



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

Case Reference : LON/00AZ/LSC/2013/0700

Property : Flat 2, 15 Ravensbourne Park,
London SE6 4XU

Applicant : Ground Rents (Regis) Limited
(landlords)

Representative : Mr S. Murch of counsel instructed
by Mr D. Bland (solicitor), Ms L.
Vidgeon and Ms N. Webb of Ground
Rents (Regis)

Respondent : Mr B. Dunwell (leaseholder)

Representative : In person

Type of Application : Determination of service charges,
(under s27A the Landlord and
Tenant Act 1985) following a
transfer of two claims in the
Croydon County Court

Tribunal Members : Professor James Driscoll, solicitor,
(Tribunal Judge), Mr Hugh Geddes
JP RIBA MRTPI and Mrs Lucy West
MBA (Tribunal Members)

**Date and venue of
Hearing** : 3 March 2014

Date of Decision : 28 April 2014

The decisions summarised

1. For the purposes of these claims the leaseholder's service charge contributions are based on a contribution of 10% of the landlord's costs.
2. The two interim demands for service charges are reasonable and they are payable in full.
3. Under the terms of the lease the landlord is responsible for carrying out both internal and external decorative works. (As there is another statutory consultation taking place there is no need for the tribunal to determine the reasonableness of the costs of the proposed decorative works).
4. No order is made under section 20C of the Landlord and Tenant Act 1985 ('the Act') limiting recovery of any professional charges that the landlord may have incurred in the tribunal proceedings.
5. The cases are transferred back to the Croydon County Court for further action.

Background

6. In this matter the applicant is the owner of the freehold of a building which contains six flats and it is the landlord under the flat leases. The respondent is the leaseholder of Flat 2 in the subject premises. We will refer to the parties as the 'landlord' and the 'leaseholder' respectively. At the hearing we were told that the leaseholder purchased the flat in or about November 1990. He does not live in the flat which he rents out presumably on an assured shorthold tenancy.
7. The leaseholder's flat is part of a building which consists of six units. At the hearing we were told that three of the units are tenancies regulated by the Rent Act 1967. The other three (including the respondent leaseholder's flat) are held on long leases. As such the landlord can recover one-half of its costs of insuring, managing and maintaining the building from the three leaseholders under the service charge provisions in their leases. It bears the other half of the costs itself as these cannot be passed on to the regulated tenants.
8. Following a transfer from the Croydon County Court the tribunal is required to make a determination of service charges under section 27A of the Landlord and Tenant Act 1985. The leaseholder seeks an order under section 20C of the Act limiting recovery of the landlord's costs as a future service charge.
9. The order transferring the claims was made on 28 September 2013. Directions were given following a case management conference held on 31 October 2013 which was attended by representatives of the landlord and the leaseholder who was unrepresented. The first claim (under the county court reference 2YJ23261) relates to charges for internal and external decorative

work to the subject premise in the sum of £701.26 and a demand for service charges on account in the sum of £324.29. The second (under county court reference 3YL65919) relates to service charges for the period 24 June to 24 December 2012 (in the sum of £490.36) and for the period 25 December 2012 to 23 June 2013 in the sum of £324.29 and for a demand in the sum of £934.41. It was directed that the two claims be heard together.

10. There have been previous proceedings involving these parties in this tribunal which are relevant to this application as the lease service charge provisions relate the amount payable by the leaseholders to the rateable value of the flat. Following those proceedings it was decided that this leaseholder should pay 10% of the landlord's charges.

11. The landlord has obtained the rateable values of the flats and it now proposes new percentages for the units with this leaseholder's contribution fixed at 16.2587%. In further directions given on 10 December 2013 it was directed that the issue of the service charge contributions be considered at the hearing.

The hearing

12. This took place on 3 March 2014. A bundle of documents was prepared by the landlord's advisors. The leaseholder prepared a separate bundle. The landlord instructed Mr Murch of counsel who handed us a copy of his skeleton submissions on the morning of the hearing.

13. Also present at the hearing were Mr Bland a legal executive employed by the claimant, Ms Vidgeon a client liaison manager and Ms Webb the property manager who works for Countrywide Estate Management, the appointed managing agents. The leaseholder was unrepresented.

14. We were told that under the leases service charges are made for expenditure incurred for each calendar year (referred to in the lease as the 'accounting year'). Provisions governing the setting and the collection of service charges are set out in the fifth schedule to the leases. We were provided with a copy of the lease in the bundle of documents. In the usual way the lease provides for the landlord to demand two interim payments each year. These interim charges can be levied on 24 June and 25 December each year. At the end of each accounting year a statement should be prepared by the landlord showing the expenditure for that year and whether the amounts payable by the leaseholder exceeded the actual expenditure, or were less, in which case the landlord will levy a demand for the amount outstanding.

15. At the hearing Ms Webb told us that she is the manager of the subject property and she spoke to a statement signed on 9 January 2013. She addressed the challenges to the recovery of the charges for the accounting periods 2012 and 2013. She states that, in a schedule of complaints and comments, the leaseholder includes earlier service charge periods than those which are the subject of these applications and which were also dealt

with in earlier proceedings before this tribunal. No comments were made, therefore, on the matters raised for periods before 2012.

16. She claims that the accountancy fees (£480), the common parts cleaning (£25) (a service that has been discontinued because of lack of funds) and gardening (£25) (another service which has been discontinued because of lack of funds) are recoverable.
17. On the other items for the 2012 period she explained that £216 was spent on repairs to the drain and an invoice for the work is included in the bundle.
18. As to the management fees (£1,872) she argues that the landlord has the right to appoint a manager under clause 5 (v) of the lease and that these fees are reasonable and in line with the rates charged by managing agents for properties in this general area.
19. Turning to the decorative works, she claimed that a full statutory consultation was carried out under section 20 of the Act and in accordance with the regulations made under that provision. However, the proposed works have not been carried out as they have not received sufficient funds and the selected contractor now wants a higher price. An additional consultation is currently taking place. She added that in her opinion the landlord is entitled to carry out external and internal decorations and charge the costs to the leaseholders under the terms of the lease. The contributions received from other leaseholders would, she said, be 'ring-fenced' for the works when they are eventually carried out.
20. Ms Webb also addressed us on the interim charges for the year ending 2013. She told us that these estimates are based on the actual expenditure for the previous year and on other works that may need to be carried out.
21. Mr Dunwell addressed us on his challenges to the service charges claimed from him. He had prepared written statements including a schedule of charges (many though outside the scope of this application) with his objections. On the charges which are the subject of these proceedings, he claims that he has not been given a statement of rights as required by section 21B of the Act. It is likely, he told us that the landlord has sent demands and other documentation to the wrong address. He added that he has kept the landlord informed of any change of address.
22. He complains that the service charge demands were made outside the 18 month period stipulated in section 20B of the Act; that the service charge accounts have not been certified by an accountant as required by the RICS Residential Management Code; that he was not consulted over the proposed decorative works and that works carried out were not of a good standard. He also alleges that the landlord has failed to comply with section 42 of the Landlord and Tenant Act 1987.
23. Mr Dunwell is unhappy with the quality of the management of the premises. He contends that the current managing agents failed to carry out

timely repairs to the building and that damage was caused to his flat as a result. Mr Dunwell is unhappy with the way in which the landlord and the managing agents have pursued arrears of service charges. He intends applying to the tribunal for a manager to be appointed under the provisions in Part II of the Landlord and Tenant Act 1987.

Reasons for our decision

24. We explained to the parties at the hearing that our consideration of this case is confined to the matters that were transferred to us for determination by the Court. There has been a history of litigation between the parties which may have left a legacy of mistrust. Copies of past decisions of this tribunal between the parties were included in the bundles. These decisions illustrate the history of disputed charges and other matters but they are not (subject to one caveat) otherwise relevant to our consideration of the claims that were transferred to us by the Court. These decisions are, however, relevant in one respect and this relates to the service contributions under the leases. In decision LON/00AZ/LSC/2009/0459 this tribunal stated that the landlord should take immediate steps to change the service charge provisions by ascertaining the rateable values. Then in decision LON/00AZ/2009/0809 the tribunal applied 10% as the proportion payable by the leaseholder in the absence of any other information.
25. At the hearing Mr Murch referred to a letter sent on behalf of the landlord to the tribunal dated 28/11/13 which set out the relevant rateable values for each of the six units proposing the proportion 16.2587% for flat 2. He repeated the proposal that this should be applied to the charges which are disputed in this case as well as to future service charges.
26. We have considered this suggestion but we reject it for the purposes of these cases. The landlords having been previously directed to charge 10% we see no reason why this should be changed retrospectively. The landlord may wish to consult all of the leaseholders on the proposed new service charge percentages for the future. Variations to the leases may be necessary. But these issues are for the future. We will proceed to determine the recoverable service charges on the basis that the leaseholder's contribution is based on 10% of the relevant costs incurred by the landlord.
27. We turn next to the charges which we repeat are for the costs of decorations and two demands for payments in advance. Bearing in mind that the landlords are now embarking on a fresh consultation we will limit ourselves to the challenges made by the leaseholder.
28. First, we note that the demands were sent to the leaseholder at his address in Ascot which is the address he confirmed when he attended the pre-trial review on 31 October 2013.
29. Second, we note that the statement of rights was attached to these demands (see pages 237 to 240 of the landlord's bundle).

30. Third, is the issue of whether the landlord is required to carry out external and internal decorations. This issue must be determined by considering the relevant terms of the lease. Clause 5(v) B of the lease imposes the obligation to paint the whole of the outside wood aluminium or other work of the building (Clause 5(v) B (a)) and to paper varnish (etc.) of the interior of the building (ibid. sub-paragraph (b)). There is also a more general reference in Clause 5(v) F of the lease to the landlord having power to employ (amongst others) tradesman in relation to the building.
31. This leads us to conclude that the landlord is entitled or required to carry out these sorts of decorative works. It would be surprising if there were not such an obligation in the lease, otherwise neither the landlord nor the leaseholders could be required to carry out such works.
32. Fourth, is the issue relating to the statutory consultation which the leaseholder challenges. As the landlord has indicated that a fresh consultation is being undertaken there is no need to make a determination.
33. In summary, we determine that the landlord has a power and a duty to carry out external and internal decorative works.
34. As to the other charges, we consider that the two interim demands are reasonable. Under section 27A (3) of the Act, the tribunal can make, in effect, advance determinations. This sensible measure provides protection for leaseholders who consider that they are being charged exorbitant or unreasonable demands for services that are yet to be delivered. It provides a remedy also for landlords who wish to obtain confirmation that the proposed costs of works, for example, are reasonable and recoverable under the leases. As these demands were based on information from previous years we determine that they are reasonable demands.
35. As to the leaseholder's other challenges, we find that the accounts were signed off by an accountant as evidenced by the papers in the bundle. His allegation that there has been a breach of the requirements in section 42 of the Landlord and Tenant Act 1987 is not substantiated and besides is not relevant to the determination of the issues transferred to the tribunal for determinations. We find that the individual expenses claimed were reasonably incurred. They were carried out in accordance with the landlord's duties under the lease and they were required. We note also that some of the costs, such as the cleaning costs, would have been higher, but they were discontinued as the landlord was not in funds to continue to pay for them.
36. Finally, we deal with the leaseholder's application for an order to be made under section 20C of the 1985 Act. As the proceedings were transferred to this tribunal by the court, the landlord had little option other than to continue with the proceedings. Whether any costs incurred are reasonable (or, indeed recoverable under the lease) is a question for future service charges. Issues relating to the costs of the court proceedings are clearly a matter for the court.

**Professor James Driscoll
Solicitor and Tribunal Judge**

Appendix of the 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

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.

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.

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. 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.