

12669



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

**Case Reference** : **LON/00BE/LSC/2017/0430**

**Property** : **Flat 17 La Gare Apartments, 51  
Surrey Row, London SE1 0BZ**

**Applicant** : **51 and 53 La Gare Company Ltd**

**Representative** : **Mr Stimmler of Counsel instructed  
by JB Leitch Solicitors**

**Respondent** : **Ms Angela Stokes**

**Representative** : **In person**

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

**Tribunal Members** : **Judge Evis Samupfonda  
Mr M Taylor FRICS  
Mr P Clabburn**

**Date and venue of  
Hearing** : **15<sup>th</sup> February 2018  
10 Alfred Place, London WC1E 7LR**

**Date of Decision** : **14 March 2018**

---

**DECISION**

---

## **Decisions of the tribunal**

- (1) The tribunal determines that the sum of £740.70 as conceded by the Applicant is not payable by the Respondent. The tribunal also determines that the sums of £483.24 and £96.00 are not payable by the Respondent for the reasons set out below.
- (2) The tribunal makes the determinations of the amount of service charges that are reasonable and therefore recoverable from the Respondent as set out under the various headings in this Decision.
- (3) The tribunal does make an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge.
- (4) Since the tribunal has no jurisdiction over county court costs and fees, this matter should now be referred back to the Central London County Court.

## **The application**

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") as to the amount of service charges and administration charges payable by the Respondent in respect of the service charge years 2016 and 2017.
2. Proceedings were originally issued in the Central London County Court under claim no. D50YX928. The claim was then in turn transferred to this tribunal.
3. The relevant legal provisions are set out in the Appendix to this decision.

## **The hearing**

4. The hearing of the application took place on 15 February 2018. Mr Stimmler of Counsel appeared on behalf of the Applicant. Mr Adil, a Property Manager from Rendall and Rittner, the Applicant's managing agents accompanied him. Ms Stokes, the Respondent lessee appeared in person. Her husband Mr M Aspell accompanied her.

## **The background**

5. The property which is the subject of this application is a self-contained flat formed over three floors accessed from a communal area within a detached building which was converted into eighteen units in 1999.
6. The tribunal did not inspect the property. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate given the nature of the issues in dispute.
7. The Respondent holds a long lease of the property, which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease will be referred to below, where appropriate.
8. The Particulars of Claim set out the amount the Applicant sought to recover from the Respondent as follows:

Service Charges -£4,991.29

Administration Fee-£96.00

Legal Costs -£972.00

Ground Rent - £50.00

### **The issues**

9. At the start of the hearing, Mr Stimmler informed the tribunal that the Applicant sought a determination of the reasonableness and payability of the service charges and administration fees only as the tribunal does not have jurisdiction to consider ground rent and county court costs. He said that there had been concessions on both sides prior to the hearing. The Applicant conceded £740.70 was not payable in respect of the service charge. The Respondent conceded that £250 was reasonable and payable in respect of the Reserve Fund in each of the years 2016 and 2017. Of the service charge, the Respondent conceded £223.20 was reasonable and payable. Both parties set out in full very detailed statements of case and therefore the tribunal has not fully rehearsed their positions in this determination. The outstanding issues the tribunal were required to make a determination on were as follows:
  - (i) The payability and/or reasonableness of service charges for the years 2016 and 2017 relating to the Reserve Fund. For the year 2016, the amount claimed is £380. For the year 2017, the amount claimed is £1,325.00
  - (ii) Levy Charge of £483.24, demanded in March 2015

- (iii) Administration fees of £96.00
10. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

**Reserve Fund 2016 – Amount claimed £380**

11. In summary, the Applicant's case was that the Applicant is entitled under the terms of the lease to accrue reserve funds. The reserve fund in 2016 stood at £14,304. The Applicant anticipated major works and therefore in order to avoid a large cash call on the leaseholders demanded a contribution of £630 from each service charge payer. The Respondent conceded £250 was reasonable and payable.
12. The Respondent's case was that the Applicant had sufficient funds and therefore did not require the additional sums. The amount claimed was not reasonable as no justification was provided. Also the Respondent paid her service charges by way of regular monthly instalments. This was the custom and practice accepted by the Applicant over the previous 10 years. The Respondent also highlighted that there was surplus of £10,358 in the service charge account that was not credited back to the leaseholders in line with the terms of the lease.

**The tribunal's decision**

13. The tribunal determines that the amount payable in respect of the Reserve Fund is £380.00. The tribunal was provided with a managing agent report that dealt with proposed future projects.

**Reasons for the tribunal's decision**

14. There was no dispute between the parties that the lease entitles the Applicant to recover service charges and to accrue reserve funds. What was in dispute was whether the amount claimed is reasonable. The tribunal was satisfied that the amount claimed is reasonable set against the anticipated major works. The Respondent pursuant to clause 4 (E) is required to "Pay the Interim Charge and the Service Charge at the times and in the manner provided in Clause 7 hereof." Clause 7(3)(D) and (E) provide that if there is a surplus in the interim Service Charge or Service Charge, the Landlord should credit that back to the Lessee's account.
15. While the evidence indicates that the landlord is required to credit the lessee any surplus in the budget, in this case the surplus was added to the service charge. The Applicant accepted that the Respondent had paid payments towards the service charge via instalments, however, the Applicant maintained that the payments were not sufficient to clear

the outstanding arrears. Therefore it was not clear whether the Respondent was entitled to any credit from the surplus.

### **Reserve Fund 2017-Amount claimed £1325.**

16. The Applicant's case was that the amount demanded for the Reserve Fund increased because the Applicant relied on an expert report dated 10 May 2016 that indicated that the lift would need replacing. The tribunal was taken to the key points in the report; the Budget cost was £80,000 and the approximate time period until full modernisation/replacement should be considered was 3 years.
17. The Respondent's case was that the lift did not need replacing. The Respondent relied on the email of 19 January 2018 she received from a representative of Titan, the contractor currently responsible for maintaining the lift that it did not need to be replaced as the lift "was good enough to last without a complete upgrade."

### **The tribunal's decision**

18. The tribunal determines that the amount payable in respect of the Reserve Fund for 2017 is £ 1325.00.

### **Reasons for the tribunal's decision**

19. The tribunal accepted that the primary reason for the increase in the amount demanded was due to the anticipated costs of replacing the lift. The Respondent provided a record of a conversation contained in an email as evidence in support of her contention that the lift did not need replacing, which the tribunal did not consider sufficient in order to constitute a reliable expert report. The tribunal considered that it was reasonable for the Applicant to rely on the expert report of Cook and Associates Lift and Escalator Consultants. However, the tribunal also considered that now it has been informed of the views expressed by the current maintenance contractor Titan, it might be prudent for the Applicant to seek further information or commission a report from Titan. The tribunal noted that the expert report does not indicate that the lift needs to be replaced immediately. The tribunal also noted that the development was built circa 1999 and therefore the lift might be reaching the end of its useful life.

### **Levy Charge –Amount Claimed £483.24**

20. The tribunal understood that the Applicant demanded £483.24, termed "Levy Charge" from the Respondent in March 2015 as a contribution towards replacing the emergency lighting. Both parties conceded that the emergency lighting was not replaced in 2015. Both parties agreed

that the lighting was replaced in October 2017 costing £4,144.80. The Respondent's contribution is £259.23.

21. The Applicant's position was that the Levy Charge is recoverable as a contribution towards the reserve fund. The Respondents disagreed for a number of reasons but primarily because the emergency lighting was not replaced, the Respondent did not receive a demand for the said sum, the Applicant failed to comply with sections 20B and 20Z of the 1985 Act.

### **The tribunal's decision and reasons**

22. The tribunal determined that the sum of £483.24 is not recoverable. The tribunal was presented with an undated invoice said by the Applicant to have been served around "20 March 2015" that was denied by the Respondent. It was clear from the year -end accounts of 2015 that the Respondent was charged £483.24 "for overhaul of emergency lighting." It was clear from an email dated 20 March 2017 from the previous managing agents JM that "the emergency lighting did not take place. This is because not everybody had paid their additional charge...As previously advised, the directors will need to instruct the new agent to remove the service charge levy from all those that were charged." It was also clear that the Applicant failed to act on the previous agent's advice. The parties understood that the Levy Charge was requested for a specified and identified piece of work. In the circumstances, the tribunal determined that it is not reasonable for the Applicant to charge the Respondent for specified work that was not been carried out. Also it was not reasonable for the Applicant to then apply the demand under a different head.

### **Administration Fee -£96.00**

23. The tribunal was informed that this fee related to the cost of additional work incurred by the agents in dealing with the Respondent's queries. The tribunal noted that the Respondent had raised various issues with the managing agents regarding service charges and considers that the issues fell within the duties and services expected of the management agents set out in their agreement and the RICS Code of Conduct. For this reason, the tribunal determined that this sum was not payable by the Respondent.

### **Application under s.20C and refund of fees**

24. At the end of the hearing the Respondent applied for an order under section 20C of the 1985 Act. The tribunal noted that the Applicant was entitled to demand that the Respondent pays her service charges in accordance with the terms of the lease irrespective of how it allowed other leaseholders to make payments. The tribunal noted that the

Respondent chose to make regular payments towards the service charge via monthly payments and that this was a method that was acceptable to the Applicant for a period of some 10 years. The Respondent then moved to paying bi-monthly as a result of discussions with the Applicant's agents. The majority of the correspondence from the Respondent to the Applicant relates to her making enquiries regarding the service charge of £1447.14 that appeared on her account without explanation. The Respondent was entitled to make enquiries and seek clarification advice from the Applicant.

25. Having heard the submissions from the parties the tribunal determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the Applicant may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge.

### **The next steps**

25. The tribunal has no jurisdiction over ground rent or county court costs. This matter should now be returned to the Central London County Court.

**Name:** Judge Evis Samupfonda      **Date:** 14 March 2018

## **Appendix of relevant legislation**

### **Landlord and Tenant Act 1985 (as amended)**

#### **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 27A**

- (1) An application may be made to the appropriate 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 the appropriate 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 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) the appropriate 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 charge 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 charge 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 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.

## **Commonhold and Leasehold Reform Act 2002**

### **Schedule 11, paragraph 1**

- (1) In this Part of this Schedule “administration charge” means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
  - (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
  - (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
  - (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
  - (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.
- (2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

- (3) In this Part of this Schedule “variable administration charge” means an administration charge payable by a tenant which is neither—
- (a) specified in his lease, nor
  - (b) calculated in accordance with a formula specified in his lease.
- (4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

**Schedule 11, paragraph 2**

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

**Schedule 11, paragraph 5**

- (1) An application may be made to the appropriate tribunal for a determination whether an administration 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) Sub-paragraph (1) applies whether or not any payment has been made.
- (3) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.
- (4) No application under sub-paragraph (1) 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.
- (6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
- (a) in a particular manner, or

(b) on particular evidence,  
of any question which may be the subject matter of an application  
under sub-paragraph (1).