



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

Case Reference : LON/00AE/LSC/2013/0486

Property : 4 Thanet Lodge Mapesbury Road
London NW2 4JA

Applicant : Thanet Lodge (Mapesbury Road)
RTM Company Limited

Representative : Mrs C Brady, Solicitor of Brady
Solicitors LLP

Respondent : Norstown Properties Limited

Representative : Mr J Fattal director

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

Tribunal Members : Judge P Leighton LLB
Mr L Jarero BSc FRICS
Mr A Ring

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

Date of Decision : 30th April 2014

DECISION

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the Applicant shall provide to the Respondent by no later than 31st May 2014 a revised schedule of the service charge account for the years 2011 and 2012 in accordance with the decisions made by the tribunal below, to arrive at a sum payable by the Respondent in respect of the service charges for those years.
- (2) The tribunal makes the determinations as set out under the various headings in this Decision
- (3) The tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985
- (4) Since the tribunal has no jurisdiction over county court costs and fees, this matter, as well as the Respondent's counter claim, should now be referred back to the Barnet County Court.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act")] as to the amount of service charges payable by the Applicant in respect of the service charge years 2011 and 2012 for the property known as 4 Thanet Lodge Mapesbury Road London NW2 4JA (the "property").
2. There have been previous proceedings between the parties at the tribunal and paid by which there was a settlement and payment up to December 2010 Proceedings were then issued in the Barnet County Court under claim No.2yL27127 on 8th August 2012 in the sum of £1008 which subsequently proved to be an error. The Particulars of Claim were amended on 19th October 2012 to £5104.50. The Respondent then filed a defence called "amended particulars of claim" in which he set up a counterclaim and asserted that the claim was for £1008 and had been paid.
3. The claim was then transferred to this tribunal, by order of District Judge Marin on 21st February 2013. Directions were given on 9th April 2013 ordering schedules. A further case management conference was held on 3rd September 2013 and after several adjournments the matter finally came before the tribunal for a first hearing on 23rd January 2014 but it was impossible to hear it on that day for various reasons and the matter was adjourned to 6th February 2014.
4. The relevant legal provisions are set out in the Appendix to this decision. The tribunal has also had regard to the decisions of the Lands Tribunal in

Forcelux -v- Sweetman 2001 2 EGLR 173 and of the Upper Tribunal in **Regent Management Ltd -v- Jones 2011 UKUT369** cited by the Applicant in support of the proposition that the tribunal has to determine that costs are reasonably incurred and are not necessarily at the cheapest costs and that the decision to provide a service or the extent to which it is to be provided is reasonable even if there are other ways in which the service can be provided equally well.

The hearing

5. The Applicant was represented by Ms Clare Brady of Brady & Co solicitors at the hearing and the Respondent appeared by Mr J Fattal a director of the company.
6. At the hearing on 23rd January 2014 the tribunal gave further directions for the adjourned hearing. In particular the Respondent was required to particularise his objections to the service charges since his responses to the Scott Schedule merely consisted of a series of rhetorical questions which did not set up a positive case. Sadly the Respondent failed to comply with those directions which made it extremely difficult to identify the issues. At the adjourned hearing the Applicant had prepared a case summary in accordance with directions and the tribunal heard submissions from both parties. Following the adjourned hearing the parties were allowed to make further written submissions to clear up some outstanding issues regarding unresolved items and disclosure.

The background

7. The property which is the subject of this application is a 2/3 bedroom flat on the ground floor within a purpose built four storey block consisting of 42 flats.
8. 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 [Some photographs were produced of areas within the building].

The Lease

9. The Respondent holds a long lease of the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease will be referred to below, where appropriate.
10. By clause 4(4) of the lease the tenant covenanted to pay the interim and the final service charges in the manner provided in the Fifth Schedule of the lease. Failure to pay within 14 days of demand incurred a liability to pay interest.

11. By Clause 5(4) of the lease the lessor covenanted to provided the services set out in (a)-(q)of that clause.

The issues

12. 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 period 2011 and 2012 relating to numerous items although a number of items were agreed at the hearing as follows:

- (a) Audit and accountancy £750 for each year
- (b) Communal electricity £3,278.25 for 2011 and £3607.63 [for 2012?]
- (c) Major works reserve fund £2854.08 for 2011
- (d) Directors insurance £559.71 for 2011 and £692.07 for 2012
- (e) Health and safety asbestos management £533.72 for 2011 and £692.07 for 2012
- (f) Bank account credit interest 2012 £5151

13. The following matters were originally disputed but agreed at the hearing

- (a) £757 in 2011 and 2012 for company secretary's expenses
- (b) Fire extinguisher maintenance £1,313.94 for 2011 and £1639.46 for 2012
- (c) Lift insurance £634.91 for 2011 and £686.41 for 2012
- (d) Lift maintenance £2,149.38 for 2011 and £3481.86 for 2012
- (e) Transaction charges £126.70 and £133.70 admitted on a diminished basis

14. The following items therefore remained disputed for 2011 and 2012 respectively namely

- (a) Gardening £6,330.07 and £5082
- (b) Cleaning and window cleaning £7,964.68 and £7,786.34
- (c) Contingency £218 .97 and £918
- (d) Pest control £2,489.04 and £1,529.40
- (e) TV aerial satellite maintenance £69.55 and £1,433.14
- (f) Repairs and maintenance £8,252.92 and £20,068.43
- (g) Legal fees £2,940.60 and £373.37
- (h) Building insurance £10,679.82 and £11,407.12
- (i) Entry phone system rental £241.88 for 2012
- (j) Managing Agents fees £10,813.35 and £11,437

15. In addition there was a counterclaim for breach of covenant to repair but there was no evidence presented in relation to this and the tribunal considered that, if the Respondent still intended to pursue such a claim, he would now have to attempt to do so in the county court.
16. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.
17. Although the tribunal was critical of the manner in which both sides had presented the material the tribunal accepted in general terms the evidence of Mr Soteriou, supported by the invoices, that works had been carried out to the block. The Respondent had unfortunately taken a number of bad points during the hearing including disputing receipt of documents many of which had been provided. He sought to suggest that some of these documents had been withheld which the tribunal did not accept and in one case during the hearing he was shown a document in the bundle which he disputed ever having seen and had to withdraw the allegation.
18. The tribunal found the Schedule which had been produced extremely unhelpful in that the entry column did not indicate which service was referred to but merely an invoice or page number. The respondent had compounded the difficulty by simply setting out a series of questions and where the landlord had answered the

questions, set out a series of further questions in the final column. The landlord's solicitor in final submissions has acknowledged that the schedule could be set out more helpfully and it is to be hoped that in future cases those using the schedule will indicate clearly in the first column the category of expenditure which is being described in order to simplify the task of the tribunal.

19. The Tribunal also made clear to Mr Fattal on behalf of the Respondent that the purpose of the schedule is not to operate as a means of cross examining the landlord on the services provided but to indicate directly which services are challenged, why they are challenged and, where they are alleged to be excessive, to put forward an alternative reasonable cost for the service.

Item 1 Gardening

The tribunal's decision

20. The Tribunal determines that the gardening costs are reasonable and that the amount payable in respect of gardening costs is £6330.07 for 2011 and £5082 for 2012.

Reasons for the tribunal's decision

21. The Respondent challenged the fact that there was no written contract for gardening services and he claims that the costs are excessive. The Applicant states that gardening services are provided every three weeks in the summer (March to November) and monthly in December to February. There are 16 visits per year. The services provided include application of lawn weed removal and feed preparation and disposal of garden refuse. It is agreed that there is no formal written contract but invoices were produced by the respondent for the works provided and these were not disputed. The Respondent simply maintains that the cost of the service is excessive but this is what the landlord has had to pay. It is not disputed that the works were carried out and there have been no complaints about the standard of gardening in the block.
22. The tribunal considers that this is the price which the landlord has had to pay to provide the service from a reputable company West London Gardens. If the Respondent is able to provide a supplier who can provide the service as well and at a more economic rate he can inform the landlord but in the meantime the tribunal is prepared to uphold the amounts charged.

Item 2 Cleaning

The tribunal's decision

23. The tribunal determines that the amount claimed for cleaning is reasonable and is allowed in the sum of £7964.68 for 2011 and £7768.34 for 2012.

Reasons for the tribunal's decision

24. The Applicant through its directors agreed in 2007 that the block needed cleaning twice a week. The Respondent challenged the need for this but the Applicant maintains that the volume of traffic and the build up of debris justifies this extent of cleaning. There is no formal contract but invoices have been produced from Tunfield Cleaners which are not disputed.
25. The block is V shaped, has two corridors and has four storeys so that there is a considerable distance to clean. Glazed partitions are leathered, smoke detector batteries and light bulbs changed. External bins are washed. Stonework outside is mopped including entrance ways, pathways and the car park area. Although there is no formal contract there is a notice put up in the block and signed by the cleaners when the work is completed. There has been no complaint about the standard of cleaning in the block The Respondent suggests an alternative cost of £6200 for this work but produced no evidence in support. If a like for like service can be provided for this cost it should be notified to the landlord.
26. The tribunal is satisfied that the cleaning charges were reasonably incurred and that even if they could have been provided more cheaply by another contractor the charges are within a range which is reasonable.

Item 3 Contingency Charge

The tribunal's decision

27. The tribunal determines that the amount payable in respect of contingency in the sum of £ 283.97 for 2011 and £918 for 2012 is not payable.

Reasons for the tribunal's decision

28. The tribunal considers that it was reasonable for the Applicant to place a sum of £100 in the budget to cover contingencies to cover unforeseen expenditure but it appears to the tribunal that if and when any of the contingency fund is spent it should be allocated to a specific head of expenditure (e.g. minor repairs). It is not clear to the tribunal what this expenditure amounts to and there is a risk of double counting. Accordingly the tribunal disallows those two items.

Item 4 Pest Control

The tribunal's decision

29. The tribunal determines that the amount payable in respect of pest control is £2489.04 for 2011 and £1529.40 for 2012 .

Reasons for the tribunal's decision

- 30 The Respondent has queried the amounts spent on pest control. There is a standing agreement in place for treating rats although this does not appear to cover mice. In addition Mr Fattal contends that the contract should be reviewed and could be provided more cheaply. No evidence was adduced in support of this. The landlord is obliged to provide the service and the invoices support the amounts charged. Whilst it may be sensible to review the contract in future to see if it can be provided more cheaply there is no evidence that the amounts charged for 2011 and 2012 were excessive.

Item 5 TV Aerial Satellite Maintenance

The tribunal's decision

- 31 The tribunal determines that the item for 2012 has been incorrectly labelled and nothing is allowed under this heading. The sum of £69.55 is allowed in 2011 for the cost of an aerial.

Reasons for the tribunal's decision

- 32 In the accounts invoices for the amount claimed of £1433.14 appears to relate to the entry phone and door entry system and will be dealt with under that heading. The figure of £69.55 for 2011 relates to the communal TV aerial and appears reasonable.

Item 6 Repairs and Maintenance

The tribunal's decision

- 33 The tribunal determines that the amount payable in respect of repairs and maintenance is £8,252.92 for 2011 and £20,068.43 for 2012.

Reasons for the tribunal's decision

- 34 The Respondent challenges the large increase in repair and maintenance costs for the year 2012 which were substantially higher than the previous year.
- 35 The agents explained that a significant amount of work had to be carried out in 2012 to a party wall and other expenses. These were all supported by invoices in the Applicant's bundle and the tribunal could find no reason for disallowing this expenditure which was necessary for the maintenance of the block.

Item 7 Legal Fees

The tribunal's decision

- 36 The tribunal determines that the amount payable in respect of legal fees is £1,500 for 2011 and £373.37 for 2012.

Reasons for the tribunal's decision

- 37 The Respondent challenged legal fees which had been charged to the landlord in respect of services provided by solicitors where it was necessary to chase unpaid service charges.
- 38 In principle the legal costs should be charged against the account of the defaulting tenants and not charged to the service charge account. The solicitors were not called but it was stated that the fees had been charged when they could not be recovered from individuals.
- 39 It appears to the tribunal that the cost of £2940 for 2011 is very high. The tribunal considers that greater efforts should be made to recover this from the individual leaseholders including the Respondent and that the overall figure should be cut to £1,500 as a charge on the service charge account.

Item 8 Building Insurance

The tribunal's decision

- 40 The tribunal determines that the amount payable in respect of building insurance is £10,679.82 for 2011 and £11,407.12 for 2012.

Reasons for the tribunal's decision

- 41 The Respondent challenges the insurance on the basis that the amount charged is excessive but has produced no evidence to support this. Mr Soteriou said that the insurance is placed through brokers and reviewed regularly. The tribunal finds no grounds for holding that the building insurance costs were unreasonable. The landlord is obliged to insure and has provided invoices to support the sums paid.

Item 9 Entryphone Rental

The tribunal's decision

- 42 The tribunal determines that the amount payable in respect of entryphone rental is £1433.18 for 2011 and £241.33 for 2012.

Reasons for the tribunal's decision

- 43 It appears that the basic rental cost for the service is £241.33 but the figure for 2011 includes a sum for installing the video equipment to support the door entry system.
- 44 The Respondent complains that it is apparently only the flats at the top which have the benefit of the video service and that for the other flats it is audio only. It is not clear that it is possible to separate out the expenditure for the two systems and may be impractical. It appears to make very little difference to the amount of service charge which each flat is likely to pay and there appear to have been no other complaints.

Item 10 Management Fees

The tribunal's decision

- 45 The tribunal determines that the amount payable in respect of management fees is £10,000 for 2011 and £10,500 for 2012.

Reasons for the tribunal's decision

- 46 The amount charged by the managers Crabtree amounts to £10,813.35 for 2011 and £11,437 for 2012. According to Mr Soteriou from Crabtree this amounts to approximately £225 per unit. However it appears to the tribunal that the figures presented show figures of £257 per unit for 2011 and £272 for 2012.
- 47 Mr Fattal made a number of complaints concerning the lack of action by the managing agents particularly in relation to his property and the water damage which he suffered.
- 48 The tribunal has examined the management agreement with Crabtree and notices that they provide a wide range of services. The tribunal has noted however that a fee of £225 per unit would amount to £9450 and that the fees are considerably in excess of that figure.
- 49 The tribunal is generally content to allow a management fee of up to £250 for a medium sized block of this kind but considers that the sums charged here are beyond that figure and considers that it would be appropriate to cap the fees at £10,000 for 2011 and £10,500 for 2012. It may be possible to justify larger fees for subsequent years to take account of inflation but the managers would have to justify the increase by reference to the services provided.

Application under s.20C and refund of fees

- 50 In an application form the Respondent applied for an order under section 20C of the 1985 Act. Having heard the submissions from the parties and taking into account the determinations above, the tribunal determines that there are no grounds for making an order under section 20C of the Act as the Applicant has been substantially successful in the proceedings.
- 51 This is an application by a Right to Manage company which has been put to considerable expense by the Respondent, an investor leaseholder, in seeking to challenge almost every item of expenditure. Many of those challenges had to be withdrawn or abandoned at the hearing or were found to be wholly unsustainable. It would be inequitable to deny the Applicant the right to add the costs to the service charge account although it is unfortunate that the bulk of these costs will be borne by the other leaseholders all of whom are up to date with their service charge payments.

The next steps

- 52 In the light of the reductions made by the tribunal it will be necessary to make a small adjustment to the service charge payable by the Respondent. The Applicant should prepare a revised account to reflect the tribunal's reductions and present it to the Respondent for agreement. If the matter cannot be agreed the tribunal will review the revised figures and determine the final amount due.
- 53 The tribunal has no jurisdiction over county court costs and has decided it will not exercise jurisdiction in respect of the claim by the Respondent for breach of repairing covenants and the issue of leaks from other flats and water damage from guttering. These matters should now be returned to the Barnet County Court to ascertain whether any damages should be awarded.

Name: Peter Leighton

Date: 30th April 2014

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 leasehold valuation 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 a leasehold valuation tribunal;
 - (b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation 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 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.