



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

Case reference : **LON/OOAA/LSC/2013/0692**

Property : **Flat 3, 2 Bride Court, London EC4Y
8DU**

Applicant : **Miss Kate Jennings and
Mr Nicholas Smedley**

Respondent: : **Gandy Street Investment Limited**

Representatives : **Brady Solicitors**

Type of application : **Liability to pay service charges**

Tribunal Judge : **Angus Andrew
Aileen Hamilton-Farey FRICS
FCIArb**

**Date and venue of
hearing** : **5 March 2014
10 Alfred Place, London WC1E 7LR**

Date of decision : **7 April 2014**

DECISION

Decision

1. Brady's cost of £9,312.21 and Eddison's costs of £3,150 and £3,120 were reasonably incurred.
2. The service charge of £1,937.17 demanded from Ms Jennings in respect of the above costs is not payable.
3. We declined to determine the proportion of those costs that would be payable if they were included in the service charge certificate for the year commencing 25 March 2013.
4. Gandy Street Investments Ltd ("Gandy") may not recover any of its costs incurred in these proceedings from Ms Jennings through the service charge.
5. Gandy must by 5 May 2014 pay £125 to Ms Jennings and Mr Smedley being the fees incurred by them in these proceedings.

The application and the hearing

6. By their application received on 8 October 2013 Ms Jennings and Mr Smedley sought a determination pursuant to section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act") of their liability to pay a service charge of £1,937.17 in respect of legal and surveyors costs said to have been incurred during the service charge year commencing 25 March 2012. They also sought an order under section 20C of the Act preventing Gandy from recovering the costs incurred in these proceedings through the service charge. Finally they sought an order that Gandy reimburse them with the fees paid to the tribunal in connection with these proceedings.
7. A pre-trial review was held on 31 October 2013 when with the agreement of the parties the tribunal directed that the applications would be determined on the basis of written representations and without an oral hearing during the week commencing 20 January 2014. Unfortunately the parties were unable to agree the contents of the document bundle and on 12 February 2014 the tribunal directed that the application should be heard at an oral hearing on 5 March 2014 when the matter first came before us. We were unable to decide the case on 5 March 2014 for the reasons set out in the further directions that we issued on that day. For the sake of completeness we recite paragraph 4 of those reasons:-

"Both parties bear responsibility for the delay and increased cost of determining what should have been a straightforward case. Although the applicants' failure to send a copy of the document bundle to the respondent generated unnecessary confusion the respondent has done little to clarify matters. The directions of 12 February 2014 provided

that this case would be determined at today's hearing. We could not determine the case because the respondent was represented by an agent who had not been fully instructed and was unable to answer our questions. Had the respondent been properly represented we have no doubt the case could have been determined today. The overriding objective requires both parties to "co-operate with the tribunal generally": in this case such co-operation has been sadly lacking".

8. The further directions required Gandy to file a statement explaining both the accounting period and the service charge percentage used in the service charge certificate for the year 2012/2013. Ms Jennings and Mr Smedley were given the opportunity to respond and with the agreement of the parties the directions provided that we would then determine the application during the week commencing 31 March 2014 on the basis of the document bundle submitted to the tribunal, Gandy's explanation and Ms Jennings and Smedley's response.
9. The relevant legal provisions are set out in the Appendix to this decision.

Background

10. Ms Jennings owns flat 3 at 2 Bride Court London EC4. Mr Smedley is her partner. However, he is not a lessee and has no liability to pay the disputed service charge. It seems that in either late 2012 or early 2013 Gandy applied to the tribunal for a determination that a service charge would be payable by the lessees (including Ms Jennings) if extensive repairs to the roof of the building were completed at an estimated total cost of £80,000. Ms Jennings actively opposed the application and also brought her own application in respect of other costs. Those applications were heard by a differently constituted tribunal on 28 May 2013 and its decision was issued on 6 June 2013. In summary the decision was largely favourable to Gandy although the roof costs were reduced by 10% to reflect historic neglect. The tribunal specifically declined to make an order under section 20C of the Act limiting the recovery by Gandy of its costs incurred in those proceedings, through the service charge.
11. On 24 September 2013 Gandy served a service charge certificate for the accounting period 25 March 2012 to 24 March 2013 on Ms K Jennings. The service charge certificate includes the following line that is at the heart of this dispute:-

Expenditure type	%	Total expenditure	Your proportion
Other (S/C) Whole	37.20	£5,027.44	£1,937.17

12. Ms Jennings not surprisingly queried this entry and was told that it related to Gandy's costs incurred in the previous tribunal proceedings and in particular in representing Gandy at the hearing on 28 May 2013. Eventually Gandy produced invoices to substantiate the expenditure and they can be surprised as follows:-

- a. An invoice of Brady's dated 2 July 2013 in the sum of £9,312.21. That sum comprises profit costs of £6,459, disbursements of £1,456.65 and the VAT of £1,396.56.
- b. An invoice of Eddisons dated 26 June 2013 in the sum of the £2,625 plus VAT of £525: £3,150 in total. That invoice relates to the work undertaken by Mr J Owen who is a building surveyor and gave evidence in respect of the proposed roof repairs.
- c. An invoice of Eddison's dated 8 August 2013 in the sum of £2,600 plus VAT £520: £3,120 in total. That invoice relates to work undertaken by Mr Choudhury in connection with the tribunal proceedings. Mr Choudhury is a surveyor and property manager and it appears that he provided a witness statement and attended the hearing on 28 May 2013.

The total costs are £15,582.21 and the discrepancy between that figure and the total expenditure of £5,207.44 included in the service charge certificate is referred to below.

Ms Jennings lease

13. Ms Jennings lease is dated 1 July 1997. In the lease the demised property is described as apartment 10, 22/24 Bride Lane, London EC4. How Ms Jennings flat came to be redesignated as flat 3, 2 Bride Court is not clear. Her obligation to pay a service charge calculated in accordance with the second schedule to her lease is not in dispute. Ms Jennings is obliged to pay on 1st January in each year "*a fair and reasonable interim payment*". At the end of each accounting period Gandy as the lessor is to provide a service charge certificate giving details of the "*total expenditure for the Accounting Period*", the interim payment made by Ms Jennings and any balance due.

14. For the purpose of this decision the relevant lease provisions are the following:-

The particulars

Title number	NGL742921
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Property	22-14 Bride Lane, London EC4 London EC4 as the same is part of the land within the Title Number.
Internal Service Charge Percentages	12.18% of the costs and expenses that the Lessor incurs pursuant to its covenants contained in Part A of the Second Schedule hereto or such percentages as shall be proper and reasonable given all the circumstances
External Service Charge Percentages	6.63% of the costs and expenses that the Lessor incurs pursuant to its covenants contained in Part B of the Second Schedule hereto (other than under Clause 6 of Part B) or such percentages as the Lessor shall think proper and reasonable given all the circumstances
Accounting period	Shall mean a period commencing on the 1 st day of January and ending on the 31 st day of December in any year or such other period as the Lessor shall decide.
Rents	The rent insurance Rent and Service Charge.

The Second Schedule

Part B

Lessors obligations

7. Employing any workmen or other personnel necessary for the proper maintenance and security of the Property and managing agents solicitors accountants surveyors or other professional advisers in connection with the management of the Property and without prejudice to the generality of the foregoing the calculation and collection of the Rents.

Part C

Calculation of the Service Charge

- 1.1 “Total Expenditure” means the total expenditure incurred by the Lessor in any Accounting Period in carrying out its obligations under Parts A and B of this Schedule and any other costs and expenses reasonably and properly incurred in connection with the Property”.

Issues in dispute

15. Ms Jennings and Mr Smedley did not suggest that the disputed costs could not be recovered under the terms of Ms Jennings’ lease. Essentially their primary argument was that the legal and surveyors’ costs were not incurred during the service charge year commencing on 25 March 2012. Consequently they should not have been included in the service charge certificate for that year and a service charge was not payable in respect of them.
16. Their secondary argument was that the cost claimed were in any event unreasonable and that a substantial part of them should be disallowed. In so far as Brady’s costs are concerned they objected to some of the disbursements and we refer to these in more detail below. That apart they simply asserted that the costs were unreasonable and invited us to make a determination to that effect.
17. As far as Eddisons’ costs were concerned they suggested that they should be disallowed because the tribunal in its decision of 6 June 2013 made no order that these costs were recoverable. In the alternative they argued that it was inappropriate for the Eddisons’ to charge a “*strict commercial hourly rate*” for individuals who were on a company salary.

Reasons for our decision

Reasonableness of the disputed costs

18. We deal first with Brady’s costs. As far as the disbursement are concerned Ms Jennings and Mr Smedley objected to £49.05 incurred in sending papers to a lessee temporary resident in Croatia and £41.52 and £7.92 for travel costs for which they said there were no receipts other than two undated taxi receipts. It is not disputed that the papers were sent to a lessee in Croatia and we are satisfied that Brady were entitled to a recover the postage. Equally we accept their explanation that the unvouched travel costs related to a reasonable millage allowance of 45p per mile incurred in travelling to the train station for the hearing on 28 May 2013. The absence of a date on two small taxi receipts is not surprising and it does not invalidate the receipts. The receipts in themselves are proof of payment. It short we are satisfied that the disputed disbursements were properly incurred.

19. Turning to Brady's profit costs, Ms Jennings and Mr Smedley adduced no evidence that cast doubt on their reasonableness. It is not sufficient for them to simply assert that those costs are unreasonable. That apart and acting as an expert tribunal we are satisfied that the costs are of the order that we would expect for preparing for and representing a party at a one day tribunal hearing. Although it may be of little comfort to Ms Jennings and Mr Smedley the costs are relatively modest in comparison to those that we have encountered in similar cases. We are left in no doubt that the legal costs were reasonably incurred for the purpose of section 19 of the Act.
20. Turning to Eddisons' costs we reject Ms Jennings and Mr Smedley's main argument. The costs are recoverable not under the tribunal decision of 28 May 2013 but through the service charge provisions of Ms Jennings' lease. As far as quantum is concerned Mr Owen and Mr Choudhury are employees of Eddisons. As with any other professional organisation their time is charged at a rate that includes not only their salary but also a profit element and all the organisations central overhead costs including by way of example the wages of support staff, property costs and insurance premiums. It is perfectly reasonable that Eddisons should recover a reasonable hourly rate that includes those additional costs. In this case Mr Owen's time has been charged at an hourly rate of £175 plus VAT and Mr Choudhury's time has been charged at a discounted hourly rate of £200 plus VAT. Again no evidence was adduced by Ms Jennings and Mr Smedley to suggest that these rates were either inherently unreasonable or uncompetitive. In the absence of such evidence we have no alternative but to rely upon our own knowledge and experience and on that basis we are again satisfied that the hourly rate charged are reasonable and that the costs claimed were reasonably incurred.

That a service charge is not currently payable in respect of the disputed costs.

21. Essentially we agree with Ms Jennings and Mr Smedley's primary argument. The invoices relating to the disputed costs were issued between 3 and 5 months after the end of the accounting period to which the certificate of 24 September 2013 related: that is from 25 March 2012 to 24 March 2013. Furthermore it is apparent that the work to which the invoices relate was undertaken after the end of the accounting period because it related to the preparation for and the attendance of a solicitor and the two surveyors at the hearing on 28 May 2013. In short these costs should be included in the following year service charge certificate and until that certificate is issued a service charge is not payable in respect of them.

Our refusal to consider the payability of a future service charge

22. It is self evident that Gandy is entitled to include the disputed costs in the service charge certificate for 2013/2014 and in consequence a service charge should be payable in respect of those costs.

23. However in terms of payability there are a number of unresolved issues in this case that we cannot decide without hearing oral evidence. The disputed costs can only be recovered through the service charge under the provisions of paragraph 7 of part B of the second schedule to Ms Jennings' lease. On the basis of clause 15 of the particulars a service charge equal to 6.63% of those costs is payable by Ms Jennings. Thus at first blush her liability should be £1,033.10 and not £1,937.17. In our directions of 5 March 2014 we requested Gandy to explain this apparent discrepancy. The explanation provided is not wholly persuasive. It is suggested that 2 Bride Court originally formed part of 24 Bride Court but that it was at some stage split off and treated separately with the service charge costs being apportioned between 24 Bride Court and 2 Bride Court "*by reference to floor areas*". The apportionment having been made 37.20% of the apportioned costs are then allocated to Ms Jennings flat on the basis that "*there are three flats in 2 Bride Court*".
24. It is apparent that the mechanism adopted by Gandy for calculating Ms Jennings' liability for service charges is not consistent with the terms of her lease. It is possible as Gandy suggest the mechanism amounts to "*such percentages as the Lessor shall think proper and reasonable given all the circumstances*". However it is difficult to understand how a revised mechanism that results in the near doubling of the service charge for the disputed costs can be either proper or reasonable. Ultimately we have concluded that this is an issue that is better left for another day after the service charge certificate for 2013/2014 has been issued and any balancing payment demanded from Ms Jennings. We hope the parties will be able to resolve this issue without having to bring the matter back to the Tribunal.

Section 20C and reimbursement of fees

25. To the extent that the costs might be recovered through the service charge the right to recover them is a property right which should not be lightly disregarded. Section 20C however provides that a tribunal may "*make such order on the application as it considers just and equitable in the circumstances*". Those words permit us to take into account the conduct of the parties in deciding whether to make an order.
26. Ms Jennings and Mr Sedley have succeeded in their primary argument and in consequences the disputed service charges are not currently payable. Furthermore there has been a lack of transparency in the management of this property that has exacerbated the dispute between the parties and was largely responsible for the matter being brought before the tribunal. The accounting period has been changed without consultation or notice to the lessees. As explained above the service charges are not calculated in accordance with the lease provisions and the explanation provided in the response to our further directions of 5 March 2014 begs more questions than it answers. For each of and all of these reasons it is just and equitable to make the order sort by Ms Jennings and Mr Sedley and for similar

reasons we order Gandy to repay to Ms Jennings and Mr Sedley their fees of £125 incurred in making their application within 28 days.

Name: Mr A Andrew

Date: 7 April 2014

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.]

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.