provide evidence of insurance is a distinct obligation from that of the tenant to pay the Interim Service Charge and the Service Rent. Further the tribunal notes the Landlord's obligations in clause 5.5 are expressly stated to be, "*subject to and conditional upon payment being made by the tenant of the Interim Charge and the Service Charge.*" Accordingly the tribunal does not consider that failure by the Landlord to provide evidence of the terms of the policy is a reason for the tenant not paying its service charge.

Order under section 20C Landlord and Tenant Act 1985

35. The tribunal consider that the applicant's current position has arisen in large part through its failure to manage the property and its failure to respond to the respondent. By section 20C (3) it is for the tribunal to make such order as it considers it just and equitable in the circumstances. In the circumstances the tribunal therefore makes an order under section 20C that the Landlord may not recover the costs which it incurred in connection with the proceedings before the tribunal through the service charge payable by the tenant.

Rule 13 costs

36. While the tribunal notes the parties have reserved their position on costs under Rule 13 of the Tribunal Procedure (First-Tier Tribunal) (Property Chamber) Rules 2013 they would invite the parties to consider the decision in *Willow Court Management (1985) Ltd v Alexander* [2016] 0290 UKUT (LC) before making any application for such costs.

Name: J. Pittaway

Date: 17 May 2018

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).