

10366



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

Case Reference : LON/00AL/LSC/2014/0343

Property : 64 Bertrand Way London SE28
8LN

Applicant : Holding and Management
(Solitaire) Ltd

Respondent : Miss Helen Olubukola Akinnifesi
and Mr Tajudeen Bello

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

Tribunal Members : Mrs E Flint DMS FRICS IRRV
Mr M Taylor FRICS
Mr J Francis QPM

**Date and venue of
decision** : 9th October 2014 at
10 Alfred Place, London WC1E 7LR

Date of Decision : 22nd October 2014

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the sum of £447.50 is payable by the Respondent in respect of the service charges and administration charges.
- (2) The tribunal makes the determinations as set out under the various headings in this Decision.
- (3) Since the tribunal has no jurisdiction over county court costs and fees or outstanding ground rent and associated costs, this matter should now be referred back to the Woolwich County Court.

The application

1. Proceedings were originally issued in the Northampton County Court under claim no. 3X179204. The claim was transferred to the Woolwich County Court and then in turn transferred to this tribunal.
2. The relevant legal provisions are set out in the Appendix to this decision.
3. A case management hearing was held on 22 July 2014 at which the Applicant was represented by Mr N Hamilton of Peverel Property Management. The Respondent was not present or represented. Directions were issued on 22 July proposing that the matter could be dealt with on the papers.

The background

4. The Respondents are the leaseholders of the subject property by virtue of a lease dated 22 May 1985 for a term of 105 years from 1 October 1982 made by (1) The Greater London Council (2) Broseley Estates Limited (3) Derek Louis Playford and Ann-Margaret Clark and (4) Holding & Management (Solitaire) Limited. The Applicant is the Company and the party in the lease to whom the service charge is payable.
5. The Applicant is also the landlord to whom the ground rent is payable.
6. Neither party requested an inspection and the tribunal did not consider that one was necessary in view of the nature of the issues in dispute.
7. The Respondent holds a long lease of the property. Clause 3.2 requires the tenant *in respect of every Maintenance Year to pay the service charge to the Company by two equal instalments in advance on the half yearly days*. The service charge is defined at clause 1.8.1 as "A sum

equal to one half (or such other proportion as may be determined pursuant to part 1 of the Fourth Schedule) or the Aggregate Annual Maintenance Provision for the whole of the Building for each maintenance year”....

The issues

8. The relevant issues for determination as follows:
- (i) The balancing charge of £9.22 in respect of the service charge year 2011-2012
 - (ii) Outstanding on account payments of £403.75 for the service charge year 2012-2013.
 - (iii) Outstanding on account payments of £96.00 in respect of the service charge year 2013-2014.
 - (iv) Administration charges totalling £168.00
9. Having considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

Balancing Charge 2011-2012: £9.22

10. The outstanding sum represents the balancing charge payable in respect of 2011-12

The tribunal's decision

10. The tribunal determines that the amount payable in respect of the balancing charge on the service charge account for 2011-12 is £9.22. The audited accounts dated 26 April 2013 show a deficit for the block, 62-65 Bertrand Way, of £36.89 which is to be apportioned equally among the 4 lessees.

Reasons for the tribunal's decision

11. The Tribunal is satisfied that the service charge costs have been incurred and that the sum demanded is payable in accordance with the terms of the lease.

On account payment 1 April 2013 – 30 September 2013: £403.75

12. This is the first half yearly on account payment for 2013 – 2014 based on the estimated service charge for the year.

The tribunal's decision

13. The tribunal determines that the amount payable in respect of the on account payment is £378.28.

Reasons for the tribunal's decision

14. A credit of £25.47 being the service charge adjustment for the year had not been reflected in the claim.

Outstanding amounts 2013-2014: £96 and £48

15. These sums are the ground rent due for the year and associated legal fees which the Applicant in their statement of case have stated that they are not looking for a decision in respect of this sum from the tribunal.

The Tribunal's Decision

16. This item is remitted to the County Court.

Reasons for the tribunal's decision

17. Ground rent is not within the jurisdiction of the tribunal.

Administration Charges 2013: £120.00

18. This is made up of two items of £60 each. The first charge relates to the managing agent's credit control charges for pursuing arrears of service charge. The second item relates to the legal review fee which is the managing agents charge for a review of the account before

The Tribunal's decision

19. The first item is disallowed but the second is payable.

Reasons for the Tribunal's decision

20. The managing agent's charge of £60 on 25 April for its credit control procedures is unreasonable in amount. The applicant has provided no information to substantiate the charge and there have been several previous identical items which have been reaccredited to the account.
21. The legal review charge is reasonably incurred and payable. The applicant has shown the steps involved in this procedure.

The next steps

22. The tribunal has no jurisdiction over ground rent or county court costs. This matter should now be returned to the Woolwich County Court.

Name: Evelyn Flint

Date: 22 October 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.

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 the appropriate 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 the appropriate 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).