9877

FIRST TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY TRIBUNAL)

Case Reference	:	**LON/00AH/LSC/2013/0818**
Property	:	**Flat 4 Radley Court, 144 Selhurst Road, London SE25 6LP**
Applicant	:	**Radley Court (Selhurst) Management Co. Ltd.**
Representative	:	**PDC Legal Solicitors**
Respondent	:	**Mr John A Westcarr**
Representative	:	**In Person**
Type of Application	:	**For the determination of the reasonableness of and the liability to pay service charges and administration charges**
Tribunal Members	:	**Judge Dickie** **Mr I Holdsworth MSc FRICS**
Date and venue of Hearing	:	**24 April 2014, 10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**24 April 2014**

DECISION

Decisions of the tribunal

(1) The tribunal determines that the sum of £1404.02 is payable by and now due from the Respondent in respect of the service charges forming the subject of the County Court claim.

(2) No administration charges are payable under the lease. The sums specified in the County Court claim as administration fees as set out below are not payable.

(3) The tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985.

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.

2. Proceedings were originally issued in the Northampton County Court under claim no. 3YM09991. The claim was transferred to the Croydon County Court and then in turn transferred to this tribunal, by order of District Judge Bishop on 26 November 2013. The relevant legal provisions are set out in the Appendix to this decision.

3. **The County Court claim was for:**

- **£1498.02 for service charge (including insurance) comprising, as shown by the account schedule attached to the Particulars of Claim:**

  22/6/12 - £381.18 outstanding from the sum of £487.35 for service charge 24/6/12 to 24/12/12

  22/6/12 - £146.25 for reserve fund contribution 24/6/12 to 24/12/12

  25/6/12 - £336.99 for insurance 28/6/12 to 28/6/13

  29/11/12 - £487.35 for service charge 25/12/12 - 23/6/13

  29/11/12 - £146

- **£384.00 for administration fees comprising**

  11/12/12 - £156.00 Instruction Fee

  11/12/12 - £168.00 Debit collection fee.

  4/6/13 - £60 Claim fee

- **Costs of £145.80**

- **Plus court fee and solicitor's costs of £175.00**

The hearing

4. The Applicant was represented by Mr J Wragg at the hearing and the Respondent appeared in person.

5. The hearing bundle had been prepared by the Applicant and served in accordance with the tribunal's directions. A supplementary bundle was not filed with the tribunal until 2 days before the hearing, and the Respondent said he did not receive it until the day before the hearing. However, he confirmed that it contained no documents that were new to him and, no objection having been raised to its admission in evidence and, being satisfied there was no prejudice to the Respondent from its late service, the tribunal decided to admit the supplementary bundle in evidence.

The background

6. The property which is the subject of this application is a block of flats containing ten flats in total. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.

7. The Respondent holds a long lease of the property which requires the Applicant management company to provide services (including the maintenance and management of the building) and the tenant to contribute towards their costs by way of a variable service charge. All leaseholders of the flats are shareholders in the management company. The specific provisions of the lease will be referred to below, where appropriate. The current managing agent appointed by the management company is HML Andertons.

The issues

8. At the start of the hearing the parties identified the relevant issues for determination as follows:

(i) Mr Westcarr disputed his liability to make contributions to the "bi-annual reserve fund"

(ii) He also disputed his liability to pay administration charges.

(iii) Mr Westcarr did not otherwise dispute his liability to pay or the reasonableness of his service charges.

9. 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

10. **The tenant covenants in the lease to pay an Interim Charge and a Service Charge at the times and in the manner provided in the Fifth Schedule.** The Applicant relied on Clause 6(m) of the lease, by which the landlord covenants:

"To set aside (which setting aside shall for the purposes of the Fifth Schedule hereto be deemed an item of expenditure incurred by the Company) such sums of money as the Company shall reasonably require to meet such future costs as the Company shall reasonably expect to incur in replacing maintaining and renewing those items which the Company have hereby covenanted to replace maintain or renew".

11. Mr Wragg also relied on Paragraph 3 of the Fifth Schedule of the lease which provided for payment of the Interim Charge by equal payments in advice on the Twenty fourth of June and the Twenty fifth of December each year.

12. Mr Wragg showed by reference to the accounts that the landlord kept four separate reserve funds - the general reserve, the external decoration reserve, the internal redecoration reserve and the roof renewal reserve.

13. The Applicant through its managing agent had demanded reserve fund contributions each half year. For the year 2007/08 a total reserve fund contribution of only £10 had been demanded. None was demanded for the year 2008/09. The following sums were subsequently demanded annually in two instalments:

2009/10 £125.00

2010/11 £292.50

2011/12 £390.00

2012/13 £292.50

14. Mr Wragg referred to accounts showing the position of the reserve fund at the end of the service charge year ending 24 June 2012 had been £15,586.00 and that this had funded the external and internal decorations in 2013 which cost £12,122.00. This was work within the purpose provided for in clause 6(m). The landlord had continued to charge a reserve fund in the region of £3000 between the ten lessees, it was explained, to allow for a five year cyclical maintenance programme.

15. Mr Westcarr has owned his flat for over 27 years. He had previously been a director of the management company and also provided common parts cleaning services for the building by contract with the management company. The Applicant referred to evidence from Companies House records that the Respondent had resigned as a director of the company on 30 November 2010. Mr Westcarr disputed that he had so resigned, and was dissatisfied that he was now not included in decision making within the company. He was also aggrieved about non payment of invoices for his cleaning services and ultimately the termination of his cleaning contract on 10 February 2014, communicated to him in a letter dated 7 January 2014. He was unhappy that he had not been consulted (as the contractor and as a resident) about any issues concerning the contract and the decision to terminate it.

16. These concerns raised by Mr Westcarr are not matters for the tribunal. There is no evidence that the managing agent acting without the authority of properly appointed directors of the management company. If any sums are due under the cleaning contract, these cannot be set off against service charges owing under the lease.

17. It was Mr Westcarr's case that the management company, during his directorship, had agreed to ring fence £3000 for external and internal decorations. He clarified during the hearing that this agreement was for an annual ring fenced sum. He was also dissatisfied about variable and increased amounts that had been charged for the bi-annual reserve fund. However, it would appear to the tribunal that the Applicant has justifiably altered its view as to the appropriate amount of the reserve fund contribution.

18. The tribunal recognised that the Respondent had misunderstood the presentation of the reserve fund demand as a separate bi-annual

reserve fund charge, in addition to the agreed annual £3000 reserve fund which he thought formed part of the general service charge. He had therefore believed there to be duplication in the charges made by the landlord. However, having considered the landlord's evidence the tribunal is satisfied that this is not so. Separate accounting of the reserve fund is normal practice and there has been no duplicate charging since the breakdown of service charges includes nothing for a reserve fund.

19. The tribunal is satisfied that the lease clearly provides for the landlord to operate a reserve fund. It finds on the landlord's evidence that the amount of the reserve fund contributions that form the subject of this claim are reasonable and payable.

Administration Charges

20. **Mr Wragg conceded at the hearing on behalf of the management company that the lease made no provision for the recovery of administration charges. He therefore conceded that the administration fees totalling £384.00 were not payable. In respect of the County Court costs, Mr Wragg was instructed that the management company did not intend to seek their recovery in the County Court and he did not ask the tribunal to make an order transferring the claim back to the County Court.**

21. **The tribunal observed that in a previous decision of the Leasehold Valuation Tribunal dated 18 August 2009 in respect of proceedings between the same property and parties (Case Number LON/00AH/LSC/2009/0126 & 0323) the tribunal determined that no administration charges are payable under the terms of the Respondent's lease. The account statement showed the refund of such charges shortly after that decision, since which time only one administration charge not claimed and now conceded in these proceedings had been charged. This was a sum of £94 for "management charge - arrears collection" made on 27 July 2010. Mr Westcarr had disputed his liability generally to pay administration charges in his County Court defence, and Mr Wragg conceded this amount as a set off from the principal sum of £1498.02 claimed in these proceedings. He therefore sought a determination that the sum of £1404.02 was payable in respect of the claim.**

Application under s.20C

22. At the hearing, the Respondent applied for an order under section 20C of the 1985 Act. He considered that if the arrangements concerning the reserve fund had not been altered, these proceedings would not have

been necessary. Having heard the submissions from the parties and taking into account the determinations above, the tribunal declines to make such an order for the following reasons.

23. Mr Westcarr has failed to provide copy cleaning invoices in spite of the decision of the previous tribunal that such invoices should be produced. The Applicant has expressed a willingness to pay such invoices on receipt and the resolution of that matter might have enabled the compromise of the present proceedings. Notwithstanding that Mr Westcarr has been successful in resisting the claim in respect of administration charges, the tribunal considers there would be only negligible additional costs in relation to the claim for these sums, and Mr Westcarr's intransigence over the issue of the reserve fund and his relationship with the company and managing agent was the primary reason for his non payment and the inevitability of these proceedings.

Name: F Dickie **Date:** 24 April 2014

Appendix of relevant legislation

Landlord and Tenant Act 1985

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 a leasehold valuation 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 a leasehold valuation 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) a leasehold valuation 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.

Leasehold Valuation Tribunals (Fees)(England) Regulations 2003

Regulation 9

(1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.

(2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).

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 a leasehold valuation 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 a leasehold valuation 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).

Schedule 12, paragraph 10

(1) A leasehold valuation tribunal may determine that a party to proceedings shall pay the costs incurred by another party in connection with the proceedings in any circumstances falling within sub-paragraph (2).

(2) The circumstances are where—
(a) he has made an application to the leasehold valuation tribunal which is dismissed in accordance with regulations made by virtue of paragraph 7, or
(b) he has, in the opinion of the leasehold valuation tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.

(3) The amount which a party to proceedings may be ordered to pay in the proceedings by a determination under this paragraph shall not exceed—
(a) £500, or
(b) such other amount as may be specified in procedure regulations.

(4) A person shall not be required to pay costs incurred by another person in connection with proceedings before a leasehold valuation tribunal except by a determination under this paragraph or in accordance with provision made by any enactment other than this paragraph.