



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

Case Reference : **LON/00AU/LSC/2015/0091**

Property : **Flats 1 and 2, 61 Rawstorne Street
London EC1v 7NJ**

Applicant : **Grete Jurado and Phillippe Jurado**

Representatives : **Mr F Uvais, Solicitor**

Respondent : **Lalji Naran Patel and Kesharben
Lalji Patel**

Representative : **Mr P Patel, Managing Agent**

Type of Application : **For the determination of the
liability to pay and reasonableness
of service charges (s.27A Landlord
and Tenant Act 1985)**

Tribunal Members : **Prof Robert M. Abbey (Solicitor)
Mr John Barlow (FRICS)
Mrs Laurelie Walter (Lay member)**

**Date and venue of
Hearing** : **22nd June 2015 at 10 Alfred Place,
London WC1E 7LR**

Date of Decision : **6 July 2015**

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the service charges (of which the Applicant pays one third per flat) for the property are payable as follows:-

2008-2009

Audit and Accountancy	£143.75
Administration Charge	£Nil
Insurance	£1628.59
Management fee	£750.00
Electricity	£35.85

2009-2010

Audit and Accountancy	£146.88
Insurance	£1650.52
Management fee	£900.00
Electricity	£60.08

2010-2011

Audit and Accountancy	£150.00
Insurance	£1716.23
Management fee	£900.00
Electricity	£47.71

2011-2012

Audit and Accountancy	£150.00
Insurance	£1791.60

Management fee £900.00

Electricity £47.72

2012-2013

Audit and Accountancy £150.00

Insurance £1840.57

Management fee £900.00

Electricity £110.48

- (2) The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985, i.e. preventing the landlord from adding the legal costs of these Tribunal proceedings to subsequent service charge accounts.

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 charge payable by the applicant in respect of service charges payable for services provided at Flats 1 and 2 61 Rawstorne Street London EC1V 7NJ, (the property) and his liability to pay such service charge.
2. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

3. The applicant was represented by Mr Uvais a solicitor with Harper and Odell and the respondent was represented by Mr P. Patel from the managing agents Naran Jesha Limited.
4. The tribunal had before it an agreed bundle of documents prepared by the applicant. The bundle was augmented at the hearing with a copy of the basement lease. After the hearing official copies of the freehold title were provided to the tribunal to confirm the legal title and status of the respondent.

The background

5. The property which is the subject of this application comprises two converted flats within 61 Rawstorne Street, (“the building”). There is a

third flat in the building and there is also a fourth lease of the basement premises of the building. Flat 1 is on the ground floor; flat 2 on the first floor, flat 3 on the second floor and the basement flat is described as the lower ground floor flat. The ground, first and second floor leases were all granted on 22 May 1983 for a term of 99 years from 25 December 1982 while the basement lease was granted on 6 April 1994 for a term of 99 years from 24 June 1993.

6. 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 applicants hold long leases of the properties which require the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. Each lease, excluding the basement, must pay a one third of the services provided. There is no such liability in the basement lease.

The issues the applicants raised covered the reasonableness of the charges raised for the several items listed above and carried out by the respondent. The applicants consider that the items are either excessive or unreasonable.

The issues

8. First to give evidence for the respondent was Mr P. Patel from the Managing Agents. He confirmed the amounts charged and highlighted the levels as set out in the annual accounts prepared by chartered accountant Andrew Todd. He confirmed that the amounts were then divided in three for payment by the tenants in accordance with the terms of the leases. No demand was made of the basement tenant as there was no service charge provision similar to those in the flat leases in the basement lease. He produced annual accounts and supporting papers and invoices to confirm the nature of the services listed and demanded.
9. Mr Uvais for the applicants put to the tribunal that the applicant were of the view that the service charges should be divided in quarters rather than thirds bearing in mind the existence of the basement lease. He also explained where he thought the service charges were excessive and unreasonable. He suggested that the administration charge in 2008-2009 of £1331.25 was clearly unreasonable because it was only payable by one of the applicants and related to other litigation or another dispute not before the tribunal regarding the basement.

Decision

10. The tribunal is of the view that there are elements of the service charges that are unreasonable. However before considering this aspect it considered the suggestion that the charges should be split four ways rather than three. The tribunal dismissed this argument as it was clear in the leases that the applicants had to pay a one third of the service charges for each lease and there was no lawful authority for this to change. There was no application before the tribunal to vary the lease or to consider any such change and accordingly the tribunal was clear that the service charge provision on the leases must prevail at one third per flat.
11. Turning to the reasonableness of the various charges, the tribunal considered the amounts for each year starting with 2008-2009. In this particular year there was a single charge of an administration fee amounting to £1331.25. The tribunal agreed with Mr Uvais that this was an unreasonable charge and should be disallowed in full. The tribunal considered the charge to relate to other litigation and that there was no justification for the administration charge levied against this one tenant.
12. The other annual charges were audit charges, insurance fees, electricity charges and a management fee. Dealing with these in turn the comments and decisions set out below apply to these annual charges in each service charge year.
13. In regard to the electricity charges the tribunal finds that they are all reasonable as they reflect the actual charges of the electricity company. However, the tribunal recommends that the accountant at the time of the preparation of the annual accounts sets out a breakdown of how the charges are apportioned or levied. Similarly the tribunal recommends that the electricity supply for the basement be put on a separate electric meter.
14. In regard to the insurance charges, again the tribunal finds that they are all reasonable as they simply reflect the actual charges of the insurance company. The tribunal was able to see paperwork in the trial bundle to support these figures. Mr Patel from the managing agents did confirm to the tribunal that the premium charged was obtained through brokers who did check annually that the charge was a premium at a market level and not excessive. He also confirmed to the tribunal that he had no financial interest, (such as a commission), in these fees or premium.
15. In regard to the management fee for the first year, this was set at £1000 by the managing agents. Mr Patel argued that this was the total fixed fee per flat and referred the tribunal to a decision (*LON/OOAY/LSC/2014/0347 Bhundia v Primeview, 45a Conyers*

Road London SW16) to support his claim as to the reasonableness of this method of charging. It would appear that this decision does not disallow a charge simply because it is a fixed fee. This tribunal was of the view that a fixed fee can be a simple and fair way of charging where there are not many flats in a building such as this one. However, this does not stop the tribunal from considering if that fixed fee is at a level that is reasonable. In this dispute the tribunal took the view that a reasonable fixed charge per flat for this building would be £250 in the first year giving a total annual charge of £750. Thereafter the tribunal was of the view that a reasonable fixed charge would be £300 per flat giving a total annual charge of £900. In coming to these figures the tribunal was mindful of what Mr Patel outlined as the work carried out by the managing agents when dealing with the management of the building.

16. In regard to the audit and accountancy charges it became clear at the hearing that these were made up of two elements. First there was the actual charge levied by the accountant for the preparation of the annual accounts. There were supporting invoices for these prepared by the accountant Mr Todd and exhibited in the trial bundle. These were all accepted as being reasonable.
17. The second element was a charge made by the managing agents for dealing with the audit process. The tribunal was of the view that this should not be allowed as they took the view that this should form part of the management fee considered above.
18. For all the reasons set out above the tribunal is of the view that the service charges are in part unreasonable and that the amounts should be as set out above. The tribunal became aware during the hearing that Mrs Jurado started being interested in her flat in December 2011. In these circumstances the terms of this decision will apply for her only from that time and not before.

Application under s.20C and refund of fees

19. The applicants did make an application for a refund of the fees that had been paid in respect of the application/ hearing. Having heard the submissions from the parties and taking into account the determinations set out above the Tribunal does not order a refund of fees. (The tribunal was also mindful of the fact that the figures in the tribunal application form set out by the applicants were in several cases inaccurate. Additionally, the charges had all been paid by the applicants from 2008 onward and apparently without challenge until now).
20. There was a second application as to whether costs under section 20C would be considered by the tribunal, i.e. preventing the landlord from adding the legal costs of these proceedings to subsequent service charge accounts.. The tenant did make an application for an order under

Section 20C of the Housing Act 1985 that all of the costs incurred by the landlord in connection with these proceedings before the tribunal 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. Having heard the submissions from the parties and taking into account the determinations set out above the tribunal determines that it is just and equitable in the circumstances to make such an order

Name: Judge Professor Robert
M. Abbey

Date: 6. July.2015

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 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.