12392

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00AC/LSC/2017/0159**
Property	:	**2 & 3 Carlton House,** **1 Herbert Road, London NW9 6AH**
Applicant	:	**Mr G Marchetti** **Mr M Nazir**
Representative	:	**Mr H VanArkadie** **(Mansouri and Son, Solicitors)**
Respondent	:	**Carlton House Freehold Ltd**
Representative	:	**None**
Type of application	:	**For the determination of the reasonableness and liability to pay service charges and administrative charges**
Tribunal members	:	**Mr N Martindale FRICS** **Mr K Cartwright FRICS**
Venue	:	**10 Alfred Place, London WC1E 7LR**
Date of decision	:	**14 August 2017**

DECISION

Decision

(1) The Tribunal determines the items and amounts of service charges and administrative charges challenged as 'actuals' for the years 2013, 2014, 2015, 2016, and 'estimates' for 2017 in respect of Flat 2 and of Flat 3 as are set out below.

(2) The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 preventing the landlord from attempting to recover its costs arising from this application to the Tribunal, from any or all of the four leaseholders, of the four flats in this building.

Application and Directions

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 payable by the Applicant in retrospect for the calendar and service charge years of 2013, 2014, 2015, 2016, and in advance, in the calendar and service charge year of 2017. The application was dated 24 April 2016. The initial application form was only in respect of Flat 2.

2. Directions were issued from this Tribunal, by Judge Latham, on 22 May 2017. In addition to narrowing the years and items of challenge, the directions also joined the tenant of Flat 3 in the building to the application and consideration of almost identical items as had been set out for Flat 2. The relevant legal provisions are set out in the Appendix to this decision. Neither the landlord nor any representative was present at the directions hearing.

Hearing

3. The directions provided for the application in respect of both Flat 2 and 3 to be heard at the same time on 14 August 2017. They provided detailed timetable of dates by which relevant documents had to be prepared and submitted to the other party and the Tribunal. The applicants mainly complied: The respondents mainly did not. The two tenants were represented by the same representative. Neither the landlord nor any representative was present at this hearing.

Background

4. The building, within which two flats form the 'property', the subject of this application, is a small late C19th block of four flats. They were either constructed purpose built or subsequently created from the conversion from a former house at this address. The building at 1 Herbert Road is located off the A5 near its junction with the A504 near the southern part of the LB Barnet, London NW9 6AH.

5. 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.

6. The applicants each hold a long lease of the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease and will be referred to below, where appropriate. The lease also makes provision for the recovery, as an administrative charge, of some of the costs incurred in contemplation of forfeiture action under S.146 of the Law of Property Act 1925. A sample lease, that of Flat 3, was provided by the applicant.

Issues

7. A combined submission was prepared by the representative of the two applicants. It covered the material in some detail and included a little hand written details being the responses from the landlord to the Scott Schedules which the applicants had presented to them in respect of each flat.

8. The original application form was widely drawn including a queries for heads of service charges for wide range of years and for three future ones, but only in respect of Flat 2. At the direction hearing this scope was redrawn and set out in the directions themselves formed into a narrower list of specific items incorporating service charge and administrative items. The applicants' representative produced one Scott Schedule for each flat.

9. The directions themselves also referred in general terms to a number of other items which were at issue, including the level and payability of management charges for each flat.

10. Before the hearing was due to start at 10am, the Tribunal made careful and extensive enquiry of the applicants, their representative, of the bundles supplied, of the office file and of extant email records sent both to the hearing clerk and to the office email in general to establish if there was any reason for the absence of the respondent or of their representative at the hearing.

11. These enquiries established that a copy of the bundle had been sent by the applicants' representative to the managing agent prior to the hearing date, but that it had been returned to them advising that they were not acting in this matter for the respondent and that the Tribunal would be contacted shortly by one the Directors of the respondent freehold company.

12. The Tribunal however noted that it had not received any contact from the respondent, or any new agent or any other representative for the respondent, advising who was to attend, or providing any reasons for failure to attend, or making a request with reasons, to the Tribunal, for the grant of an adjournment in favour of the respondent. These facts having been established from the hearing clerk, the office file and other current email trails, and in the continuing absence of the respondent at 11am the Tribunal determined to proceed with the hearing with the two applicants and their representative only, in attendance.

Applicants Case

13. The Tribunal noted that whilst the directions had joined the leaseholder of Flat 3 as a party to the original application which had only concerned Flat 2, they did not clarify that Flat 3 itself was to be included as part of the 'Property' under consideration. For the avoidance of doubt, the Tribunal determined that the hearing should also consider and decided the service charges and administrative charges levied against Flat 3 as well as Flat 2 at Carlton House.

14. The Tribunal heard from the respondent's representative that many of the issues arose from a chronic failure by the landlord and/or their managing agent to correspond with the tenants in a detailed, timely and competent manner, about services, their provision and quality and their cost, in the building, Carlton House. In order to deal with the live issues in question the Tribunal proceeded to work its way through the two Scott Schedules, prepared in accordance with the directions by the applicants, item by item seeking in each case the reasons from the applicants as to why they were payable or not. If they were payable, what sum they considered reasonable, and if they were not payable at all, why not.

15. In summary the applicants' case was that they had received many service charge accounts and invoices from the managing agents over the years, but that they contained many items which the applicants did not recognise. They explained that either the items of service had not been provided at all; or that they had not been billed and proof of same provided; or that they had not been provided to a reasonable standard. For one or more of these reasons they maintained that many of the items should be deleted or the sums demanded, substantially reduced. In some cases substantially without specifying a figure which they thought reasonable, in others to be reduced to NIL.

16. It was not contested that each Flat in the building was due to pay 25% of the total for each item of billed services charges. It was acknowledged that the administrative charges were individual to each flat.

Respondents Case

17. Although the respondents did not attend either in person or through representatives, the Tribunal did have a copy (in the applicant's bundle) of their brief responses to some of the items in some of the years for one or both of the flats, laid out in the two Scott Schedules. At each item in dispute the Tribunal had reference to these and to any supporting documents during the hearing, where they existed. The landlord's responses in the Scott Schedules were very brief. The respondents made no general statement of case.

Tribunal's decision

18. The Tribunal has read and considered the evidence and submissions from the parties and considered the documents provided, in particular the two Scott Schedules, one for Flat 2 one for Flat 3. The Tribunal lists each and determines them as follows, with brief reasons. As later items are subject to the same arguments and reasoning as in earlier items the material is not repeated.

19. The Tribunal determines for each Service Charge year that the following items and corresponding bills were contested by each applicant; and that for each a particular sum or NIL is payable by the leaseholder, as follows:

20. Flat 2: 2013. General Repairs: £287.38 claimed. NIL payable. This was because there was no evidence to the Tribunal of an invoice showing that expenditure corresponding to this head and proportionate sum had been incurred by the landlord. Indeed the tenant maintained that such general repairs as had been carried out to the building outside of Flat 2, had been carried out by him at his own expense.

21. Flat 2: 2013. Referral instructions fees: £84.00 claimed. £40 payable. It was acknowledged by the applicant that they had withheld payment generally, of service charges, not in lieu of receiving a demand, but because they had not been presented with a copy of the bill from the provider at that time, to support the managing agent's demand. The applicant also felt that such work should be included in the managing agent's general management charge for services rather than forming a separate fee. However it was acknowledged by the applicant that the lease did provide at lease clause 2(6) *"that all costs charges and expenses (including legal costs and fees payable to a surveyor) which may be incurred by the Lessor in or in contemplation of any proceedings under Sections 146 and 147 of the Law of Property Act 1925..."* were payable. The Tribunal concluded that such costs could be recovered as individual administrative fees from leaseholders quite separate from the general annual management fee provided that the sum was reasonable.

22. Flat 2: 2013. PDC Legal fee: £336 claimed. NIL payable. Following on from the preceding paragraph, whilst there was evidence of basic debt chasing, on balance the Tribunal found that there was insufficient evidence from the respondent, of any further legal work done as a preamble to court proceedings.

23. Flat 2: 2014. General Repairs: £273.75. NIL payable. (For reasons see paragraph for same item in 2013 above).

24. Flat 2: 2014. External Repairs and Redecs: £172.50. NIL payable. (For reasons see paragraph immediately above).

25. Flat 2: 2014. Electricity: £123.75. £20 payable. Although the respondent had supplied copies of parts of bills which they had received from EON for one year of electricity, on closer examination the Tribunal struggled to make sense of them. Whilst they referred to 'readings' the Tribunal was not persuaded from the limited material available that they were actual readings. This conclusion was supported by the description from the tenants that there were only 2 internal lights and 1 or 2 external lights in the entire common parts and that there was no heating. The sums demanded in the four quarterly bills from EON varied considerably and amounted to something well in excess of such power that might reasonably have been expected to be used in the year in question at this building. Based on the Tribunal's own experience it considered that a total bill for the year, including VAT and other charges from the power company would be £80 in total.

26. Flat 2: 2015. Surveyors Fees: £530.01. £172.50 payable. The respondent had supplied a bill for the surveyor who had been engaged to prepare for intended works to the exterior repairs and redecorations. It was acknowledged by the applicant that whilst no building works had been commissioned as a result, the preparatory work had been completed by the surveyor and that something was payable. The Tribunal noted and accepted that the bill from the respondent showed a total sum of £690 had been invoiced and for the work described this sum was reasonable and payable. The Tribunal divided this four ways.

27. Flat 2: 2015. Health and Safety: £94.50. £50 payable. The applicants argued that they had not been provided with a copy of the final report and that therefore no work had been done, or if it had been it was not due without their sight of the report. On the balance of probabilities the Tribunal concluded that something had been done as the agent would not wish to take the risk of stating that it had otherwise. However for the safety assessment of a small single internal hallway, landing and stairs and the corresponding pathway to and from the street and to the rear allocated gardens the sum invoiced appeared excessive to the Tribunal. It reduced the total to £200 inclusive of VAT.

28. Flat 2: 2015. S.20 Mgt. fees: £234.17. NIL payable. The applicants argued that there was no evidence any of this work in the management of the works had taken place because either the Surveyor appointed would deal with this, and/ or that there had been no consultation of the leaseholders by the landlord, and/or that no works had been undertaken requiring any of this separate 'management' task. The Tribunal agreed that these were sufficient to justify nothing being due.

29. Flat 2: 2015. Arrears Collection: £60. £40 payable. The tenants argued it was not due owing to the absence of an invoice from the contractor. The Tribunal concluded that the tenant had a history of not paying demands from the agent, albeit for reasons which he considered reasonable. However the better approach was to pay and then contest the amounts due. The tenant had not done so and on the balance of probabilities a sum, albeit reduced by the Tribunal, was due to the landlord for the debt collection as an administrative charge.

30. Flat 2: 2016. Arrears Collection: £60. £40 payable. (see paragraph above).

31. Flat 2: 2016. Referral Instructions fee: £84. NIL payable (see earlier paragraph on same item).

32. Flat 2: 2016. PDS/PDC Legal fee: £168. NIL payable (see earlier paragraph on same item).

33. Flat 2: 2017. General Repairs (estimated): £125. £125 payable. The applicant admitted that as an estimated sum, the lease provided for an advance payment at or above the start contribution set out in the lease of £12.50 twice yearly and this was reasonable.

34. Flat 3: 2013. General Repairs: £287.38. NIL payable. (see same item above for Flat 2).

35. Flat 3: 2013. Electricity: £29.18. £29.18 payable. The Tribunal heard that the tenant accepted this figure as his contribution for this year.

36. Flat 3: 2014. General Repairs: £273.75. NIL payable. (see same for Flat 2).

37. Flat 3: 2014. External Repairs & Redec.: £172.50. NIL payable. (see same item for Flat 2).

38. Flat 3: 2014. Electricity: £123.75. £20 payable (see same item for Flat 2).

39. Flat 3: 2014. Arrears Collection: £120. £40 payable (see same item for Flat 2).

40. Flat 3: 2014. Referral Instruction fee: £84. NIL payable (see same item for Flat 2).

41. Flat 3: 2014. PDC Legal fee: £168. NIL payable (see same item for Flat 2).

42. Flat 3: 2015. Surveyors fee: £530.01. £172.40 payable. (see same item for Flat 2).

43. Flat 3: 2015. Health and Safety: £94.50. £50 payable (see same item for Flat 2).

44. Flat 3: 2015. S.20 Mgt fees: £234.17. NIL payable (see same item for Flat 2).

45. Although not separately identified on either Scott Schedule, paragraph 5 of the directions, also identified the following as in question by the applicants:

46. The sums demanded for buildings insurance. The Tribunal heard from the applicants representative that this was now no longer an issue between the parties

47. The size of the contribution required to the reserve fund. The Tribunal heard argument as noted specifically above, that the applicants felt this was capped at £12.50 payable twice yearly. It was however accepted by the applicants that the lease did allow for this figure to be increased to a reasonable sum by the landlords each year and the Tribunal's decision above with regard to Flat 2 only, reflects this.

48. The administration charges. This was dealt with by way of specific listed items in each Scott Schedule.

49. The effect of S.20B barring late demands from the landlord to the leaseholders for service charges. The Tribunal considered this point but found no evidence clearly showing this failing had occurred on the part of the respondent and that problem was one rather one of their inability to provide later supporting documentation for the landlord's otherwise prompt demands.

50. The level of the annual general management fee payable for the agents management of the building, Carlton House. The Tribunal finds that for the years 2013, 2014, 2015 and 2016 the quality of the management was of a poor standard with a failure to account promptly for sums

demanded of leaseholders whilst at the same time generating additional information by way of debt chasing, which the timely and proper provision of information as requested by leaseholders would have greatly reduced or eliminated. Consequently for each of these 4 years the Tribunal determines that the total sum of £400 each year only, is reasonable and payable for the management of Carlton House and that therefore for only £100 pa including any VAT, is due for each of these years from the leaseholder of Flat 2 and from the leaseholder of Flat 3.

51. An application for S.20C barring the landlord from seeking payment by any of the leaseholders in the building to contribution to the costs of these proceedings was made. The Tribunal grants this application, barring any payments being sought of any leaseholder in the building, Carlton House, subsequently by the landlord. This is because the landlord failed to comply with most of the directions and generally did not respond fully, promptly or at all to either the applicants or to the Tribunal nor engage in the process. Most of the items at issue have been found wholly or at least partly in favour of the applicants.

52.

Name: N Martindale Date: 14 August 2017

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;
- (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.

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).