



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

Case Reference : **LON/00BK/LSC/2017/0480**

Property : **Flat A and D, 77 Abbey Road, London
NW8 0AE**

Applicants : **(1) Robert Chard (Flat D) (2) Rekha
Ghosh (Flat A)**

Representative : **In person**

Respondent : **Irfan Sadeeq**

Representative : **In person**

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

Tribunal Members : **Judge W Hansen (chairman)
Mr S Mason BSc FRICS FCI Arb**

**Date and venue of
Hearing** : **9 April 2018 at 10 Alfred Place, London
WC1E 7LR**

Date of Decision : **23 April 2018**

DECISION

Decisions of the Tribunal

- (1) The Tribunal determines that the First Applicant, Robert Chard, is not liable to pay any further service charges to the Respondent in respect of the years 2010-11, 2011-12, 2012-13, 2013-14, 2014-15, 2015-16, 2016-17 or 2017-18 save that he shall pay the sum of £79.50 for drain repairs for 2014-15 and the sum of £240 for insurance for 2017-18.
- (2) The Tribunal determines that the Second Applicant, Rekha Ghosh, is not liable to pay any further service charges to the Respondent in respect of the years 2010-11, 2011-12, 2012-13, 2013-14, 2014-15, 2015-16, 2016-17 or 2017-18 save that she shall pay the sum of £240 for insurance for 2017-18.
- (3) The Tribunal makes an order under s.20C of the Landlord and Tenant Act 1985 to the effect that the Respondent shall not be entitled to add the costs incurred in connection with these proceedings to the service charge.
- (4) The Tribunal orders pursuant to paragraph 13(2) of the 2013 Tribunal Procedure Rules that the Respondent shall reimburse the Applicants for the application fee and the hearing fee in the total sum of £300, such sum to be reimbursed to the Applicants by 4pm on 21 May 2018.

The Application

1. By an application dated 5 December 2017 (“the Application”) the Applicants applied to the Tribunal for a determination of their liability to pay certain service charges relating to the years 2010-11, 2011-12, 2012-13, 2013-14, 2014-15, 2015-16 and 2016-17. This Tribunal is required to make a determination pursuant to section 27A of the Landlord and Tenant Act 1985 (“LTA 1985”) as to the reasonableness and payability of the service charges in question. The relevant parts of the LTA 1985 are contained in the Appendix to this decision.

Background

2. The First Applicant, Robert Chard, is the long leaseholder of Flat D, 77 Abbey Road, London NW8 (“Flat D”), the fourth floor flat within the building known as 77 Abbey Road (“the Building”). The Second Applicant, Rekha Ghosh, is the long leaseholder of Flat A (“Flat A”) on the first floor. The Building comprises

four residential flats on the four upper floors and a commercial unit on the ground floor.

3. The Respondent is the freeholder and now also acts as the manager. Flat A is held by the Second Applicant under the terms of a lease dated 21 December 2009 granted under section 56 of the LRHUDA 1993. Flat D is held under a lease dated 30 November 1987. By paragraph 2 of the Fifth Schedule to the Flat A lease the lessee covenants to pay a Maintenance Charge, being 25% of the expenses reasonably and properly incurred and which are authorised by the Eighth Schedule, the amount of such charge to be certified by the Lessor's Managing Agent or Accountant acting as an expert. The Eighth Schedule then identifies the duly authorised costs and expenses. The Flat D lease is in substantially the same terms. Nothing turns on the precise mechanics of the service charge provisions and neither party relied on any particular provision in the leases and we therefore do not propose to set out the detailed terms of the relevant leases.

Procedural Background

4. The Application identifies the items of service charge in dispute. There are a number of items common to all years, e.g. cleaning, and a number of items which relate only to one particular year.
5. On 30 January 2018 Judge Abbey gave detailed directions, including directions for Scott Schedules and witness statements.
6. The Applicants' case has been fleshed out in Scott Schedules for each flat. The Scott Schedules deal with a number of items for the year 2017-18 which was not part of the original Application. The Respondent has taken no issue with this and provided comments on two of the items in its belated response (see below). We therefore treat the Application as amended to embrace the challenge for the year 2017-18. The Applicants have also prepared an indexed and tabulated bundle which contains the documents that they rely on. Whilst there are a number of inaccuracies in the Scott Schedule (e.g. items included under the wrong year), the Applicants have clearly done their best to comply with the Directions.

7. Until the morning of the hearing there was no indication that the Respondent had made any attempt to comply with the directions at all. However, on the morning of the hearing the Respondent supplied the tribunal with an unpaginated, unindexed bundle containing a random assortment of documents in no particular order. We adjourned briefly to allow the Respondent time to paginate the bundle. There was a partially completed Scott Schedule, what purported to be a Service Charge Account for the Building, including Flats A and D, and an assortment of other documents in no particular order, including the demands relied on. The service charge account was neither certified nor audited, despite the terms of the leases and despite Judge Abbey's direction that the Respondent disclose "*all relevant service charge accounts and estimates for the year in dispute (audited and certified where so required by the lease)*". It emerged that the Respondent's bundle had only been served on the Applicants one working day before the hearing, i.e. on 5 April. The Applicants could have objected to us even looking at this material but they pragmatically decided not to raise any objection and we have therefore had regard to this further material in coming to our conclusions, but the Respondent should be aware that late service of documents in this way is unsatisfactory and serves to undermine the overriding objective of dealing with cases fairly and justly.

2010-11

8. The first dispute here relates to a weekly cleaning charge of £15 per week. The Applicants maintained no cleaning took place. We need say no more about this item because the Respondent's comments in the Scott Schedule were to the effect that this was a "*cash in hand contract*" for which there was "*no proof available*". The Respondent sensibly conceded at the hearing that these sums were not payable. This would have been our determination in any event. These sums are not payable for this year or any of the subsequent years in which they have been claimed.
9. There was a separate item in dispute for this year referable only to the Second Applicant, being a claim for £225 (25% of £900) in respect of a roof repair (page 21 in R's bundle). The Respondent has belatedly supplied an invoice for this item dated 27 July 2010. There is no evidence that this sum was demanded from the Second Applicant until its inclusion in a demand dated 17

May 2017 (page 64 in R's bundle). This is far too late, having regard to section 20B of the 1985 Act. We find this sum is not payable.

2011-12

10. We repeat our comments above about the cleaning charge of £15pw. No sum is payable for this.

2012-13

11. We repeat our comments above about the cleaning charge of £15pw. No sum is payable for this. The main dispute here relates to a number of charges directed to each Applicant for alleged roof repairs, being £99 (April 2013), £99 (13 Sept 2013), £50 (7 Nov 2013) and £99 (11 Nov 2013). We determine that none of these charges are payable for the following reasons. The claims relate to work done to the roof above Flat D which was leaking. The Respondent attempted to make a claim on insurance but the claim was rejected because the loss adjuster considered the damage was man-made, rather than caused by the weather: see email from Clive Evans dated 6 June 2014 at TA4. The Respondent inspected the roof himself, concluded that the leak was due to cracks in the mortar pointing on top of the lead flashing, despite the fact that he is not a surveyor and had no professional surveying qualifications, and purported to effect the repair himself. This was, he said, in April 2013. He said that there were then separate roof repairs undertaken in September 2013 and November 2013 which he attended to. There were no pictures of the repairs. The Respondent told us that the work was "*not done to a five-star standard but was done to a standard*". He did not say what standard.
12. The problems with the roof then appear to have continued into 2014 because there are further charges for roof repairs for 1 Jan 2014 (£99) and 14 Feb 2014 (£99) directed to each of the Applicants. Again there is no proper evidence of the repairs which were allegedly undertaken. The First Applicant maintains that whatever was done was not done to a reasonable standard because there were ongoing problems of water ingress which he ultimately attended to by instructing a properly qualified contractor to effect repairs. This was done in October 2014 and the First Applicant paid the invoice in the sum of £450.00

(TA 1). We accept the First Applicant's evidence. We are satisfied that whatever work was done by the Respondent was not done to a reasonable standard and no sums are payable by the Applicants for these purported roof repairs whether in 2012-13 or 2013-14.

2013-14

13. We repeat paragraphs 11 and 12 above. No sums are payable in this year for roof repairs.

2014-15

14. The first 2 items here relate to a call-out for a blocked drain (£99 per tenant) and drain servicing (£99 per tenant). We are satisfied that there was a blocked drain necessitating a call-out and some work. However, we are satisfied that the total charge for this work was £318.00 (see page 59 of R's bundle) and there is no justification for charging more than this. The First Applicant is therefore liable to pay 25% of £318 = £79.50. The Second Applicant has, we find, already paid her share of this invoice (see p.59 of R's bundle) and is not liable to pay any more.
15. The Scott Schedule fails to distinguish clearly between what purport to be management charges and what are in fact administration charges within the meaning of Schedule 11 of the CLRA 2002. The Scott Schedules identify the following further charges as being in dispute for 2014-15: an "*administration fee*" of £100, a further "*administration fee*" of £99 and a "*late payment fee*" of £99. In fact only the first of these was claimed for this service charge year (see e.g. page 105 of R's bundle) so the latter two charges do not arise in this year. On further questioning, it appears that the administration fee of £100 is, in fact, the Respondent's charge for managing the Building. He does not employ a professional managing agent. This is for his work as the "manager". We do not accept that such a charge is payable under the terms of the Eighth Schedule but even if it were, we do not accept that any such charge is justified on the facts of this case. The Applicants complain in their Application as follows: "*The freeholder is very aggressive and causing significant stress to the residents of the building. [...]. The freeholder constantly harasses the residents and is both threatening and aggressive. He neglects all duties he*

has as a landlord. He continues to make everyone's life miserable while the state of the building deteriorates". Based on what we have seen and heard, we consider these comments well-founded. No management charges are payable for this or subsequent years.

2015-16

16. The first item is a claim for £112.50 being 25% of the sum of £450 which the First Applicant expended on finally repairing the leaking roof after the Respondent's various failed attempts. The Respondent has not reimbursed the First Applicant for this sum. No comparable sum has been demanded from any other tenant. The First Applicant has paid the entirety of the sum of £450 and has not been reimbursed. In these circumstances there is no justification for this charge.
17. The second item is a sum of ground rent in the sum of £240 over which we have no jurisdiction although we note that the rent in the Flat A lease is a peppercorn and the First Applicant says that he has paid this sum.
18. The next item is a charge for insurance, £179.66 for each flat. This is acknowledged as paid by Flat D in the Respondent's letter dated 7 December 2015 (p.82 of R's bundle). We are also satisfied that the Second Applicant has already paid this sum: see page 65 of R's bundle. We need say no more other than to observe that no further sum is payable by the First or Second Applicant for this item.
19. The electricity charge of £32.46 for this year, not £35.49 as per the Scott Schedule, has been paid by the tenants: see TA 15. No further sum is payable.
20. The administration fee, or more accurately the management charge of £99, is not payable for the reasons set out in paragraph 15 above.

2016-17

21. There is a charge of £171.62 per flat for insurance for this year (see demands at pages 64 and 90 of R's bundle). The Scott Schedule is wrong in referring to a figure of £300. Whilst there is a lack of proper documentation in relation to

the insurance position for this year, the sum of £171.62 is not specifically challenged in the Scott Schedules and we note that it has in fact been paid by both Applicants (see TA 18 and TA 25). We therefore make no further comment in relation to this item. Bizarrely, there is included in the demand sent to the First Applicant dated 17 May 2017 a further demand for a sum of £300 in respect of “insurance” (p.90 of R’s bundle). No further detail is provided. It appears that this item in fact relates to a charge for insurance for 2017-18 (cf. demand to Second Applicant dated 17 May 2017 at p.64 of R’s bundle). We therefore deal with this item under the appropriate year.

22. There is also a charge of £2000 per flat described as a “*late payment administration fee*” (page 93 of R’s bundle) included in the challenge for this year. It is not clear whether this item relates to 2016-17 or 2017-18. We suspect the latter but deal with it here. We also note that this item is the subject of a challenge for 2016-17 and 2017-18 but according to the Respondent’s own Service Account (p.18 of R’s bundle), there is only one such fee of £2000 and it arises in the year 2017. We asked the Respondent what this was for. He said it was a combination of legal fees and late payment administration charges. There was no invoice for either element. This charge is clearly extortionate and without justification and is not payable for this year or 2017-18.

2017-18

23. There is a charge of £300 per flat for insurance for this year (see p. 64 of R’s bundle), not £400 as suggested in the Scott Schedule. We understand that latter sum may be the sum originally demanded for 2018-19 but we are not dealing with that year as part of this Application. There was no evidence in either bundle to prove that the charge of £300 had been incurred. The Respondent then produced a Debit Invoice dated 17 Feb 2017 addressed to him as the insured which appeared to be an invoice from his brokers for a premium of £1269.09 plus IPT of £126.91 and an admin fee of £20, a total of £1416, in respect of a policy of insurance (Policy No. RSHG0042160) issued by Royal & Sun Alliance in respect of 77 Abbey Road. This might be thought to be some evidence to justify a charge of $\frac{£1416}{4} = £354$ for insurance for this year. However, the Respondent’s comments in the Scott Schedule at page 17 of his bundle say this: “2017 insurance is £240. 2018 insurance is £325”. The

position in relation to insurance is totally unsatisfactory. There is a lack of any proper documentation to establish clearly what the position was after 2015-16. Given the debit invoice referred to above and having regard to the Respondent's comments in the Scott Schedule, we find that the Applicants are liable to pay £240 each for insurance for 2017-18. We are not going to deal with the year 2018-19 as part of this claim but we would urge the Respondent to provide proper evidence of the insurance position for this year so that any legitimate charge can be promptly paid by the lessees. It is wholly unreasonable on the part of the Respondent not to respond promptly to demands from the tenants for sight of the relevant insurance documentation.

24. We repeat paragraph 22 above. Insofar as the "legal fee" of £2000 per flat is claimed for this year, it is not payable.
25. The Scott Schedule also refers to two further items for this year, a Notice of Works and a Fire Assessment. However, we made it clear that any challenge in respect of these items was premature. They will have to be dealt with as part of a separate application if they give rise to controversy.

Other applications

26. The Applicants applied for an Order under s.20C of the 1985 Act.
27. The Tribunal has a discretion in the matter which must be exercised having regard to what is just and equitable in all the circumstances: *Tenants of Langford Court v. Doren Ltd* (LRX/37/2000). Having regard to our conclusions above, we consider it just and equitable to make a s.20C order.
28. The Applicants also applied for an order under paragraph 13(2) of the 2013 Tribunal Procedure Rules for the reimbursement of the application fee and the hearing fee which together total £300. Again, we have discretion. Having regard to our conclusions above, we consider it appropriate to make the order sought. There were no other applications.

Name: Judge W Hansen

Date: 23 April 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.