

9440



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

Case Reference : LON/OOBG/LSC/2013/0515

Property : Flats C and G, 8 Tapp Street,
London E1 5RE

Applicant : F.T.Z Ltd.

Representative : Circle Residential Management
Ltd.

Respondents : Mr M Loi (Flat C)
Mr J Singh (Flat G)

Representative : None notified

Type of Application : For the determination of the
reasonableness of and the liability
to pay a service charge

Tribunal Members : Judge Goulden
Mr T N Johnson FRICS

**Date and venue of
Hearing** : Wednesday 6 November 2013 at 10
Alfred Place, London WC1E 7LR

Date of Decision : 6 November 2013

DECISION

Decisions of the Tribunal

- The Respondents shall each pay the sum of £583.38 in respect of the interim service charge for the period 24 June 2013 to 31 December 2013.
- The Respondents shall each pay the sum of £157.50 to the Applicant in respect of reimbursement of the application and hearing fees.

The application

1. The Applicant seeks a determination pursuant to s.27A (3) of the Landlord and Tenant Act 1985 (“the 1985 Act”) as to the amount of the interim service charge for the period 24 June 2013 to 31 December 2013. The application was dated 17 July 2013 and was received by the Tribunal on 31 July 2013.
2. 8 Tapp Street, London E1 5RE (“the property”) was described in the application as a public house which had been converted into 7 flats. The original application had named four Respondents, the lessees of Flats A,C, E and G. The cases against the lessees of Flats A and E were subsequently withdrawn.
3. Directions of the Tribunal were issued on 22 August 2013, following a Pre Trial Review which was held on the same date, at which there were appearances on behalf of the Applicant company, but no appearances either for or on behalf of any of the Respondents.
4. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

5. The Applicant had requested a paper determination but the Procedural Judge listed the case for an oral hearing.
6. The oral hearing took place on Wednesday 6 November 2013. Mr M Paine, Director, Circle Residential Management Ltd. attended on behalf of the Applicant. There were no appearances for or on behalf of the Respondents, the lessees of Flat C and G.

The background

7. Neither side requested an inspection and the Tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.

8. A specimen lease of Flat C was in the case file. With no information to the contrary, it is assumed that the residential leases were in essentially the same form.
9. The Respondents hold long leases of their flats in the property which require the landlord to provide services and each tenant to contribute towards the costs by way of a variable service charge. The specific provisions of the lease will be referred to below, where appropriate.

The issues

10. The Tribunal had, in its Directions dated 22 August 2013, identified the relevant issues for determination as the payability and/or reasonableness of interim service charge for the service charge year ending 31 December 2013, demands for which were produced to the Tribunal.

Written submissions

11. Written submissions were received from Ms C Nelson of Circle Residential Management Ltd., the Applicant's managing agents.
12. No written representations were received from or on behalf of either of the two remaining Respondents.

Oral submissions

13. Mr Paine said that both lessees had a history of non payment of their service charges and ground rent. He went through the actual payments for the year ending 31 December 2012 and the budget for the year ending 31 December 2013.
14. In answer to questions with regard to the Respondents' contention that the Right to Manage had passed to the RTM company on 4 February 2013, Mr Paine said that the Claim Notice, which was sent to the Applicant's managing agents was defective and invalid since it had been sent by recorded delivery on 1 October 2013. A copy of the envelope was produced and the original was inspected by the Tribunal. He accepted that he had not been in contact with the Respondents thereafter and confirmed that they had not been in touch with him. As far as he was concerned there was no Right to Manage company and the Applicant was entitled to continue managing the property, which they had been doing. It was maintained that the Applicant was entitled to demand interim service charges under the lease terms.
15. Mr Paine also requested reimbursement of the application and hearing fees. He said that the Respondents had not appeared at either the Case

Management Conference or the substantive oral hearing. They had not complied with the Tribunal's Directions and, although a formal application had been made under Rule 9 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 for the Respondents' case to be struck out, the Tribunal had written to the Respondents reminding them that they were to comply with Directions, but had not given the Respondents notice that the Tribunal was considering strike out. He also said that "*depending on the Tribunal's decision*" he may also apply for a costs order under Rule 13.

The Tribunal's decision

16. Under Clause 5(4) of the lease the lessee covenants with the lessor inter alia that the lessee will **"Pay the Interim Charge and the Service Charge at the times and in the manner provided in the Fifth Schedule hereto both such Charges to be recoverable in default as rent in arrears...."**
17. Under Clauses 1(3) of the Fifth Schedule – The Service Charge - to the lease, it is stated **"The Interim Charge" means such sum to be paid on account of the Service Charge in respect of each Accounting Period as the Lessor or their Managing Agents shall specify at their discretion to be a fair and reasonable interim payment having regard to anticipated expenditure in the next Accountancy Period and the reserves held"**.
18. The purported Notice of Claim, which was sent to the Applicant's managing agents on 1 October 2013 was clearly invalid. It was signed and dated 1 October 2013, there was a covering letter also dated 1 October 2013 and the original envelope, marked "recorded delivery" was stamped on 1 October 2013. Paragraph 6 of the purported Notice stated "The company intends to acquire the right to manage the premises on 4th February 2013". This cannot be correct. Accordingly the Applicant was entitled to continue to maintain the building, and seek interim service charges in accordance with the lease terms, as it has done.
19. The Tribunal was critical of the letter sent to the Respondents dated 5 July 2013 which appeared to give the Respondents a very short period of time in which to respond. Mr Paine said that in practice the lessees were given a longer period in order to respond and said that the demands were sent some 4 to 6 weeks before such a letter was sent. He did however understand the Tribunal's concerns and confirmed that the format of such letters had now changed.
20. Neither of the Respondents have engaged with the process of the Tribunal. Directions have not been complied with. Although the Respondents' statement of case dated 3 October 2013 indicates that they wish to make an application under S27A of the Act in respect of

previous service charge years, no such application has been lodged at the Tribunal.

21. The Tribunal determines that the Applicant is entitled to recover the interim service charges in accordance with the demands sent to each Respondent on 5 July 2013, being £583.38 in respect of each Respondent.

Application for reimbursement of fees

22. Mr Paine requested reimbursement of the application and hearing fees. He said that he had requested agreement as to the liability to pay the interim service charges prior to the application being made. The Respondents had not communicated with the Applicant and had not complied with Directions. They had had several opportunities to state their case but had not done so. The Applicant therefore had to incur the expense of the application and the subsequent substantive hearing, which could have been avoided.

The Tribunal's Decision

23. The application fee was £125. The hearing fee was £190. For the reasons as set out above, the Tribunal sees no reason why the Respondents should not reimburse to the Applicant the total sum of £315. The Tribunal therefore determines that each Respondent do pay to the Applicant the sum of £157.50.

Name: J Goulden

Date: 6 November 2013

Appendix of 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
 - (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 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, 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) a leasehold valuation 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.

Leasehold Valuation Tribunals (Fees)(England) Regulations 2003

Regulation 9

- (1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.
- (2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).

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 a leasehold valuation 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 a leasehold valuation 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).

Schedule 12, paragraph 10

- (1) A leasehold valuation tribunal may determine that a party to proceedings shall pay the costs incurred by another party in connection with the proceedings in any circumstances falling within sub-paragraph (2).
- (2) The circumstances are where—
- (a) he has made an application to the leasehold valuation tribunal which is dismissed in accordance with regulations made by virtue of paragraph 7, or
 - (b) he has, in the opinion of the leasehold valuation tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.
- (3) The amount which a party to proceedings may be ordered to pay in the proceedings by a determination under this paragraph shall not exceed—
- (a) £500, or
 - (b) such other amount as may be specified in procedure regulations.
- (4) A person shall not be required to pay costs incurred by another person in connection with proceedings before a leasehold valuation tribunal except by a determination under this paragraph or in accordance with provision made by any enactment other than this paragraph.