



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

Case Reference : LON/00AW/LSC/2014/0060

Property : Flat 8 Heaton House, 216/224
Fulham Road, London SW10 9NB

Applicant : Retail General Partner Limited (1)
Retail Plus Nominee Limited (2)

Representative : Brook Street des Roches LLP

Respondent : Ms Bernadette Peschaud

Representative :

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

Tribunal Members : Mr Jeremy Donegan (Tribunal
Judge)
Mr Frank Coffey FRICS
(Professional Member)

**Date of Paper
Determination** : 30 May 2014

Date of Decision : 12 June 2014

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the following interim (advance) service charges are payable by the Respondent for the years ended 31 December 2012 and 2013:

25 December 2011 £373.75 (due 25 December 2011)

24 June 2012 £373.75 (due 24 June 2012)

25 December 2012 £842.00 (due 03 April 2013)

24 June 2013 £842.00 (due 11 July 2013)

- (2) The interim service charges are due to the Applicants.
- (3) The tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985.

The application

1. On 04 February 2014 the Applicants submitted an application to the tribunal under section 27A of the Landlord and Tenant Act 1985 (the 1985 Act), seeking a determination of the service charges payable by the Respondent for the years ended 31 December 2012 and December 2013 (the First Application).
2. On 10 February 2014 the Applicant submitted a further application to the tribunal under section 168(4) of the Commonhold and Leasehold Reform Act 2002 (the 2002 Act), seeking a determination that a breach of the Respondent's lease had occurred (the Second Application). The alleged breach was that the Respondent has not paid the service charges referred to in the First Application.
3. An oral pre-trial review took place on 11 March 2014, attended by the Applicant's solicitor (Ms Claire McKay of Brook Street des Roches LLP), when directions were given. These provided that the case be allocated to the paper track, to be determined upon the basis of written representations. Neither of the parties has objected to this allocation or requested an oral hearing. The paper determination took place on 30 May 2014.
4. The Applicants' solicitors filed a bundle of documents in accordance with the directions that included copies of the applications, the directions, the Lease, two statements of case, various service charge documents, relevant correspondence and a statement from Ms McKay.

5. The Respondent did not file any bundle of documents or respond to the application in any way.
6. On 15 May 2014 (at the request of the tribunal) the Applicants' solicitors provided the tribunal with additional documents, namely copies of the service charge budget for the year ended December 2012 and a service charge demand dated 13 June 2012.
7. On 20 May 2014 (at the invitation of the tribunal) the Applicants' solicitors wrote to the tribunal withdrawing the Second Application. The tribunal consents to the withdrawal in accordance with Rule 22 (3) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. Accordingly this decision deals solely with the First Application.
8. The relevant legal provisions are set out in the Appendix to this decision.

The background

9. The property which is the subject of this application is Flat 8 Heaton House, 216-224 Fulham Road, London SW10 9NB (the Flat). The Respondent is the leaseholder of the Flat. The Applicants are the joint freeholders of Heaton House (the Building), which is a purpose built block of flats. Originally there were 10 flats in the Building. Two additional flats were subsequently created, making a total of 12 flats.
10. The Respondent holds a long lease of the Flat, 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 are referred to below, where appropriate.

The lease

11. The lease was granted by the Melbourne Court Estates Limited (Landlord) to Jean-Claude Peschaud and Rosalind Jane Peschaud (the Tenant) on 10 December 1976 for a term of 99 years from 25 December 1974. The Applicants are the successors in title to the Landlord and the Respondent is the successor in title to the Tenant.
12. The service charge provisions are contained in the sixth schedule to the lease. Paragraph 1 of part I of the sixth schedule provides:

The tenant shall in every calendar year the whole or part of which falls within the term hereby granted pay to the Landlord a sum (in this Lease called "the Maintenance Contribution") amounting to one tenth of the Annual Maintenance Provision for that year computed in

accordance with Part II of this Schedule and subject to the provisions set out in the said Part II of this Schedule the Tenant shall pay the Maintenance Contribution for each calendar year by two equal instalments in advance on the Twenty fifth day of December in the preceding year and the Twenty fourth day of June in such calendar year PROVIDED THAT in relation to the first year of the said term the Tenant shall pay the sum of one tenth of Eight hundred and fifty pounds (£850) as Maintenance Contribution upon the execution hereof

13. On 15 October 2013 the tribunal made an order, in proceedings under reference LON/00AM/LVL/2013/0005, varying the leases of flats 1-10 at the Building in accordance with a draft deed of variation attached to order. The deed provided that paragraph 1 of part I of the sixth schedule should be deleted and replaced with:

The tenant shall in every calendar year the whole or part of which falls within the term hereby granted pay to the Landlord a sum (in this Lease called "the Maintenance Contribution") amounting to a fair and reasonable proportion of the Annual Maintenance Provision for that year, to be conclusively determined (except in the case of manifest error) by the Landlord or the Landlord's Surveyor, computed in accordance with Part II of this Schedule and subject to the provisions set out in Part II of this Schedule the Tenant shall pay the Maintenance Contribution for each calendar year by two equal instalments in advance on 25 December and 24 June

14. The variation was made in response to the construction of the two extra flats at the Building, meaning that it was no longer appropriate for each flat to pay 1/10th of the Annual Maintenance Provision. The variation was not retrospective and took effect from the date of the tribunal's order.
15. Paragraph 2 of part 1 of the sixth schedule lists various items of expenditure that are to be included in the Annual Maintenance Provision including, at subparagraph (viii) the insurance for the Building.
16. Paragraph 1 of Part II of the sixth schedule provides

The Annual Maintenance Provision in respect of any calendar year (other than the first year of the said term) shall be computed not later than the beginning of December in the year immediately preceding such year and shall be computed in accordance with paragraph 2 of this Schedule

17. Paragraph 2 of part II of the sixth schedule then sets out detailed provisions for the computation of the Annual Maintenance Provision, which is to include:
- (a) *the aggregate expenditure estimated as to be incurred by the Landlord in the year for the purposes mentioned in paragraph 2 of Part I of this Schedule as reduced by*
 - (i) *any unexpended reserve already made pursuant to subparagraph (c) of this paragraph in respect of any such expenditure and*
 - (ii) *any excess of the corresponding estimate in relation to the immediately preceding year over the expenditure actually incurred in that year*

The issues

18. The Applicants seek a determination of the interim (advance) service charges payable by the Respondent for the years ended 31 December 2012 and 2013. In accordance with the terms of the lease the interim charges were payable on 25 December 2011, 24 June 2012, 25 December 2012 and 24 June 2013.
19. The payment dates were all before the variation to the leases. It follows that the interim service charges payable by the Respondent amounted to 1/10th of the Annual Maintenance Provision. Further the Annual Maintenance Provision should have included the anticipated cost of insuring the Building.
20. 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.

Year ended 31 December 2012

21. The sum claimed, as set out in the Applicants' statement of case for this year, is £876.94. In her statement, Ms McKay explains that she has made enquiries of the managing agents and the service charges have not been paid.
22. This figure of £876.94 has been calculated with reference to the actual service charge expenditure for the year, as detailed in a "Statement of Income and Expenditure" dated 14 February 2013. That statement was prepared by the former managing agents, Centre Management, and shows the following expenditure:

Common Parts Electricity	£389.02
Common Parts Cleaning	£1,280.00
Maintenance	£70.00
JJ Electrics	£4,720.80
Management fee	£2,500.00
Total	£8,959.82

23. The Applicants are seeking 1/12th of this sum from the Respondent (**£746.65**), notwithstanding that at the time the lease required her to pay 1/10th of the Annual Maintenance. Centre Management demanded a smaller contribution upon the basis that there are 12 flats at the Building.

24. It appears that there are now two agents managing the Building, Braemar Estates Property Management (BEPM) and Cushman & Wakefield (CW). On 17 May 2013, BEPM issued a demand to the Applicant claiming service charge expenditure for 01/01/2010 to 31/12/2012 in the total sum of £1,929.75. The tribunal was not given a breakdown of this figure. The service charges for 2010 and 2011 do not form part of the application before the tribunal.

25. The Applicants are seeking two additional sums for insurance contributions in 2012, namely:

25/12/11 – 23/06/12	£58.03
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24/06/12 – 24/12/12	£72.26
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Total	£130.29
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These insurance contributions were each demanded by CW on 11 January 2013.

26. The interim service charge being claimed by the Applicants of £876.94 is the total of the figures set out in paragraphs 22 and 24 above. The Applicants contend that this sum should have been paid within 14 days of the demands made by BEPM and CW.

27. The estimated expenditure detailed in the service charge budget for the year ended December 2012 was:

General Repairs and Maintenance	£2,500.00
Electricity (Common Parts)	£500.00
Management Fees	£2,500.00
Accountancy Fees	£300.00
Cleaning of Common Parts	£1,920.00
Pest Control	£250.00
Reserve Fund	£1,000.00
Total	£8,970.00

28. The Applicants' solicitors have been unable to obtain a copy of the demand for the interim service charge due on 25 December 2011, from Centre Management. However they have obtained and produced a copy of a demand dated 13 June 2012, for the interim service charge due on 24 June 2012, which was for a sum of £373.75. This represents 50% of 1/12th of the estimated expenditure in the budget.

The tribunal's decision

29. The tribunal determines that the amount payable for interim service charges for the year ended 31 December 2012 is £747.50. Of this sum £373.75 was due on 25 December 2011 and the balance of £373.75 was due on 24 June 2012.

Reasons for the tribunal's decision

30. The service charge budget produced by Centre Management amounted to the Annual Service Charge Provision. The Respondent has not challenged any of the figures in the budget. The tribunal is satisfied that the amount of the budget was reasonable.
31. Centre Management issued an interim service charge demand on 03 June 2012, based on their budget. Applying the terms of the lease that were in force at the time, the amount of the demand should have been £448.50 (50% of 1/10th of the estimated expenditure). However there was nothing to prevent the Applicants from demanding a lesser sum, based on 1/12th of estimated expenditure, as this was to the

Respondent's benefit. The interim service charges were due on the payment dates specified in the lease, of 25 December and 24 June.

32. The tribunal is satisfied that Centre Point would have demanded the same amount from the Respondent in December 2011. The demand issued in June 2012 refers to "Service Charge for 2nd Period, 6 months from 01/07/2012". This strongly suggests that a previous demand was issued in December 2011 for the earlier period from 01 January to 30 June 2012.
33. The service charge budget should have included the estimated cost of insuring the Building but did not do so. The lease does not permit the Applicants to demand insurance contributions separately from the Annual Maintenance Provision. It follows that the Respondent is not liable to pay the insurance contributions demanded in January 2013, after the end of the financial year, by way of an interim service charge.
34. The Respondent is liable to pay interim service charges based on the Annual Maintenance Provision for 2012 and the demands issued by Centre Management, in accordance the lease. She is not liable to pay the higher sum now being claimed by the Applicants, based on actual expenditure, as this does not comply with the lease terms.

Year ended 31 December 2013

35. The sum claimed for this year is £1,756.26. Again Ms McKay has made enquires of the managing agents and the service charges have not been paid.
36. The figure of £1,756.25 has been calculated with reference to a detailed budget of anticipated expenditure totalling £16,835 that was prepared by BEPM. The Respondent has been asked to pay 1/10th of this sum (**£1,684**). BEPM issued demands to the Respondent, each for half of this sum (£842) on 20 March 2013 and 27 June 2013.
37. CW demanded an insurance contribution of **£72.26** from the Respondent on 11 January 2013. The interim service charge being claimed by the Applicants, of £1,756.26, is the total of the insurance contribution and the sum of £1,684 referred to in paragraph 35 above. Again the Applicants contend that this sum should have been paid within 14 days of the demands made by BEPM and CW.

The tribunal's decision

38. The tribunal determines that the amount payable for interim service charges for the year ended 31 December 2013 is £1,684. Of this sum £842 was due on 03 April 2013 and £842 was due on 11 July 2013.

Reasons for the tribunal's decision

39. The service charge budget produced by BEPM amounted to the Annual Service Charge Provision. Again the Respondent has not challenged any of the figures in the budget. The tribunal is satisfied that the amount of the budget was reasonable.
40. The interim service charge demands issued by BEPM were correctly based on 1/10th of the Annual Service Charge Provision, in accordance with the lease terms then in force. The interim service charges demands were sent out after the payment dates specified in the lease. The tribunal accepts the Applicants' submission that payment should have been made within 14 days of the date of the demands. It follows that for the demand dated 20 March 2013, payment was due on 03 April 2013. For the demand dated 27 June 2013, payment was due on 11 July 2013.
41. Again the service charge budget should have included the estimated cost of insuring the Building but did not do so. The lease does not permit the Applicants to demand insurance contributions separately from the Annual Maintenance Provision. It follows that the Respondent is not liable to pay the insurance contribution demanded in January 2013, by way of an interim service charge.

Application under s.20C

42. The directions provided for the tribunal to determine whether an order should be made under section 20C of the 1985 Act, which would prevent the Applicants from passing any of its costs of these proceedings through the service charge. Taking into account the determinations above, the tribunal determines that it is not just and equitable to make such an order. The Applicants have been largely successful in that the bulk of the service charges claimed have been allowed. Further the Respondent has played no part in these proceedings and has not put forward any grounds for disputing the service charges.

Name: Jeremy Donegan

Date: 12 June 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 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.