



FIRST-TIER TRIBUNAL  
PROPERTY CHAMBER (RESIDENTIAL  
PROPERTY)

Case Reference : LON/OOBE/LSC/2014/0057

Property : 1 HANWORTH HOUSE JOHN RUSKIN  
STREET LONDON SE5 0XF

Applicant : LONDON BROUGH OF SOUTHWARK

Representative : Ms E Bennett, senior income  
enforcement officer, Mr G Dudhia,  
service charge accountant & Ms T Cox,  
capital works officer

Respondent : Ms M ONWUTA

Representative : Ms L Butcher, litigation friend and  
supported by Mr M Orey, Chair of Home  
Owners Council, Southwark area

Type of Application : SECTION 27A LANDLORD AND  
TENANT ACT 1985 ("1985 Act")

Tribunal Members : JUDGE T RABIN  
MR A MANSON FRICS  
MRS L WEST

Date and venue of Hearing : 21<sup>st</sup> May 2014 10 Alfred Place, London  
WC1E 7LR

Date of Decision : 31<sup>st</sup> May 2014

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DECISION

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## **The application**

1. The Tribunal was dealing with an application transferred from the Northampton County Court on 28<sup>th</sup> January 2014 as to whether the service charges demanded pursuant to s.27A of the 1985 Act during service charge years 2012/13 (actual) and 2013/14 (estimated) and major works charges from 2012 and continuing are reasonable and payable by the Respondent. The application relates to 1 Hanworth House, John Ruskin St London SE5 0XF ("the Flat"). The Applicant is the freeholder of the estate where the Flat is located ("the Estate") and the Respondent is the long leaseholder of the Flat.
2. The relevant legal provisions are set out in the Appendix to this decision.
3. In view of the nature of the claim it was determined that an inspection was not necessary.

## **The Hearing and Evidence**

4. The application was heard on 21<sup>st</sup> May 2014. The Applicant was represented by the persons mentioned above and the Respondent was accompanied by a litigation friend.
5. Ms Butcher made an application for an adjournment on the basis that the papers were delivered late and she was still awaiting information about the costs of the major works. Ms Bennett pointed out that there were full details of the tender process, the costs and the breakdown for the block in which the Flat is located to be found in the bundle and that these had been served on the Respondent only very slightly late. The Tribunal agreed that there had been full disclosure of the costs of the major works and refused the request for an adjournment. After Ms Bennett had identified the pages of the bundle where the information could be found, the Tribunal adjourned for 20 minutes to allow Ms Butcher and the Respondent to refresh their memories.
6. Ms Bennett said that there had been further payments since the summons was issued in the County Court and that the amount owing for service charges was now £72.04, representing the adjustment to the estimated charges for 2012/13. The major works still had £2,099.78 outstanding as at 16<sup>th</sup> May 2014. Ms Butcher disputed this as further sums had been paid as recently as the week ending 16<sup>th</sup> May 2014 and these had not been taken into account. The Tribunal made it clear that its role was limited to determining whether charges were reasonable and properly payable. Any disagreement about the level of sums paid toward the service charges has to be determined by the parties outside

the Tribunal, as the Tribunal has no jurisdiction to make such a judgement.

7. Ms Butcher also pointed out that the statement of Ms Thackerey, the revenue service charge officer, referred to an amount owing of £1,032.31 and not this sum now claimed. She said that the Respondent had relied on this as the outstanding figure. Ms Bennett acknowledged this was an error and had explained this in writing to the Respondent the day the issue had been raised by her. Ms Bennett said she had been unable to clarify the figure with Ms Thackerey who is in a different team dealing with service charges as she is currently away.
8. Since the application dealt with both service charges and major works, these will be dealt with separately.

### **Service charges 2012/3**

9. The Respondent had received demands for an estimated service charge of £2,392.39, which sum had been paid as at the date of the hearing. The actual service charges were calculated after the end of the financial year and accounts prepared. A copy of the final accounts were served on the Respondent as well as the actual service charge demand of £2,464.43. This left a balance of £72.04, which remains unpaid as at the 16<sup>th</sup> May 2014.
10. Ms Butcher said that all the sums had been paid because the Respondent had made further payments since the statement produced. In any event she considered the service charges unreasonable. She objected to some of the charges and produced a Scott Schedule half way through the hearing and Ms Bennett was willing to consider the points raised. These were as follows:
  - (a) Some items are in the wrong accounting period. This point was conceded by Ms Butcher after Mr Dudhia had explained the Applicant's accounting procedures.
  - (b) Some items were not communal. In reviewing some examples, Mr Dudhia explained that the Applicant considered any of the structure as communal. This definition was broad and included communal heating and ventilation, radiators, windows, door entry system, drains and stairs.
  - (c) Some items should have been covered by insurance or warranties. Mr Dudhia explained that the insurance policy would not cover items where there had been wear and tear and it was not economical to submit small claims. All the items referred to were for

relatively small sums. As far as warranties were concerned, the Applicant did not consider that it was reasonable to try and pursue warranties where there could have been fair wear and tear or misuse.

### **Service Charges 2013/2014**

11. The Respondent had paid the estimated service charges in full. Ms Butcher agreed that it would be practical to wait for the final accounts before raising any issues of disagreement.

### **The Tribunal's decision**

12. The Tribunal has carefully considered the issues raised by Ms Butcher and has perused examples of the matters raised in the Scott Schedule. The Applicant has given full explanation of the costs and these have been audited and found to be very accurate. The service charges have covered general repairs and maintenance of the Building and the heating and hot water supply. The Respondent provided no evidence to demonstrate that the sums charged were unreasonable and, having considered the arguments by both parties, the Tribunal finds that the service charges are reasonable and payable.

### **Major works**

13. Ms Butcher said the Respondent had not had details of the costs of the major works or the expenditure to date. The Respondent did not know what she was paying for or how she would know if there was any overlap with standard service charges.
14. Ms Bennett explained where the figures had been identified in the bundle and the process undertaken by the Applicant when undertaking major works. The works have not yet been completed but an estimate has been provided and, if appropriate, a Section 20B Notice will be served.

### **The Tribunal's decision**

15. Although there was no objection to the Section 20 process by the Respondent, the Tribunal considered the notices served. These were all in proper form and the Respondent had been provided with copies of the tender documents, pricing schedule, tender analysis and priced schedule of works. She was also given a breakdown of the block cost and the cost to her.

16. The Tribunal found that the Section 20 procedure had been properly followed. Multiple tenders had been sought and, following a tender analysis, the lowest tender was accepted. The estimated sum is reasonable and payable by the Respondent.
17. There seems to be some disagreement about the amount actually paid. Ms Bennett has promised to send the Respondent an up to date statement of account and hopefully this will clarify the situation. It should be noted that there is nothing due for 2013/4.
18. Mr Orey had not been identified during the hearing but was introduced by the Respondent after the hearing had closed. With the agreement of Ms Bennett, Mr Orey addressed the Tribunal. He expressed the hope that in future, with his organisation's help, more service charge cases could be settled at an early stage without coming to the Tribunal. This is a wish heartily endorsed by the Tribunal members.

### **Section 20C**

19. Ms Butcher made an application for a Section 20C order to the effect that the costs of these proceedings should not be regarded as proper costs to be included in the service charge. Ms Bennett said that the Applicant did not add costs of proceedings to the service charge. In the circumstances the Tribunal made no order but would not have made an order in any event.

Judge Tamara Rabin

31<sup>st</sup> May 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.
- (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.
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- (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).