



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

Case Reference : LON/00AX/LSC/2017/0429

Property : Ground floor flat, 128 Hook Road,
Surbiton, Surrey KT6 5BZ

Applicant : John James Morello

Respondent : Goodshelter Property (Surbiton) Ltd

Type of Application : Liability to pay service charges

Tribunal : Judge Nicol

Date of Decision : 9th January 2018

DECISION

- (1) The Tribunal has concluded that the sum of £60 is payable by the Applicant to the Respondent in respect of the staircase repair.
- (2) The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 that the Respondent may not add any of its costs incurred in these proceedings to the service charge.

Relevant legislative provisions are set out in the Appendix to this decision.

Reasons

1. The Applicant is the lessee of a two-bedroom flat in a purpose-built block. The Respondent is the freeholder.
2. The Applicant has applied for a determination under section 27A of the Landlord and Tenant Act 1985 ("the Act") as to the payability of service charges arising from:

(a) A cleaning invoice for £324. In their statement of case dated 23rd November 2017, the Respondent conceded this point and have amended the relevant service charge demand. Therefore, this item is no longer in dispute.

(b) Repairs to a staircase invoiced on 24th September 2016 for £360. The Applicant's share is £60.

3. The Applicant's objection to the repairs is that the staircase in question appears to be exclusively for the use of one flat. It is a metal staircase descending from a first floor back door, over a communal path and into a rear garden. The Applicant says it is locked so that it is accessible only by the occupiers of the relevant first floor flat.

4. The fact that an area is inaccessible to a service-charge payer is not determinative of whether they should pay a service charge for its maintenance. What matters is what the governing provisions of the lease say. The Respondent points to clause 1.1 which includes the following definition:

Common Parts: that are not part of the Property or the Flats and which are intended to be used by the tenants and occupiers of the Building shown hatched blue on Plan 1.

5. Under paragraph 1(b) of Part 1 of Schedule 7 to the lease, the Respondent is obliged to maintain the Common Parts. Plan 1 does not specifically identify the staircase but the area hatched blue includes the communal area that the staircase overhangs. The plan is a vertical view so it is not clear whether it is intended to include the staircase.

6. Neither party has sought to adduce the lease to the first floor flat in which it is likely there is reference to the staircase or covenants which would address its status. Therefore, the Tribunal has to look at the evidence it does have and its own expert knowledge and experience of such matters in order to work out, on the balance of probabilities, the status of the staircase.

7. The Applicant relies on the actual use of the staircase to make his case that it is not part of the Common Parts. While that is indicative, it does not carry much weight – it is not unusual in leasehold situations for areas inaccessible to some lessees to remain the responsibility of the freeholder to repair and the lessees to pay for.

8. Users of the communal area beneath the staircase have a clear interest in its maintenance so that the communal area remains safe to use. Further, the staircase is external to the building. The definition of Retained Parts, i.e. the parts retained by the freeholder, in clause 1.1 includes all the exterior parts of the building. It would be inconsistent for the staircase to be excluded or for its maintenance to be left to one lessee.

9. On balance, and despite its use, the Tribunal prefers the Respondent's interpretation of its obligations to maintain the staircase. Therefore, it is entitled to levy a service charge on the Applicant in respect of costs incurred in that maintenance.
10. The Applicant also challenged the service charge on the basis that the relevant demand had not included the landlord's address contrary to sections 47 and 48 of the Landlord and Tenant Act 1987. The effect of that provision is only suspensory. To the extent that the Respondent had not provided their address previously, they have done so now, as demonstrated by the documents in the bundle, and so the Applicant may no longer withhold payment.
11. The Applicant also queried whether the Respondent's arrangements for holding service charge funds complied with section 42 of the 1987 Act. The Tribunal is satisfied that, to the extent that such arrangements used to be inadequate, the Respondent has remedied them by opening a separate bank account. In any event, the Tribunal is also satisfied that there was no default in this regard which could have affected the payability of the service charge.
12. The Applicant has also applied for an order under section 20C of the Act that the Respondent may not add the costs of these proceedings to the service charge. The Tribunal could not identify any power under the lease for the Respondent to do this. Nor is there any indication that the Respondent has incurred any relevant costs or is considering putting any on the service charge. Nevertheless, the Tribunal is prepared to make the order because the Applicant successfully challenged the cleaning invoice – the proceedings would have been unnecessary to a large extent if that sum had not been mistakenly charged.

Name: NK Nicol

Date: 9th January 2018

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.