



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

Case Reference	:	LON/00AH/LSC/2019/0193
Property	:	37a Parchmore road, Thornton Heath, Surrey CR7 8LY
Applicant	:	Wolali Segbedzi (landlord)
Respondents	:	Kirsten Kilby (tenant)
Type of Application	:	Liability to pay service charges
Tribunal Members	:	Judge Adrian Jack, Professional Member Patrick Casey MRICS
Date and venue of hearing	:	9th August 2019 10 Alfred Place, London WC1E 7LR
Date of Directions	:	4th June 2019 (amended 29th July 2019)

DECISION

Procedural

1. The applicant landlord seeks a determination under section 27A of the Landlord and Tenant Act 1985 as to the service charges payable to him by the tenant for the years 2013 to 2019.
2. The Tribunal heard this matter on 9th September 2019. The landlord represented himself. The tenant represented herself. She was accompanied by her father.

The lease

3. The demised premises are the upper ground floor flat at 37 Parchmore Rd together with the garden. The original lease was granted for a term

of 99 years from 29th June 1982. By a lease dated 24th February 2017 granted under the provisions of the Leasehold Reform, Housing and Urban Development Act 1993 for lease extensions, the term of the lease was extended to 189 years from 29th June 1982. Save that the ground rent was reduced to a peppercorn, the terms of the original lease were unaltered.

4. The lease contains two relevant provisions as regards service charges. By clause 3(8)(b) the tenant is obliged to insure the demised premises in her own and the landlord's names. She is obliged:

“to produce to the landlord on demand the policy or policies of such insurance and the receipt for every... premium, provided that if the tenant shall fail to insure and keep the demised premise[s] insured... the landlord may do all things necessary to effect and maintain such insurance and any sums expended by the landlord for that purpose shall be repayable by the tenant on demand and be recoverable forthwith by action.”

5. The landlord is obliged to insure the remainder of the property. However, there is no provision for the landlord to recover any part of the premium for insuring the rest of the property from the tenant. In effect, the tenant pays the insurance for her part; the landlord for his.
6. The third schedule to the lease provides in Part I, that the tenant shall pay two thirds of the expenses and outgoings incurred by the landlord under Part II. Part II contains obligations on the landlord for the “renewal repair maintenance decoration redecoration and cleaning of the... building main structure including the outside and main walls roofs and principal timbers (insofar as they are not the tenant's responsibility) of the... building and the boundaries thereto and the conducting media”. Part II also provides for the landlord to repair etc communal boilers and the like but it was agreed there was nothing falling within this paragraph of Part II.
7. The tenant's obligation under Part I is to pay the landlord within 28 days of any demand being made. There is no provision for a service charge year. There is a limited ability for the landlord to obtain payments on account under para 2 of Part I “by way of reasonable provision for anticipated expenditure”.

Service charge demands

8. The first service charge demands were made in March of this year. The landlord accepted that he did not serve with the demand for service charges any statement of the tenant's rights and obligations under section 21B of the Landlord and Tenant Act 1985. The result is that no monies are payable by the tenant at present.
9. Further by section 20B of the same Act, a tenant is not liable to pay service charges incurred over 18 months before the landlord has informed the tenant of her liability to pay. In the current case, the first

the tenant was informed of her potential liability was when the service charges demands were served on her. Accordingly any expenditure incurred more than 18 months before service of the demands is irrecoverable by the landlord.

Management fees

10. The landlord seeks to recover management fees in the sum of £470 for each year. In our judgment, this claim fails on every conceivable basis. Firstly, the landlord says that these are monies due a company called Area Property Ltd. However, the company was only incorporated on 4th February 2019, so it cannot have provided services prior to that date. Secondly, there is no evidence of any contract between the landlord and Area Property Ltd (which is wholly owned by himself and of which he is the sole director). Thirdly, even after its incorporation there is no evidence of its providing any management services. Fourthly, there is no provision of the lease which provides for the tenant to reimburse the landlord for any management expenses.
11. For all these reasons no management fees are recoverable from the tenant.

Block insurance

12. The landlord says that he incurred premiums for insurance to the block in the sum of £900 from 2013 onwards. The landlord was unable to show any evidence of his having a policy in force in any year prior to the year commencing 20th April 2018. Apart from one payment in 2013 to Sainsbury's Home, which may refer to insurance, there is no evidence of payment of insurance prior 2019. Nor is there evidence that any policy he took out was in the name of both the landlord and the tenant.
13. The landlord was unable to show that he had made any formal demand for sight of the tenant's policy of insurance over her own flat. In these circumstances, the landlord cannot in our judgment rely on the limited right to recover the additional cost of insurance under clause 3(8)(b). In any event, the landlord has failed to show what the additional cost of insuring the demised premises in addition to just the remainder of the property would have been.
14. Accordingly, no part of the insurance premiums is recoverable.

Roof guttering

15. In each year, the landlord sought to recover £190 in respect of clearing the roof guttering. The tenant denied that there had been any clearing of the roof guttering. The landlord's evidence of this item was derisory. He produced a flyer from "Sam's Gutters" inviting homeowners to call "Sam" on his mobile to arrange for the gutters to be cleaned. On this, the landlord wrote himself "£190 paid by W. Segbadzi" with the date 27th November 2013 and then again 21st November 2014. Since the

payments were supposedly in cash, it is obvious that these are worthless as evidence.

16. There is an invoice which appears genuine, dated 26th November 2015 for £179, paid by card. However, this does not correspond to the sum of £190 claimed in the service charge demand. Moreover the invoice is made out to “Mr Waller”. Notwithstanding that, we accept that this payment was made and was in principle recoverable from the tenant. However, the failure to demand payment within 18 months is fatal to the landlord’s claim.
17. There are invoices for £190 dated 30th November 2016, 28th November 2017 and 28th November 2018 purportedly from ANR Roofing Services. The invoice numbers on these are 102, 103 and 104. By contrast an invoices purportedly from the same firm for the chimney work, to which we come below, is dated 23rd December 2016, but numbered 101. In other words it post-dates invoice 102 dated 30th November 2016. We do not accept the genuineness of any of these invoices.
18. There is no evidence at all of any payment after 2015.
19. We disallow this claim completely.

Drain cleaning

20. Like the gutter-cleaning, this is a recurring sum of £180 in each accounting year. The sums are said to be justified by invoices from “Louis Builders”, the earliest purportedly dated 20th November 2013. The invoices are not contemporary. The landlord says that he asked Louis Builders to send him them by email this year. There is no evidence of any payment having been made.
21. The tenant said that there had been no drain blockages whilst she had been at the property and her tenants had reported no blockages to her.
22. We simply do not accept that these are genuine invoices for services genuinely supplied. We disallow this claim completely.

Cleaning the communal area

23. The landlord likewise sought to recover £650 in each year for cleaning of the communal area. This was a small space at the front of the building. The amounts are said to be justified by invoices from “Len Cleaners”. The invoices for each year are identical. The landlord said that, as with the “Louis Builders” invoices, he asked the cleaner to email him the invoices only this year.
24. The landlord told us that the cleaner came once or twice a year. He had no explanation for why the sum of £650 was the same regardless of whether the cleaner came once or twice. The sum in any event appears excessive. There is no evidence of its having been paid.

25. The tenant said that her mother used to tidy up the front area.
26. Again, we do not accept that these are genuine invoices for services supplied. We disallow this claim completely as well.

Chimney stack

27. The 2016/17 service charge demand includes an amount for £870 “repair work to Chimney stack/brick work”. There is evidence that this work was actually done. There are photographs of the scaffolding and of the chimney. However, the invoice from ANR Roofing Services is, for the reasons we have given, not genuine.
28. However, we do not need to determine what the cost of these works were. The invoice for the work is dated 23rd December 2016. That is more than 18 months before the tenant was informed of her potential liability to contribute. The item is therefore not payable under section 20B. We disallow it completely.
29. Even if it were in principle recoverable, there was no section 20 consultation, so the amount recoverable would be limited to £250.

Major works

30. The 2017/18 demand includes four items for painting the building (£2,500), pointing bricks (£989), repairing the boundary fencing (£700) and fitting property numbering (£140). None of these works have been carried out. No section 20 consultation has been commenced in respect of the works. The landlord is impecunious. In our judgment, there is no prospect of these works being carried out within any reasonable timeframe. We accordingly disallow the items completely.

Damage to lower flat

31. The 2017/18 demand includes an item of £500 for repair of damage to the ground floor flat, part of the landlord’s premises. The leak appears to have been the fault of the tenant’s sub-tenants who live in her upstairs flat. There appears no legal basis on which the tenant is liable for a leak caused by her sub-tenants. Accordingly we disallow this item as well.

Costs

32. The landlord has been relieved of his liability to pay fees to the Tribunal. Accordingly, the Tribunal does not need to determine who should pay these fees.
33. The tenant seeks an order under section 20C of the Landlord and Tenant Act 1985 to prevent the landlord recovering any legal costs against her. The landlord has not expended any monies on legal costs, so the Tribunal declines to make such an order.

DECISION

1. The tenant owes the landlord nothing in respect of service charges in the period up to 9th September 2019.
2. The Tribunal refuses to make an order under section 20C of the Landlord and Tenant Act 1985, as being otiose.

Name: Adrian Jack

Date: 9th September 2019

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 21B

- (1) A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges.
- (2) The Secretary of State may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.
- (3) A tenant may withhold payment of a service charge which has been demanded from him if subsection (1) is not complied with in relation to the demand.
- (4) Where a tenant withholds a service charge under this section, any provisions of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.
- (5) Regulations under subsection (2) may make different provision for different purposes.
- (6) Regulations under subsection (2) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.