



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

Case Reference	:	LON/00BG/LSC/2017/0007 LON/00BG/LSC/2017/0047
Property	:	Flat 5C London Wharf, Wharf Place, London E2 9BD
Applicant	:	London Wharf E2 RTM Company Limited
Representative	:	Mr Ryan Kohil Counsel
Respondent	:	Mr Sherif Ghali In Person
Representative	:	Mr Sherif Ghali
Type of Application	:	Court referral and an application pursuant to s27A Landlord and Tenant Act 1985 – determination of service charges payable
Tribunal Member	:	Judge John Hewitt
Date and venue of hearing	:	27 April 2017 10 Alfred Place, London WC1E 7LR
Date of Decision	:	3 May 2017

DECISION

Decisions of the tribunal

1. The respondent shall be debarred from taking any further part in these proceedings;
2. The issues raised in these proceedings shall be determined summarily;
3. It is determined that the service charges amounting to £7,184.86 claimed by the applicant in court proceedings – Claim Number A13YJ765 are payable by the respondent to the applicant, subject only to any set-off that may arise by reason of the counterclaim made by the respondent in those proceedings;
4. The service charges set out below and mentioned by the applicant in its application dated 1 February 2017 made pursuant to section 27A Landlord and Tenant Act 1985 (the Act) are payable by the respondent to the applicant, subject only to any set-off that may arise by reason of the counterclaim made by the respondent in the court proceedings referred to in paragraph 3 above:

Date payable	Nature of payment	Amount
01.01.2015	On account 01.01.2015 – 30.06.2015	£ 939.34
11.08.2015	On account 01.07.15 – 31.12.2015	£ 939.34
01.01.2016	On account 01.01.2016 – 30.06.2016	£ 939.34
20.04.2016	Adjustment to the above demand	£ 72.54
12.08.2016	<i>“Section 20 External Redecorations”</i>	£2,723.91
13.08.2016	On account 01.07.2016 – 31.12.2016	£1,011.88
05.01.2017	On account 01.01.2017 – 30.06.2017	£1,016.92

5. No determination shall be made (for the reasons set out in paragraphs 34-37 below) in respect of (what appear to be) variable administration charges, demands for which were included in the documents attached to the application form, namely:

Date	Nature of demand	Amount
23.02.2015	<i>Admin Fee on Referral</i>	£150.00
04.08.2015	<i>Admin Fee on Referral</i>	£150.00
02.02.2016	<i>Admin Fee on Referral</i>	£150.00

6. The court file shall now be returned to the court along with a copy of this decision so that outstanding matters in the court proceedings may be addressed.

Background

The lease and service charge regime

7. By a lease dated 28 February 1990 granted by Funhome Properties Limited the Property was demised to the respondent (Mr Ghali) for a term of 125 years.
8. The lease, (which runs only to 18 pages) is fairly basic, but is broadly in conventional form. A premium was paid, a ground rent of £100 pa was

reserved and, by clause 3, the tenant covenanted with the landlord to perform and observe the obligations set out in the Fourth Schedule.

9. So far as material the Fourth Schedule provides as follows:

“10. (a) To keep the Landlord indemnified against a proportionate part of all costs charges and expenses which the Landlord shall incur in or in connection with the management of the Estate ...

10. (b) To keep the Landlord indemnified against a one-ninth part of all costs charges and expenses which the Landlord shall incur in complying with the obligations set out in Clause 6 of the Sixth Schedule or in doing any works or things for the maintenance and/or improvement of the block ...

(The Sixth Schedule sets out a number of covenants on the part of the landlord, which may be summarised to include: to effect various insurances, to maintain the service roads, to keep communal areas clean, tidy and lit, to keep retained areas as are or should be repaired or decorated in good and tenantable repair, to keep the structure and exterior of the block and the roof and foundations in good and tenantable repair, to keep proper nooks of account and once in each year to certify the total amount of such costs, charges and expenses incurred, and to certify the proportionate part payable by the tenant pursuant to the provisions of the Fourth Schedule.)

11. (a) To pay to the Landlord in each half-year such sum as the Landlord shall estimate to be half of the amount prospectively payable by the Tenant under the last preceding clause ... such sum being payable on the First day of January and the First day of July in each year ...

11. (b) ... should the Landlord be required in order to comply with any of the obligations ... in the Sixth Schedule ... to expend any sum of money in excess of such sums as the Landlord shall then have collected from the Tenant ... towards the cost of carrying out such obligations ... then the Landlord shall be entitled to require the Tenant to pay on demand such sum as shall represent a proportionate part ... of the money that will be required to be expended by the Landlord over and above such sums as aforesaid ... and such further amount shall be taken into account in calculating the Service Charge contributions pursuant to the provisions of sub-clause (a) of this Clause ...

12. Within twenty-one days after receipt of the certificate provided for in the Sixth Schedule ... to pay to the Landlord the net amount (if any) appearing by such certificate to be due to the Landlord from the Tenant”

10. Evidently, the landlord had adopted the calendar year as the service charge year, which is convenient and fits well with the obligation on the tenant to make half-yearly on account payments on 1 January and 1 July in each year.
11. At some point, which was not in issue, a requisite majority of long lessees exercised the right to manage and the applicant became entitled to manage the development in accordance with the relevant statutory provisions.

The litigation history

12. In January 2014, the applicant commenced court proceedings against Mr Ghali and claimed service charge arrears amounting to £7,184.86 incurred over the period 2011 to 2014, several administration charges, statutory interest and costs.

Mr Ghali filed a defence and counterclaim. The gist of the defence was that the claimant/applicant had not provided any services for which a service charge can properly be charged and had not made any valid demands for payment. No particulars of either point were provided.

The litigation was hotly contested with applications, appeals and requests for stays for various reasons.

Eventually by an order made on 9 March 2016 HHJ Madge sitting at the County Court at Central London made an order that:

“2. The Defendant’s Counterclaim be stayed pending the determination as to the reasonableness of service charges which is to be considered by the First Tier Tribunal (Property Chamber).”

3. The claim relating to the reasonableness of service charges to be transferred to the First Tier Tribunal (Property Chamber).”

The judge has referred to this tribunal only the question of the reasonableness of the service charges claimed in the court proceedings. All other claims made in those proceedings remain with the court. In particular, it is to be noted that the respondent’s counterclaim is stayed pending the determination of this tribunal as regards the service charges claimed in the court proceedings. Thus, that counterclaim cannot (absent a further order) be progressed until this tribunal has made a determination on the reasonableness of the service charges claimed.

For administrative reasons the court did not send the material papers to this tribunal until 16 December 2016.

The court referral was allocated tribunal case reference LON/00BG/LSC/2017/0007

Comprehensive directions were given on that referral on 12 January 2017.

13. On 2 February 2017, the applicant issued an application in this tribunal, pursuant to section 27A of the Act. In that application, the applicant sought a determination that certain service charges, which it alleges have accrued due and payable since the issue of the court proceedings, are payable by Mr Ghali. These service charges are those set out in paragraph 4 above.

The application was allocated tribunal case reference LON/00BG/LSC/2017/0047

14. The application form only made reference to service charges accrued in the years 2015, 2016 and 2017 (part). But, included in a bundle of papers appended to the application form which were said to support the application, there were three demands for what appears to be administration charges. These are identified in paragraph 5 above.
15. Directions were given on the application on 8 February 2017. The two sets of proceedings were consolidated and were to be heard at the same time. Further directions were given to mirror those that had already been given with regard to the court referral. The first direction was that Mr Ghali was, by 17 February 2017, to serve on the applicant a schedule (in a form set out – in essence a Scott Schedule) requiring Mr Ghali to set out by reference to each service charge year in issue:
 - the service charge item and amount in dispute;
 - the reason(s) why the amount is disputed; and
 - the amount (if any) the respondent would pay for that item

It was made clear that the format of the schedule was to be the same as that which had been directed in respect of the court referral proceedings.

The direction also required Mr Ghali to disclose certain documents and photographs on which he intended to rely and to provide a statement of any legal submissions in support of the challenge to the service charges disputed if the liability to pay is at issue.

16. Mr Ghali did not comply with that direction. By letter dated 23 February 2017 the tribunal sought an explanation from him. The letter drew attention to the barring notice set out in the directions and also expressly sought an explanation why the tribunal should not bar the respondent from taking any further part in the proceedings pursuant to rules 9(3)(a) and 9(7). A response was required by 3 March 2017.
17. Mr Ghali says that he experiences difficulties and delays in receiving his mail and, he says some goes missing. Mr Ghali alleges that representatives of the applicant are responsible for this interference with his mail. In the event, it became clear that Mr Ghali has received

all of the letters sent to him by the tribunal, but he may not have received all of them within 2/3 days of them being posted.

18. The tribunal received a letter from Mr Ghali which was dated 22 March 2017. It was not considered satisfactory. By letter dated 28 March 2017 Mr Ghali was notified that a case management conference (CMC) in respect of both applications was scheduled for 2.00pm 27 April 2017. The second and third paragraphs of that letter were in the following terms:

*A judge has directed that **you must attend** that hearing (either on your own, or with a friend or representative in support) and **you must bring with you a list** of the service charge items for the years 2011 to 2014 that you dispute (with short reasons why).*

If you do not attend the case management hearing, the tribunal may bar you from taking further part in the proceedings and decide that all of the service charges that are subject to this claim are reasonable and payable by you; and the matter will then be returned to the county court to deal with your counterclaim.

By letter dated 6 April 2017 the above letter was corrected to make it clear that the service charges in dispute cover the years 2011 to 2017 and that the respondent was to bring to the CMC a list of the service charge items in dispute over that period.

It should be noted that both letters bore both case reference details, namely 2017/0007 and 2017/0047. Mr Ghali accepted that he had received both letters.

19. At 2.00pm on 27 April 2017 I was informed by a case officer that Mr Ghali had called to say that he had driven to the hearing, was trying to locate a disabled parking bay and would be late. I requested the case officer to call Mr Ghali to say that I would delay the commencement of the CMC until 2:10pm.

Mr Ghali had not arrived by 2:10pm and I commenced the CMC. The applicant was represented by Mr Kohil of counsel. I had queries on some of the documents attached to the application form in case reference 2017/0047 and I went through these with Mr Kohil. They concerned the claims to the administration charges.

Mr Ghali arrived at 2:30pm and joined the CMC.

20. Mr Ghali had not brought with him a list of the service charges in dispute over the period 2011 to 2017, or indeed any list at all. Mr Ghali explained that he was not able to prepare the list without legal advice and support. He said he was unable to afford to instruct a solicitor privately. He went on to explain that he had made numerous enquiries of local CAB or legal advice centres that may be to help him. Eventually he was able to sit down with an adviser and spent quite a bit of time

with him, but despite apparently being sympathetic, he explained that he was not able to assist the respondent. Mr Ghali had provided to the tribunal a letter dated 17 March 2017 from Whitechapel Legal Advice Centre from which it appears that the Centre has provided ad hoc pro bono legal advice in relation to various legal issues for a considerable time. The letter confirmed that the Centre was unable to assist with then preparation of a complex case before the tribunal. It recommended that Mr Ghali instruct a firm of solicitors.

Mr Ghali said that since receiving that letter he has made more efforts to get legal assistance but to no avail.

21. Mr Ghali also explained that he suffers a number of serious medical conditions which require him to take a large number of medications, some of which are very strong and which cause him to tire easily and affect his ability to concentrate and attend to paperwork. In addition, he has diabetes which adversely affects his eyesight. The combination of his various medical conditions and medications cause him to become depressed and require him to take yet further medication. Mr Ghali explained that these conditions are made worse by the dreadful state of his flat and the lack of a working bathroom all of which he attributes to the shortcomings of the applicant and which are the focus of his counterclaim in the court proceedings.
22. Mr Ghali accepted that there was no realistic prospect of him being able to get legal assistance any time soon and he was adamant that was not able to prepare his case without that assistance.

Mr Ghali also accepted that there was no realistic prospect of his medical problems abating any time soon to such an extent that he would be able to put his case together on his own. To use his expression: *"I just can't deal with it."*

Mr Ghali did not appear to have any friends or relatives who would be able to assist him prepare his case.

23. Having heard Mr Ghali's submissions I decided to adjourn the CMC, to consider carefully what Mr Ghali had told me and to come to a decision on the way forward.

Decision and reasons

24. Mr Ghali is plainly not a well man. Several times during the hearing Mr Ghali had need to use his inhaler. I have sympathy with him. Mr Ghali, who was emotive at times, appears to be living in awful conditions which he attributes to the applicant and about which he is very bitter.

He has no time for the applicant and believes that not only do they not provide any services to him at all, they go out of their way to make his life as difficult and as intolerable as possible. Such criticisms are extended to the applicant's advisers and representatives.

In general terms Mr Ghali takes the view that he should not be required to pay any service charges to the applicant given that it has treated him so badly.

25. Mr Ghali was adamant that he could not and would not prepare his case without legal assistance. I find that there is no realistic prospect of him being able to obtain that assistance in the near future, if at all.
26. Mr Ghali was also adamant that his medical conditions prevented him from preparing his case on his own. Sadly, for Mr Ghali, those medical conditions are not going to improve to such an extent to enable him to prepare his case in the near future, if at all.
27. In these circumstances, I concluded that there was no useful point in granting the respondent further time; and, in any event, no application for further time was made.
28. I gained the impression that Mr Ghali's living conditions are having a severe and adverse effect on him and those conditions are unlikely to be improved unless he succeeds with his counterclaim in some measure.

That counterclaim is presently stayed pending the determination of the service charges payable for the period 2011 – 2014.

29. Having regard to the information before me and taking into account the overriding objective I came to the view that the appropriate way forward in this case was to debar Mr Ghali from taking any further part in these sets of proceedings, make a summary determination of the service charges now the subject of reference/application before the tribunal and report back to the court so that stay on the counterclaim might be lifted and progress might be made with Mr Ghali's counterclaim to enable him to try and achieve the outcome he wants.
30. For these reasons, I have made orders pursuant to rule 9(3)(a) and 9(7).

Summary determinations

Service charges

31. In the court proceedings, the applicant claimed service charge arrears of £7,184.86 said to have been incurred over the period 2011 -2014. I have reviewed the court file. Those arrears comprise for the most part the twice yearly on-account payments which are required to be paid by the tenant. They range in amount from £826.23 due on 1 January 2011 to £926.00 due on 1 January 2014, although the on-account payments for 2012 were each £1,082.94. These sums are payable as a matter of contract, subject to them being reasonable in amount, with balancing debits or credits as the case may be once the actual expenditure has been ascertained.

The court file did not contain any budgets or year-end accounts, but, as mentioned in paragraph 33 below I have seen such materials for later years.

Having regard to the materials before me I find that the service charges referred to in the court proceedings are payable by Mr Ghali to the applicant. I have therefore reported this determination to the court.

32. As regards the service charges claimed for 2015 – 2017 (part), the sums claimed are all based on estimates or budgets prepared and the sums claimed are also the ‘on-account’ payments. As a matter of contract law those sums are payable without any right to challenge them, at least to the extent that they are reasonable in amount.
33. Some supporting materials were attached to the application form. These may be summarised as follows

	2014	2015	2016	2017
Budget:	£56,886	£57,631	£62,855	£63,216
Actual certified:	£67,149	£62,527	N/A	N/A

Of course, the budget for a succeeding year will usually be prepared before the actual expenditure for the preceding year is certified.

The accounts I have seen show a fairly consistent level of expenditure over the years. The individual items of expenditure appear to be within tolerable levels for development such as London Wharf.

I bear in mind that lessees contributions at 2.7778% equate to between £1,600 - £1,756 over the period. For a flat of the of the subject type in a development such as London Wharf and close to central London that broad level of annual service expenditure is well within anticipated tolerances.

I also bear in mind that the applicant is a RTM company controlled by lessees and I infer that in general terms they will seek to keep the level of expenditure to within reasonable levels.

For these reasons, I find that the budgets were reasonable in amount. Accordingly, and pursuant to the terms of the lease, the on-account instalments demanded of Mr Ghali are payable to the applicant. I have therefore made a determination to that effect. The lease does not appear to exclude the equitable right of set-off and thus the obligation on Mr Ghali to pay these sums may be subject to his counterclaim raised in the court proceedings.

Included in the papers attached to the application form were copies of the demands for the routine half-yearly on-account payments. I have inspected them carefully. On the face of them they appear to be in order

and compliant with the various regulations concerning such demands. There was nothing to indicate to me that they are not, or might not, be regular and compliant demands.

34. One of the demands, that dated 12 August 2016, is a demand for a payment on account of major works to be carried out and which appear to have been the subject of a consultation. Paragraph 11(b) of the Fourth Schedule expressly permits the landlord to make, what is in effect an interim demand, in respect of proposed expenditure. It seems to me that such a provision covers proposed expenditure on major works which are outside the usual or routine service charge expenditure. Given the age, size and scale of the London Wharf development the amount claimed appears to be within the range that might be considered reasonable. I bear in mind that this is an on-account demand, evidently made following a consultation process and that the cost of works may be susceptible to challenge in due when they are carried out and the actual cost ascertained.
35. For this reason and given that obligation to make an on-account payment is a contractual obligation I have made a summary determination that it is payable.

Administration charges

36. I mentioned in paragraph 5 above that within the papers attached to the application form were copies of three demands for an "*Admin Fee on Referral*". These do not appear to be part of the service charge regime. A s27A application concerns service charges.
37. If the demands made amount to variable administration charges within the meaning of Schedule 11 to the Commonhold and Leasehold Reform Act 2002, they are payable only to the extent to which they are reasonable in amount. There was no information before me as to the basis on which the charge was incurred, the provision of the lease relied upon as imposing an obligation on the tenant to pay such a charge and no information that the amount of the charge was a reasonable amount.
38. I concluded that these variable administration charges were not properly before me in a valid application and that even if they, there is no or no reliable evidence before me on which I could properly make a summary determination of the amount(s) payable.
39. I have therefore declined to make determinations on these charges. If the applicant wishes to pursue them it will have to make an appropriate application in proper form.

Judge John Hewitt
3 May 2017