

12154



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

Case reference : **LON/00AK/LSC/2017/0051**

Property : **2 Wickham Close, Enfield**

Applicant : **Charoula Sergiou**

Representative : **N/A**

Respondent : **Quadron Investments Ltd**

Representative : **Altermans Solicitors Ltd**

Type of application : **For the determination of the
reasonableness of and the liability
to pay a service/administration
charge charge**

Tribunal members : **Judge Carr
Mr M Taylor FRICS**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of decision : **19th April 2017**

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the sum of £914.66 is payable by the Applicant in respect of the service charges for the year 2016 – 17.
- (2) The tribunal makes the determinations as set out under the various headings in this Decision.
- (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/or administration charges payable by the Applicant in respect of the service charge year 2016 – 17.
2. In the determination which decided that the tribunal had jurisdiction to decide the application, directions were issued in connection with reaching a final determination. The tribunal decided that the application was to be determined without a hearing unless either party made a written request for a hearing. No such request having been made, the application is being made on the basis of the documentation provided.
3. The directions indicated that if either party wished to make further written representations or to produce further documentation in connection with the application that documentation had to be copied to the other party and provided to the tribunal by 13th April 2017.
4. The tribunal received further written representations from the Respondent on 12th April 2017. No further written representations were received from the Applicant .
5. The relevant legal provisions are set out in the Appendix to this decision.

The background

6. The Applicant holds 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 issues

7. The issue to be determined by the tribunal is whether the sum of £ demanded in connection with court proceedings for the recovery of arrears of service charges is reasonable and payable.
8. Having seen evidence and submissions from the parties and considered all of the documents provided, the tribunal has made its determination on the issue as follows.

The argument of the Applicant

9. In the application the Applicant provides an account of the sequence of events which led to the demand for £1580.61. She states that a service charge demand for £505.95 was allegedly sent by the managing agents, Quadron Properties, and later by their solicitor by post. She states that she did not receive the demand.
10. The Applicant contacted Paul Alterman of Quadron Properties, the managing agent of the property, by email on 10th January 2017 to advise him of her new correspondence address.
11. On 20th January 2017 she received an email from Altermans Solicitors demanding that she pay the sum of £1580.61 within seven days or a County Court judgement would be issued as proceedings had already commenced in the County Court.
12. The Applicant paid £665.91 on 23rd January 2017. She then received an email the following day from Altermans Solicitors following this payment stating that full payment must be made that day or they would follow the landlord's instructions to enter a judgement. She paid the balance of £914.66 under protest on 24th January 2017 in order to avoid a judgment being entered.
13. She explained in her application that she paid the £665.95 which was the service charge of £505.95 plus the Court fee of £80 and the Solicitor's costs of £80. She accepts that the service charges were payable and that it was reasonable for her to pay the Court fee and the Solicitor's costs.
14. She argues that the additional charges of £914.16 are excessive and disproportionate to the original service charge arrears.
15. She points out that although she informed Paul Alterman of her new correspondence address on 10th January 2017 he only forwarded the email to Altermans on 19th January 2017 and the solicitor contacted her the following day. She was required to file a defence by 19th January 2017.

16. She also asks the Tribunal to note that she had previously corresponded with Paul Alterman by email in January 2016 and that a simple email or phone call once the account fell into arrears would have resulted in an immediate payment and avoided the need for further action.

The argument of the Respondent

17. The Respondent argues that the costs sought from the applicant are both reasonable and payable by her in full.
18. The Respondent explains that the disputed sum is £914.66 and is made up of £861 legal fees, £50.00 for a service charge for gutter cleaning which was incorrectly stated as an administration charge, and £3.66 interest on the rent and insurance arrears at 8% as per the County Courts Act.
19. The Respondent first posted a demand for payment to the Applicant in respect of the ground rent and insurance charges on 21st April 2016. As there was no response a reminder letter was sent to her on 6th September 2016 advising that the matter would be referred to solicitors if payment remained outstanding for a further 10 days. As there was no response the case was referred to Altermans Solicitors by the Respondent on 8th November 2016. A letter before action was sent to the Applicant on 11th November 2016.
20. No response to the letter before action was received and therefore Altermans were instructed to commence proceedings in the County Court Money Claims Centre. A claim was filed on 14th December 2016 and subsequently issued by the Court on 30th December 2016 under claim number C41YPO92. A copy of the Notice of Issue included in the hearing bundle confirms that the claim was sent to the Applicant by the Court by first class post on 3rd January 2017 and deemed served on 5th January 2017.
21. The Respondent explains that the legal fees represent the fees of a Grade C fee earner at an hourly fee of £200.00 plus VAT together with disbursements such as Land Registry fees for office copy entries. The work included; receiving instructions and opening a file, obtaining and reviewing Land Registry office copy entries of the freehold title, leasehold title and lease, drafting and sending the letter before action, following up and obtaining further instructions from the Respondent; drafting and filing the claim with the County Court Money Claims Centre and corresponding with the parties.
22. In reply the Applicant reiterates that no documents were received in connection with the charges and that a simple email would have put the matter right.

The tribunal's decision

23. The tribunal determines that the amount payable in respect of service/administrative charges is £914.66 .

Reasons for the tribunal's decision

24. The tribunal determined that the Respondent was contractually entitled to the monies demanded in its decision of 27th March 2017. The only issue outstanding is the reasonableness of the sum demanded.
25. The tribunal determines that on the balance of probabilities the letters and notices that the Respondent claims to have sent were sent to the Applicant.
26. Although the directions suggested that legal costs would only be reasonable if they were clearly taken as a last resort, the tribunal, with respect disagrees. It considers that legal costs are recoverable if instituting legal proceedings was reasonable in all of the circumstances. The tribunal determines that the actions of the Respondent in attempting to contact the Applicant about outstanding arrears were reasonable and appropriate. Clearly the managing agents could have chased the matter up by email, but there was no requirement on them to do so. Several steps were taken before the issue of proceedings and the tribunal considers in the circumstances that the decision to issue proceedings was reasonable even though other steps may have been possible.
27. The tribunal also notes that the Applicant did not inform the managing agent of her change of address until 10th January 2017. The information was only provided by email and not in writing. By 10th January 2017 sums were already outstanding. The sums included ground rent and insurance which are both annual payments. It is difficult to understand why, if the Applicant had not received demands for these sums why she did not contact the managing agents in connection with them. If she had done so, the matter would have been resolved.
28. The tribunal has reviewed the matters covered by the legal fees and considers them to be reasonable.
29. Therefore, because the tribunal determines that the letters and notices were sent, that the decision to issue proceedings was reasonable and that the legal fees are reasonable, the sum demanded is reasonable.

Application under s.20C and refund of fees

30. In the application form the Applicant applied for an order under section 20C of the 1985 Act. Taking into account the determinations above, the tribunal determines not to make an order under section 20C of the 1985 Act.

Name: Judge Carr

Date: 19th April 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).