

9 448



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

Case Reference : LON/00AT/LSC/2013/0197

Property : 22 Mogden Lane, Isleworth,
Middlesex TW7 7LD

Applicant : London Borough of Hounslow

Representative : Mr R Bhose, Counsel

Respondent : Mr R Houslin

Representative : Not present at hearing and not
represented

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

Also present : Mr R Pettifor, Senior Project
Manager for Applicant and Mr D
Howard, Leasehold Manager

Tribunal Members : Judge P Korn (chairman)
Mr C Gowman BSc MCIEH
Ms S Wilby

**Date and venue of
Hearing** : 7th October 2013 at 10 Alfred Place,
London WC1E 7LR

**Deadline for further
written submissions** : 14th October 2013

Date of Decision : 23rd October 2013

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the service charges in the sum of £20,021.97 which form the service charge element of the County Court claim are payable in full.
- (2) The tribunal determines that the Respondent shall pay to the Applicant the sum of £500 towards its costs within 28 days of this Decision pursuant to paragraph 10 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002.

The application

1. The Applicant seeks (and following a transfer from the county court the tribunal is required to make) a determination pursuant to section 27A of the Landlord and Tenant Act 1985 as to the reasonableness and payability of certain service charges charged to the Respondent.
2. The County Court claim covers service charge demands dated between 1st October 2009 and 1st May 2012 totalling £20,021.97. The County Court claim also includes ground rent, interest and solicitors' legal costs incurred prior to or in connection with the issuing of proceedings in the County Court. At a pre-trial review the tribunal stated – and at the full hearing Counsel for the Applicant confirmed that it was agreed – that only the service charge element of the claim had been transferred to the tribunal for a determination.
3. The relevant legal provisions are set out in the Appendix to this decision. The Respondent's lease ("the Lease") is dated 29th March 2004 and is between the Applicant (1) and the Respondent (2).

The background

4. The Respondent had entered a defence to the County Court claim, stating (amongst other comments made by him) that the charges were exorbitant and did not reflect the true and actual value of services carried out.
5. The Applicant attended and was represented at the pre-trial review but the Respondent did not attend and was not represented. At that pre-trial review the procedural chairman directed the Respondent to send a detailed defence to the Applicant by 21st June 2013, and a copy of the procedural chairman's directions was sent to both parties.
6. The Applicant later notified the tribunal that the Respondent had failed to send a detailed defence to the Applicant by 21st June 2013. The tribunal then issued a further direction stating that the Respondent must send his detailed defence to the Applicant by 7th August 2013,

failing which he would be debarred from taking any further part in the proceedings. The Respondent failed to comply with this further direction and consequently became debarred from taking any further part in the proceedings.

7. The full hearing was attended by Mr Pettifor and Mr Howard on behalf of the Applicant and the Applicant was represented by Mr Bhose of Counsel. The Respondent did not attend and was not represented.

The Applicant's case

8. Mr Bhose took the tribunal through the various service charges listed in the County Court Particulars of Claim and through the relevant provisions in the Lease. The bulk of the service charge comprised charges for major works, and he called Mr Pettifor to give evidence regarding the need for these works, the consultation process gone through and the pricing of the works.
9. Mr Bhose also took the tribunal through the general service charges and the contributions towards the building insurance premiums, and he also called Mr Howard to give evidence on these.
10. Mr Bhose submitted that on the basis of the documentation supplied by the Applicant, the evidence given at the hearing and the failure of the Respondent to provide a detailed defence the service charges in question were payable in full.
11. The tribunal raised various questions on the documentation, although these questions were necessarily limited in view of the fact that the Respondent had failed to articulate his challenge to the service charge beyond the general comments made in his County Court defence.
12. Mr Bhose also commented that the Respondent had made no payments whatsoever since the Lease was granted in 2004, the only payments having been made by the Respondent's mortgagee. He also said that the documents and statements required by the tribunal's directions to be sent by the Applicant to the Respondent had been sent to him by hand and also by 'special delivery'.

Tribunal's analysis and determinations

13. Having considered the copy documentation supplied and heard the Applicant's evidence the tribunal considers that the service charges which are the subject of this application were reasonably incurred and are payable in full. The Applicant has provided appropriate supporting documentation to justify the charges, including details of the major works consultation process, a reasonable breakdown of the service charge, details in relation to building insurance, estimated service

charge accounts and actual service charge certificates, an expert report, witness statements and relevant copy correspondence.

14. By contrast, the Respondent has failed to articulate any specific challenge to the service charge. His statement that the charges were 'exorbitant' and did not reflect the true and actual value of services carried out was not followed by any evidence or any detailed explanation of his concerns and therefore does not serve as a credible challenge to the Applicant's statement of case. Furthermore, the Respondent has failed to engage with the process since requesting that the case be transferred to this tribunal, despite his having been given ample opportunity to do so.

Cost Applications

15. At the end of the hearing, the Applicant made an application for an order for costs under the new Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. However, the tribunal explained at the hearing that pursuant to paragraph 3(7) of Schedule 3 to The Transfer of Tribunal Functions Order 2013 such an order could not be made in a case such as this in which proceedings commenced prior to 1st July 2013, as such an order could not have been made before 1st July 2013.
16. The Applicant therefore instead made an application for an order for costs (up to a maximum of £500) under paragraph 10 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002 ("CLARA"). In view of the fact that the Respondent had received no notice of this alternative cost application the tribunal determined that the Respondent (and the Applicant) should be allowed 7 days within which to make written submissions on this application. The Applicant duly made written submissions but the Respondent did not.
17. Paragraph 10 of Schedule 12 to CLARA states that a tribunal may determine that "*a party to proceedings shall pay the costs incurred by another party in connection with the proceedings in ... circumstances ... where ... he has, in the opinion of the tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings*" subject to an upper limit of £500.
18. After entering his initial – very vague – defence to the County Court claim the Respondent has simply failed to engaged with the tribunal process, despite the fact that it was he who requested that the case be transferred to the tribunal. He did not attend the pre-trial review or full hearing, and he did not comply with the direction to send a detailed written response to the Applicant's case even after being warned in writing by the tribunal that he would be debarred from taking any further part in the proceedings if he failed to do so by a specified date. In the circumstances the tribunal is satisfied that the Respondent acted

“otherwise unreasonably” within the meaning of paragraph 10 of Schedule 12 to CLARA.

19. Having seen the Applicant’s written submissions the tribunal is also satisfied that the Applicant has reasonably incurred costs in excess of £500 in connection with these proceedings, and accordingly the tribunal orders the Respondent to pay to the Applicant the sum of £500 towards its costs within 28 days of the date of this decision.
20. There were no other cost applications.

Name: Judge P Korn

Date: 23rd October 2013

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.