

		<b>FIRST-TIER TRIBUNAL PROPERTY CHAMBER (RESIDENTIAL PROPERTY)</b>
<b>Case Reference</b>	:	<b>LON/OOBF/LSC/2014/0628</b>
<b>Property</b>	:	<b>4 Eleonara Terrace, Lind Road, Sutton, Surrey SM1 4PU</b>
<b>Applicants</b>	:	<b>Mr. M. Shah, Mr A. Shah and Mr P. Shah (leaseholders)</b>
<b>Representative</b>	:	<b>None (Mr M. Shah attended the hearing oh behalf of all three leaseholders)</b>
<b>Respondent</b>	:	<b>Whitefoord Pension and Trustee Services Limited, B Glass and D. Glass (landlords)</b>
<b>Representative</b>	:	<b>Trust Property Management (chartered surveyors and manag- ing agents)</b>
<b>Type of Application</b>	:	<b>Application under section 27A of the Landlord and Tenant Act 1985 to determine the liability to pay a service charge</b>
<b>Tribunal Members</b>	:	<b>Professor James Driscoll (Judge)</b>
<b>Date of Hearing</b>	:	<b>4 March, 2015</b>
<b>Date of Decision</b>	:	<b>6 March, 2015</b>

<b>DECISION</b>
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## **The Decision summarised**

1. Because the demands were not made within the period prescribed by section 20B of the Landlord and Tenant Act 1985 the sums claimed for the costs of insurance for the service charge years 2007 (£304.10 and a late payment charge of £58.75), 2008 (£328.70), 2009 (£355.40), 2010 (£352.67) and 2011 (£362.48) are not recoverable from the applicant leaseholders.
2. Under rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 the landlords are to reimburse the leaseholders for the fees payable in making this application in the sum of £315 and this sum is to be paid to the leaseholders by 31 March 2015.
3. Under rule 13(1)(b) the landlords are to pay costs to the leaseholders as they have behaved unreasonably in the way they have dealt with this application. These costs are those incurred by the leaseholders in bringing these proceedings, preparing for the hearing. On the basis of the written summary I was presented with at the hearing, I have assessed these costs as the sum of £113.43. This is to be paid by the landlord to the leaseholders by 31 March 2015.

## **Introduction**

4. The applicants are Messrs Shah, three brothers who have purchased a lease of a flat in the subject premises which is a block of six flats. They hold the flat as investment. The respondents are the owners of the freehold and the landlords under the applicant's lease. They are represented by their managing agents Trust Property Management.
5. In this application the leaseholders seek a determination that charges for the landlord's costs in insuring the building cannot be recovered as a result of the operation of section 20B of the 1985 Act. Under that provision a landlord cannot recover costs as a service charge if they were incurred more than 18 months before a demand for the charges are made. Section 20B(2) provides that this does not apply if during the period of 18 months of the costs being incurred the leaseholder was notified in writing that these costs have been incurred. A copy of section 20B and other provisions referred to in this decision are contained in the Appendix to this decision. For

one of the service charge years in dispute the imposition of a charge for a late payment is also disputed on the basis that it need not be paid as the landlords had failed in their obligations under section 20B.

6. The leaseholders also raised certain issues relating to ground rent recovery but as the tribunal explained in the Directions given on 10 December 2014 it has no jurisdiction over ground rent recovery.

## **The hearing**

7. The leaseholders application was made on or about 5 December 2014. As mentioned in the previous paragraph Directions were given on 10 December 2014. The tribunal wrote to the leaseholders and to the managing agents representing the landlords on 11 December 2014 notifying them that the hearing of the application would take place on 4 March 2015. A copy of the Directions was also sent. Later the applicants were given another week to comply with the direction requiring them to prepare and lodge bundles of documents. They delivered three bundles of documents as directed and they also sent by recorded delivery a copy to the managing agents.
8. At the hearing on 4 March 2015 Mr M. Shah attended on behalf of the three leaseholders. There was no appearance by or on behalf of the landlords or their managing agents. A case officer telephoned the managing agents and she was told that they had not instructed anyone to attend the hearing.
9. In these circumstances I considered that it was in the interests of justice to proceed with the hearing (see rule 34 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013). The landlords and the managing agents were made aware of the hearing; they have not responded to the Directions and they have not communicated in any way with the tribunal or, I was told at the hearing, with the leaseholders. Moreover the leaseholders have complied in full with the directions and they have prepared bundle of documents as directed and Mr Shah told me that a copy of the bundle was sent by recorded delivery to the managing agents on 13 February 2015. He showed me a receipt showing that the bundle was sent by recorded delivery.
10. Mr Shah told me that the managing agents have failed to make timely demands for the charges incurred in insuring the building. He added that the managing agents (Trust Management Property Management) do send demands for ground rent and for insurance cover but he says that the demands are always outside the 18 month recovery limit in section 20B of the 1985 Act. This contention was supported by his showing me demands for payment (headed 'Tenant Statement') that the managing agents serve from time to time. He added that these managing agents do not deal with repairs and maintenance and that a different firm handles that side of managing the block. In other words, Trust Management Property Management deal only with ground rent demands and demands for payment towards the costs of insuring the building.

11. Accordingly, I am satisfied on the basis of the submissions, the documents and other evidence supplied by the leaseholders that for the service charge years 2007, 2008, 2009, 2010 and 2011 that the costs demanded for a contribution to the costs of insuring the building (summarised at the beginning of this decision) cannot be recovered as they were demanded outside the time limit prescribed by section 20B of the 1985 Act. The managing agents have made no attempt to rebut these challenges. As a result the tribunal has decided that these charges are not recoverable.
12. I turn to the question of costs. Under rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 the tribunal has powers to order one party to pay costs. I am satisfied that the leaseholders have made efforts to resolve their challenges with the managing agents to no avail. They had little alternative but to apply for a determination of these issues. As a result the tribunal directs that the landlords reimburse the leaseholders for the fees they incurred in making this application (£125) and for the hearing fee (£190). This total sum of £315 is to be paid to the leaseholders by 31 March 2015.
13. Mr Shah handed me a written schedule showing both the tribunal fees and details too of the costs of preparing the bundles, postage costs, travelling costs (in delivering the bundles to the tribunal and in attending the hearing) as well as telephone costs. Under rule 13(1)(b) the tribunal can order one party to pay the other costs if they have behaved unreasonably in defending proceedings. As the managing agents, who represent the landlords, have effectively ignored the application and letters sent to them by the tribunal, ignored the directions and failed to attend a hearing without any explanation being offered, this conduct is unreasonable. I therefore consider that the tribunal should exercise its discretion and order the landlords to pay the sum of £113.43 as costs and this must be paid to the leaseholders by 31 March 2015.

**James Driscoll, 6 March 2015**

## Appendix of the 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
- 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.
- 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, mainte-

nance, 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.
- But the Tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

### **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 leasehold valuation 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 a leasehold valuation tribunal;
- (b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation 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. 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.