



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

Case Reference : **LON/00BK/LSC/2020/0301**

Property : **33C Clifton Gardens Limited
London, W9 1AR**

Applicant : **33 Clifton Gardens Limited**

Representative : **Mr Adler**

Respondent : **Pietro Lamberti
Carmen Maria Lamberti**

Representative : **Mr Luke-Gibson (Counsel)**

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

Tribunal Members : **Judge Abebrese, Mr Duncan Jagger
FRICS**

**Date and venue of
Hearing** : **1 February 2021 via CVP Remote**

Date of Decision : **14 March 2021**

DECISION

DECISIONS OF THE TRIBUNAL

- (1) The tribunal determines that the claims of the Applicant are allowed in respect of the service charges
- (2) The tribunal makes the determinations as set out under the various headings in this Decision.
- (3) The tribunal makes 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 lessee through any service charge.
- (4) The tribunal further orders that the applicant for reasons stated above is **not** entitled to be reimbursed for the cost of the application and hearing amounting to £300.

THE APPLICATION

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges and administration charges payable by the respondents in respect of the service charge years.
2. The relevant legal provisions are set out in the Appendix to this decision. The applicant is the registered freehold owner of the property. The property may be described as a 2 bedroom flat in a converted property. The respondents are currently not in occupation of the premises.

THE BACKGROUND AND THE ISSUES

3. The appellant seeks a determination under section 27A of the Landlord and Tenant Act 1985 as to whether service charges are payable. The lessee also seeks an order for the limitation of the landlords cost in the proceedings under Section 20c of the Landlord and Tenant Act 1985.
4. In an application dated 8 October 2020 the applicant landlord seeks a determination under Section 27A of the 1985 Act as to whether service charges are payable. The application relates to the service charge years 2018 (1,529.42), 2019 (1,868.59) and 2020 (1,731.09). The respondent's dispute the reasonableness of these charges.
5. The lease is dated 9 January 2004 and was later varied by a Deed of Variation dated 3 February 2005 ("the lease")

THE HEARING AND THE EVIDENCE

6. The issues which are in dispute between the parties may be listed as follows
 - Excessive Management Fees £1046
 - 2019 Service Charge repairs figure £1842
 - 2020 forecast Service Charges repairs figure £1500
 - Alleged Service arrears £2161
7. The relevant clauses of the lease are as follows. **Clause 8 of the Third Schedule** states that the Respondents shall on each quarter day falling within the financial year pay to the Applicants on account the service charge for the financial year a sum that the landlord may specify in its discretion to be fair and reasonable interim payment.
8. **Clause 1 of the Third Schedule** states that the financial year means the period from 29 September in each year to the 28 September in the following year or such other annual period as the Applicant may determine in its discretion as being fit for account to be made for the flat.
9. **Clause 14** of the lease defines the service charges and the contribution to be made by the Respondent in respect of the main block expenditure and the interior block expenditure. Clause 1 of the lease of the Third Schedule of the lease defines the main block expenditure as cost.
10. Clause 9 of the Third Schedule states that as soon as practicable after the end of each financial year the applicant shall provide the Respondents an account of the service charges payable by the respondent for the financial year together with a copy of the accountants certificate. Clause 2.15 of the lease states that the respondent must provide the applicant or its agent access to workmen at all reasonable times, following notice having been given for the purposes of carrying out works.
11. The respondents posed several questions to the applicant in relation to service charges which are dealt with by the applicant at pages 81-87 of the hearing bundle. The applicant is asked to explain the difference within the 2018 account statement from the auditors which states that

a figure of £9141 for building however overall the statement also states £8708. The applicant directs the respondent to the statement of service charge expenditure from 1 January 2018-December 2018 prepared by the accountants. The actual expenditure for 2018 amounts to £8708.83 and the budget expenditure amounts to £10,354.30. The balancing credit for 2018 is £1,213.14 which when deducted from 2019 budget amounts to £9,141.16 for the financial year 1 January 2018-31 December 2018.

12. The applicants also in response to a question from the respondents provided a breakdown of the 2018 management charge of £1600. The respondents were directed to the Carlton Grove Surveyors Terms and Conditions relating to the Block Management pages 1-16. The management fee according to the applicants have been in accordance with market norms. The burden of proof according to the applicants is for the respondents to show that the management fees are unreasonable.
13. The applicants further in response to a question from the respondents provided a breakdown of the service charge repairs figure of £2,642-£1842 The applicant states that the figure consist of £642 for the emergency external handrail repair and a further £2,000 was charged to all leaseholders towards to cover works conducted by the respondents to the balcony of Flat C and roof of Flat B. The respondent was subsequently credited £1,661.20 towards the 2019 service charge
14. The applicant was asked to provide a breakdown of the forecast management charges of £1600. The applicants in response referred the respondents to the Terms and Conditions of the Carlton Grove Surveyors referred to above and that state again that the figure reached is in accordance with the market and it is reasonable.
15. The applicants also maintain that the forecast of £1500 for 2020 is to cover a permanent solution to the railing and that the lowest figure that has been quoted in in fact more than the budget to carry out the works.
16. The respondents also requested from the applicant the invoice in relation to the aborted contractor which was initially £240 but then amended to £200, and correspondence regarding the refusal of access. The applicants provided a copy of the invoice at page 23 of the bundle. During 2019 there was a report of water ingress emanating from the respondents balcony. The applicant requested access to the respondents balcony to inspect the balcony and to carry out any necessary works to rectify the problem. The applicants provided copies of correspondence from Mr Adler to the respondents requesting access and they claim that the respondents failed to provide access or suitable dates upon which access could be gained. It is the applicants case that they incurred cost following abortive visits and that the respondent has not complied with their obligations in Clause 2.8 and the applicant is

entitled to recover the loss under clause 2.15. The contractors fees were demanded as an administrative charge.

17. The respondent also contends that the service charge arrears do not make sense and made a request for the document to be re-drafted showing actual annual service charges due as per the accounts and payments received. The respondent requested that the ancillary items be shown such as the abortive contractors fees. Furthermore, the respondent seeks clarification as to whether at the beginning of 2020 when the forecast demand was made there was an arrears balance outstanding for the annual service charges, he maintains that if this is alleged to be the position then it is not accurate. In essence the respondents ask for clarification of the whole statement and how the balance is reached. In response the applicants state that the payment of £3,100.35 relates to the Section 20 major works for the fire safety which was received by the applicants. The major works changes they contend are not referred to in the arrears statement. The respondent is referred to the statement of Mr Joshua Adler paragraphs 31 and 32. In any event the applicants state that arrears statement has been amended and it confirms arrears of £592 which includes the credit of £1,661.20 received in respect of the works to the balcony.
18. We were also referred to the applicant and the respondents statement of case at pages 79-117 and 75-78 respectively. The respondent also provided a reply at pages 162. The contents of all of the above documents have been carefully considered by the Tribunal in reaching its decision in this application.
19. The representatives at the hearing made submissions to the Tribunal which in the main repeats the contents of the documents referred to above in respect of their case and the evidence which they relied on. Mr Luke Gibson submitted that there are still five issues which are outstanding. The first of which is the management fees and he conceded that there are no alternative quotes before the Tribunal but he leaves this issue with the Tribunal to determine. The lease provides that the accounts are required to be certificated. He submits that there was a lack of information regarding the accounts in 2018-2019. The applicant has not followed the lease requirements and this should require a reduction in the service charges.
20. It was submitted secondly, that statement of service charges expenditure at page 157 it has been collected as a service charge and the Tribunal were referred to the service charge demand for the period 1 January 2019-31 December 2019. It was further submitted thirdly, that the service charges on page 132 is a balancing charge and that this should fall in the year 2019 and not 2020. It should have been viewed as an interim payment for 2020. It should not be demanded for in 2018 because the service charges were not incurred in 2018. It was made

clear that the figures are not in dispute if demanded but the issues in relation to recoverability and the amount should be made clear.

21. It was submitted fourthly that in respect of the abortive visits of the contractor the lease requires that there is a requirement for notice to be provided and this has not been adhered and the wrong clauses have been referred by the applicants. If the amount sought is a service charge then the respondent is in event only liable for a proportion of the amount.
22. Mr Lamberti was called to give evidence and he relied on his statement of case at page 75 of the hearing bundle. In respect of the management fees he gave evidence that he was seeking transparency as to how the service charge figures had been derived. He admitted that he had no comparative figures but he was of the view that a figure within the region of £650 might be reasonable. He was of the view that he had been overcharged.
23. In relation to the statement of account he gave evidence that he had nothing further to add to what had been submitted by Mr Luke Gibson. As regards the abortive contractors visit. He gave some background on this issue and he stated that prior to the current managing agents they dealt with this issue by themselves. We were referred to correspondence on this issue at page 190 of the hearing bundle. The problem he claims could not have been with the roof because he claims this had been repaired. He maintained that there was no objection to an independent contractor being granted access but not to a contractor who was not independent otherwise anyone could be granted access on to the premises. The evidence of Mr Lamberti was that the accounting processes adopted by the respondents were not adequate.
24. Mr Adler submitted that in relation to the service charges there were no comparable evidence before the Tribunal. The current leaseholders are content with the charges and there should not be any reduction made. He conceded that it was not an administrative charge but accepts that it is a service charge. He submitted that the points raised by Mr Lamberti were raised during the course of the hearing regarding the background and the history and he was not in a position to respond to them.
25. The Tribunal after careful consideration of the documentary and oral evidence in addition to submissions made by the legal representatives make the following findings. The parties it is noted had agreed a substantial amount of the issues in this application after proceedings had already been issued. The issues raised by the respondent in his statement of case at pages 77-78 are dealt with by the applicant at pages 79-85 in their responses. The position of both parties have been referred above in some detail and in the main do not need to be repeated here. The points raised in the respondents statement of case are dealt with in points A-J. The Tribunal finds accepts the evidence of the

applicant in respect of the reasonableness of the **management fee charges** for the following reasons and that the **charge of £320 is recoverable** in this instance as the portion to be paid by the respondent because the respondent despite his opposition did not provide an alternative quote for the Tribunal to consider. The respondent requested from the applicant an explanation of the fees and they responded in some detail in their responses at page 81 of the hearing bundle. The applicant provided a breakdown of the fees by providing a copy of the Carlton Grove Surveyors terms and conditions relating to the block management at pages 1-16, this was passed on to the respondents legal representatives on 23 July 2020. The applicant also directed the respondents to Clause 20.2 which sets out the levels of management fees. The Tribunal accepts that the fee is in accordance with the standard market rate.

26. In relation to the **abortive contractors fees** this is dealt with by the applicant at points G-H of the responses. The Tribunal notes that the original contractor fees was £240 but then it was amended to £200. This in our fee is no longer and issue and is being recovered as a service charge and not as an administrative charge. The Tribunal on balance accepts the evidence of the applicant and the requirements laid down in Clauses 2.8 and 2.15 of the lease.
27. In respect of the **service charge arrears (£2161)** this is dealt with at H of the applicants responses and the Tribunal gave careful consideration to the points raised by the respondent challenging the statement of service charge arrears. In short the respondents case is that the statement does not make sense and they claim that there are some key information missing such as the payment of £3,100 made on 27th November 2018. The respondent request that the statement be drafted again showing the correct figures. The Tribunal accepts the explanation of the applicant that the payment of £3,100.35 was in relation to the Section 20 major works that were carried out in respect of the fire safety. The respondent's are referred to paragraphs 31-32 of the statement of Mr Adler. It should also be noted that the arrears statement has subsequently been amended and confirms the arrears of £592.18 and it includes the credit of £1,661.20 in respect of the balcony repairs.
28. The Tribunal finds that the lease terms requires **certification** of the charges by an accountant/auditor and this is of course a good starting point in respect of any challenges that may be made by a leaseholder. The applicant did not provide certification for several years especially it is noted 2018 and 2019, there has also been an adjustment in the charges because errors on the part of the applicant and this it was argued should result in a reduction as the lease had not been followed. The Tribunal finds however that in this instance based on the evidence before us that the service charges are reasonable and that **no deductions should be made to the figures being claimed by the applicants for example to the management fees.**

The Tribunal also finds that the an order an Section 20C is appropriate in the circumstances bearing in mind the concessions that have been made and the adjustments to the service charges on the part of the applicant. In addition to this the non-compliance with aspects of the lease such as the need for certification. The Tribunal is also of the view that because of these factors the applicant **should not** be entitled to recover the cost of making the application and his hearing fees.

Application under s.20C and refund of fees

29. The Tribunal makes an order under Section 20C after hearing submissions from both parties. The reasons have been provided above
30. The Tribunal also upon hearing submissions from both parties makes an order that the applicant is not entitled to the cost of making the application and hearing fees in respect of the application.

Name: Judge Abebrese

Date:

15/03/20

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).

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;
 - (a) 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).