



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

Case Reference : **LON/00BH/LSC/2013/213**

Property : **Sand 8A Callis Road,
Walthamstow, London E17 8PN**

Applicant : **Mr David Cross (8A Callis Road)
and Ms Alison Whiteley (8 Callis
Road)**

Representative : **In person**

Respondent : **Michael John Winfield and
Edwina Winfield**

Representative : **Michael John Winfield**

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

Tribunal Members : **Judge Dowell
Mr K.M. Cartwright JP FRICS
Mr L.G. Packer**

**Date and venue of
Hearing** : **10 Alfred Place, London WC1E 7LR**

Date of Decision : **18 July 2013**

DECISION

Decisions of the tribunal

- (1) The tribunal makes the determinations as set out under the various headings in this Decision.
- (2) The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge.
- (3) The tribunal determines that the Respondent shall pay the Applicant £250 within 28 days of this Decision, in respect of the reimbursement of the tribunal fees paid by the Applicant.

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 administration charges payable by the Applicant in respect of the service charge years 2006-7, 2007-8, 2008-9, 2009-10, 2010-11, 2011-12.
2. Both applications are dated 20 March 2013. A pre trial review was held on 25 April 2013 when directions were issued for the future conduct of the case and a hearing date fixed for 15 July 2013. Both applications were made by Mr Cross. After the pre trial review Ms Whiteley applied to be treated as an applicant in the proceedings and in accordance with Regulation 6 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003, the tribunal decided to grant the request because she was likely to be significantly affected by the applications. The order was made on 9 May 2013.
3. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

4. The Applicants appeared in person and Mr Michael John Winfield appeared on behalf of the Respondents.

The background

5. The property which is the subject of this application is a two-storey terraced property built in or about 1900. The property is divided into two flats, the ground floor flat is known as 8 Callis Road and the first floor flat is known as 8A Callis Road. Photographs of the building were

provided in the hearing bundle. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.

6. Mr Cross holds a long lease of 8A Callis Road. This lease is dated 19 November 1980 and is for a term of 99 years from 24 June 1980 at a ground rent of £45 per annum for the first thirty-three years of the term, £90 per annum for the second thirty-three years of the term and £135 per annum for the final thirty-three years of the term. The lease requires the lessor to insure the whole of the building and the lessee to pay by way of additional rent one-half of the premiums paid by the lessor.
7. Ms Whiteley holds a long lease of 8 Callis Road. This lease is dated 28 August 1973 for a term of 99 years from 1 January 1972 at a ground rent of £25 per annum. The lease requires the landlord to provide services and the tenant to contribute towards their cost by way of a variable service charge. In particular it requires the landlord to insure the building and the lessee to pay a fair proportion to be determined by the lessor's surveyor or agent of such sums as the lessor shall pay by way of premium for insuring and keeping insured the building.

The issues

8. At the start of the hearing the parties identified the relevant issues for determination as follows:
 - (i) The payability and/or reasonableness of service charges for the years 2006 to 2012 inclusive relating to insurance.
 - (ii) The payability and/or reasonableness of administration charges for the years 2006 to 2012 inclusive relating to various matters.
9. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues. The original application was made by Mr Cross and all our determinations apply to him. Ms Whiteley purchased the lease of 8 Callis Road in or about 2011 and the determinations only apply to her since her purchase of the leasehold interest in 8 Callis Road.

Insurance

10. We reproduce here the amount of insurance service charge claimed from Mr Cross as set out in the service charge demand dated 28 June 2012 at 3.2 in the bundle.

2006-7:	£258.53
2007-8:	£269.94
2008-9:	£284.26
2009-10:	£312.82
2010-11:	£344.39
2011-12:	£406.28

11. Ms Whiteley has received no service charge demands for insurance (or anything else). However it was agreed between the parties at the hearing that the applicants were each liable for 50% of the costs of the insurance premium.

The tribunal's decision

12. The tribunal determines that the amount payable in respect of insurance, covering both 8 and 8A Callis Road, is

2006-7:	£454.08
2007-8:	£450.28
2008-9:	£474.18
2009-10:	£521.82
2010-11:	£547.48
2011-12:	£677.72

These are the figures obtained from the insurance broker set out in document 5.1 in the bundle. For the reasons set out above each applicant is liable for half this sum.

Reasons for the tribunal's decision

13. It came to the applicants' attention in or about October 2012 that the service charge which was being demanded from them for insurance was higher than the actual amount being paid by the landlord, as was evident from the list of premiums paid which Mr Cross had obtained from Paul Scott, the landlord's insurance broker. These figures were

not challenged by Mr Winfield. He told us that he had added a percentage to the premium because the broker accepted no responsibility and he had to satisfy himself that the policy was in order and that it was reasonable. He was entitled to charge for the work he carried out at the rate of £120 per hour. He was unable to identify a provision in the lease permitting this but his position was that there was nothing in the lease to prevent him from doing it and thus it was permitted. The applicants denied this and their case remained that they were only contractually obliged to pay the sums set out in their lease i.e. in Mr Cross's case 50% and in Ms Whiteley's case "a fair proportion" which she accepted was 50%. Clearly it could be no more since 50% was provided for in Mr Cross's lease.

14. In our opinion the landlord is not entitled to inflate the insurance premiums. There is no provision in the lease or elsewhere. The premiums listed in paragraph 12 of our decision were accepted as reasonable by the applicants and there was no challenge to quantum.
15. However a further challenge arose because the landlord had not attached to any of the service charge demands the summary of tenants rights and obligations required by S21B of the Landlord and Tenant Act 1985..
16. Mr Winfield submitted that the June 2012 service charge demand had a summary of tenants' rights and obligations attached to it. This was at document 7.4 in the bundle. However close scrutiny of this document shows that the summary is in relation to administration charges not service charges. Insurance is a service charge as defined in section 18 Landlord and Tenant Act 1985. Mr Winfield submitted that in the previous years to which this application relates the lessee was given the information on the summary of tenants' rights and obligations albeit in a slightly different form but it was clearly set out at the bottom of the service charge demands.
17. We are satisfied that the statement of rights and obligations has not been served with any of the service charge demands for insurance. The form of wording included by the landlord on the demands does not fulfil the requirements of S21B. The insurance service charges are therefore not payable until the correct statement is served.
18. To summarise, both applicants are liable in principle to pay 50% of the insurance premium as charged by the broker once the correct summary of rights and obligations has been served.

Contribution to costs of surveyor's report allocated to 8A Callis Road - £67.34

19. This charge is included on the service charge demand sent to Mr Cross dated 3 October 2012 reissued 15 October 2012 (3.4 in the bundle). The total fee charged for the report, prepared by Mr A. Warde MRICS was £650 and Mr Cross had been charged approximately 10%.

The tribunal's decision

20. The tribunal determines that Mr Cross the lessee of 8A Callis Road is not liable to make any payment in respect of the fee for Mr Warde's report.

Reasons for the tribunal's decision

21. Mr Cross told us that he had not seen this report and did not understand, when he got the service charge demand in October 2012, why a charge had been imposed on him. He did not see the report until after the pre trial review when Mr Winfield was ordered to send him a copy. Now that he had seen it, Mr Cross's case was that this report was in relation to 8 Callis Road. There were two sentences in this report which related to 8A Callis Road which were about two external steel staircases that have common support beams which were reported to be in very poor condition. The joint responsibility for these beams and the cost of repairs was that of four leaseholders i.e. the two leaseholders at 8 Callis Road and the two leaseholders at 10 Callis Road.
22. It was Mr Winfield's case that he was entitled to charge for his costs in connection with this report which he accepted was predominately in respect of the lower flat, which had been repossessed by Santander. Mr Winfield's case was that he had the right to charge for his surveyor under the lease and that the surveyor had said that Mr Cross should pay 10%. The surveyor was authorised to make this decision by virtue of the Chartered Surveyors Rule Book.
23. Mr Winfield was unable to provide us with a copy of the invoice from Mr Warde and we therefore have no information regarding the fee which was charged or the date the fee note was rendered. In any event we do not find any liability under Mr Cross's lease for such a payment.

Administration charges in respect of the insurance premium

24. The amount claimed as set out on the service charge demand dated 3 October 2012 at 3.4 of the bundle is as follows.

2006-7: £33.50

2007-8:	£33.50
2008-9:	£35.00
2009-10:	£37.00
2010-11:	£37.00
2011-12:	£39.00

The tribunal's decision

25. The tribunal determines that the amount payable in respect of administration charges in connection with the insurance premium is nil.

Reasons for the tribunal's decision

26. Mr Cross submitted that there was no liability under the terms of either his lease or that of Ms Whiteley to pay administration charges or any additional fee to be added to the insurance premium. Ms Whiteley explained that she had had no formal written demands but that in email correspondence Mr Winfield had asked her to agree to pay administration charges at the rate of £120 per hour which was his charging rate. He was not prepared to put time into creating invoices without knowing that she was prepared to pay for this work.
27. Mr Winfield's submission was that the lease was silent and that the law, which commenced with the abolition of slavery and went through to the Human Rights Act, including the Truck Acts, meant that he was able to make these charges as he was conducting commerce. He was asking for these additional payments because of his office work in connection with effecting and collecting the insurance premiums.
28. Mr Winfield told the tribunal that his case was that Mr Cross had signed an agreement to say that he would pay these charges. He had in any event been paying them for the last six years and therefore he had admitted liability. Mr Winfield said he had gone to see Mr Cross in his flat and that Mr Cross had signed the agreement. He signed two copies and Mr Winfield gave Mr Cross one copy and kept one. Unfortunately Mr Winfield cannot locate his copy. Mr Winfield said that even if there were no agreement the lease was out of date. He said he was legitimately seeking "to put some profitability back into the lease situation, which at the moment it had no saleable value".
29. Mr Cross denied the existence of any agreement. He denied that Mr Winfield had come to see him in his flat and he told the tribunal he had

never signed any agreement of any description in relation to these charges. He had paid for some time because he thought he had to although he had raised his disquiet with Mr Winfield. In the autumn of 2012 he went to the Leasehold Advisory Service who advised him that he was not liable for these charges. He then went to see his solicitors who wrote two letters to Mr Winfield explaining that Mr Cross was not liable for these charges.

30. Mr Winfield reiterated that Mr Cross was liable for these charges and he referred to the offer made by Mr Cross's solicitors to pay a yearly sum of £25 in order to resolve this dispute. Mr Winfield's case was that this meant that Mr Cross accepted the charges. Mr Cross explained that the offer was in relation to the insurance, it was 10% of the premium and this seemed to him a fair offer to resolve this dispute.
31. The reason for our decision is that there is no liability to pay these charges in either of the leases. We prefer the evidence of Mr Cross in respect of the agreement and our finding is that there is no other agreement between Mr Cross and Mr Winfield except the lease. In any event Mr Winfield did not particularise the details of this alleged agreement. Mr Cross's solicitors' letter had made clear that the offer of £25 per year – which Mr Winfield had not accepted – was a goodwill gesture, and did not imply acceptance of any liability to pay.

Administration charges in respect of ground rent

32. In his application Mr Cross refers to the period June 2006 to November 2010 when he received half-yearly invoices for admin charges for ground rent. These are as follows.

13 May 2006:	£33.50
10 November 2006:	£33.50
11 June 2007:	£33.50
23 November 2007:	£33.50
May 2008:	£33.50
23 November 2008:	£35.00
18 June 2009:	£35.00
13 November 2009:	£37.00
2 September 2010:	£37.00

2 September 2010:	£37.00
Date:	£38.00
Date:	£39.00
Date:	£39.00
Date:	£39.00

The tribunal's decision

33. The tribunal determines that the amount payable in respect of administration charges in connection with ground rent is nil.

Reasons for the tribunal's decision

34. It was recorded in the directions at the pre trial review that this tribunal has no jurisdiction in relation to matters of ground rent. However in our opinion we do have jurisdiction in relation to the administration charges which are shown on the demands which have been sent to Mr Cross.
35. Again Mr Cross submitted that he had no liability under the lease for these charges.
36. Mr Winfield's case was that the lease was outdated and the ground rent of £45 per annum was totally inadequate. He was running a business and he had to recover his costs at the rate of £120 per hour. There was nothing in the lease that said he could not make these charges for collecting ground rent. Again Mr Winfield relied on the agreement which he claimed had been signed by Mr Cross.
37. For the reasons set out in paragraphs 26-31 above we determine that Mr Cross and Ms Whiteley are not liable to pay the administration charges in connection with the ground rent.

Additional sums charged as ground rent

38. The ground rent under Mr Cross's lease is shown in the Second Schedule of the lease as £45 per annum for the first thirty-three years of the term i.e. from 24 June 1980 to 24 June 2013. For the second thirty-three years of the term the sum due is £90 per annum. However Mr Winfield is charging £63 per annum excluding the administrative charge which we have dealt with above.

39. Mr Cross's case was that he was only liable to pay the ground rent as set out in the Second Schedule of his lease.
40. Ms Whiteley's lease provides in the Second Schedule for ground rent payable as £25 per annum throughout the term of the lease.
41. Mr Winfield submitted once again that the leases were outdated and the ground rent was inadequate. An adjustment to reflect inflation was legitimate. He also needed to cover the cost of issue the ground rent demands, keeping accounts, paying cheques into the bank, and all the associated work with administering these leases.

The tribunal's decision

42. The tribunal determines that the amount payable in respect of additional sums charged as ground rent is nil.

Reasons for the tribunal's decision

43. We repeat that this tribunal has no jurisdiction over ground rent. However in our opinion the additional sum added to the ground rent (the contractual sum is quite clear from the leases and not in dispute) is within our jurisdiction although Mr Winfield was not able to give us a satisfactory explanation as to how he could make this extra charge. This charge is either a service charge for management costs or an administration charge. In either case no summary of rights and obligations was served, and there is no requirement in any event in the leases for the lessees to make such payments. For this reason we have determined that the landlord may only issue demands for the ground rent as set out in both leases and for no more.

Application under section 20C Landlord and Tenant Act 1985

44. In the application form the applicant, Mr Cross, applied for an order under section 20C of the Landlord and Tenant Act 1985. Having heard submissions from the parties and taking into account the determination above the tribunal determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the respondent may not pass any of their costs incurred in connection with the proceedings before the tribunal through the service charge.
45. We are satisfied that Mr Cross made serious efforts to reach a settlement by consulting solicitors who wrote conciliatory letters to Mr Winfield, including a voluntary yearly payment going beyond Mr Cross's liability under the lease, to which Mr Winfield had not responded. The tenants presented their case with considerable good grace and succeeded on every point which they raised. Mr and Mrs

Winfield failed to comply with the Directions so that no statement of case was served.

Refund of fees

46. At the end of the hearing, Mr Cross made an application for a refund of the fees that he had paid in respect of the application and hearing which totalled £250. Having heard submissions from the parties and taking into account the determinations above, the tribunal orders the respondent to refund fees of £250 to Mr Cross within 28 days of the date of this decision.

Name: Judge Dowell

Date: 18 July 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 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.