



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

Case Reference	CAM/00MD/LSC/2015/002
Property	Flat 70, 26-72 Rutland Avenue, Slough SL1 3AL
Applicant	242 Management Company Limited
Respondent	Mrs Humera Mohammed
Application	Determination of the liability to pay and reasonableness of service charges & administration charges pursuant to s27 of the Landlord & Tenant Act 1985.
Tribunal Members	Judge Reeder Mrs Sarah Redmond BSc ECON MRICS (valuer member) Mr Peter Tunley (lay member)
Date of inspection	14 April 2015
Date of hearing	14 April 2015
Date of Decision	14 April 2015

DECISION

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DECISION

The jurisdiction issue

1. The order made in county court proceedings (No. A1QZ1551) by District Judge Bishop on 12 August 2014 is not a determination by a court for the purposes of s27A(4)(c) of the Landlord & Tenant Act 1985. This tribunal has jurisdiction pursuant to s27A(1) of the 1985 Act to determine the reasonableness of the service charges demanded.

The procedural breach issue

2. The 'written submissions' document dated 19 February 2015 and file by the applicant is sufficient to comply with the tribunal directions order which required it to file and serve a skeleton argument on the jurisdiction issue.

The service charge demand issues

3. The tribunal determines that the relevant service charge demands have in fact been served on the respondent and rejects the respondent's claim not to have received the same.
4. The tribunal determines that the relevant service charge demands have been properly served by sending the same to the respondent by first or second class post.
5. The tribunal determines that, in any event, the relevant service charge demands have been served on the respondent by recorded delivery on 3 October 2014.
6. The tribunal determines that the relevant service charge demands were served on the respondent within 18 months of the relevant costs being incurred so as to satisfy s20B(1) of the Landlord & Tenant Act 1985, or in the event they were not then the applicant has, within 18 months of incurring the costs, notified the respondent that those costs have been incurred and that she will subsequently be required under the terms of the lease to contribute to them by way of service charge, so as to comply with s20B(2) of the 1985 Act.

The service charges challenged

7. The tribunal determines that the management charge challenged is reasonable and payable.
8. The tribunal determines that the accounting charge challenged is reasonable and payable.
9. In relation to the other relevant costs recharged as service charges to the respondent and not expressly challenged in these proceedings, the tribunal determines that they are reasonable and payable.

The costs of the proceedings before this tribunal

10. The tribunal refuses the respondent's application for an order pursuant to section 20C of the Landlord & Tenant Act 1985 to preclude the applicant from re-charging its costs of these tribunal proceedings as a service charge.
11. The tribunal orders that the respondent do reimburse to the applicant the whole of the tribunal issue fee and the tribunal hearing paid by the applicant, pursuant to regulation 13(2) of the First-Tier Tribunal (Property Chamber) Rules 2013).

REASONS

The application, parties, premises & disputed service charges

12. The applicant is 242 Management Company Limited. The application is conducted on their behalf by their managing agent Urban Owners. They pursue service charges which they allege are owing in respect of flat 70, 26-72 Rutland Avenue, Slough SL1 3AL and relate to service charge account years 2012, 2013 and 2014.
13. The leasehold owner of that flat is the respondent Mrs Humera Mohammed. She has not been present at the hearing. She herself has not filed a statement of case. She herself has not filed any evidence. The proceedings have been conducted for her by her husband Mr Mohammed

Zia Ayub Khan. He is the author of the statement of case and all correspondence relied upon for the respondent.

14. Mr Khan previously represented the respondent before the tribunal in September 2012 (No. CAM/00MD/LSC/2012/0092) when the service charges to 2012 were challenged. In that decision the tribunal remarked that he "pursued his arguments with vigour" and that "the approach he has taken and language he has chosen during the hearing suggest that he may in fact be the author of the written statements submitted on behalf of his wife". Those comments apply equally to his appearance before the tribunal today. The tribunal has urged him to remember that he is representing not himself but the respondent, his wife. It is the respondent that is at risk of accruing costs liability for ill-considered challenges to the service charges demanded.
15. Mr Khan's oral advocacy has been pursued with vigour to the point of disrespect on more than one occasion today. Nonetheless, this tribunal has used its best endeavours to carefully and courteously entertain, analyse and determine the issues which Mr Khan has raised and pursued on behalf of the respondent.

The inspection by the Tribunal

16. The tribunal has made a visual inspection of the internal common parts of the block in which flat 70 is situated, together with the external elevations and immediate grounds of the block in the company of Mr Steven Charles, legal case manager for Urban Owners who are the managing agent for the applicant landlord. The respondent has neither attended nor been represented at the inspection. By letter to the tribunal office dated 12 March Mr Mohammed Khan stated that he will not be attending the inspection as "I consider it a waste of time due to the reason that the inspection should be done without prior notice to get the actual facts and figures not asking 1 month prior for inspection so everything is done and the property is made neat and tidy". In the circumstances the tribunal has endeavoured to inspect all of those parts which are relevant to the service charges demanded.

The hearing before the Tribunal

17. The claimant has been ably represented by Mr Steven Charles, legal case manager for Urban Owners who are the managing agent for the applicant landlord. The respondent has not attended the hearing but has been represented by her husband Mr Khan. His appointment as her representative is confirmed in writing and re-affirmed by him orally at the outset of the hearing.
18. The tribunal is provided with an indexed hearing bundle provided by the applicant, and with a separate indexed hearing bundle provided by Mr Khan on behalf of the respondent.
19. Those bundles provide us with the s27A LTA 1985 application by the applicant, the s20C LTA 1985 application for the respondent, the lease for flat 70, the service charge statements of account, the periodic service charge requests for payment, the order of DJ Bishop dated 12 August 2014 and related correspondence, written submissions on behalf of the applicant, a detailed 'response statement' by Mr Khan on behalf of the respondent, a volume of 'additional correspondence' between the parties, and a volume of correspondence between Mr Khan for the respondent and the tribunal office.
20. These documents have been considered with care by the tribunal.

21. Both parties have been given ample opportunity to address us on the relevance and importance of those documents, and to present their arguments.

The lease

22. The tribunal is provided with a copy lease which the parties confirm is the relevant lease for the premises. The tribunal has considered this lease carefully. The parties have been given the opportunity to address the tribunal on the lease provision which may be relevant to the dispute.

The law

23. The Landlord & Tenant Act 1985 as amended by the Commonhold & Leasehold Reform Act 2002 sets out the Tribunal's jurisdiction to determine liability to pay service charges. Section 27A(1) of 1985 Act provides as follows -

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 is payable.

24. Section 27A(4) of the 1985 Act provides that 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.

25. Section 27A(7) of the 1985 Act provides that the jurisdiction conferred on a leasehold valuation tribunal in respect of any matter by virtue of this section is in addition to any jurisdiction of a court in respect of the matter.

26. Section 18 of the 1985 Act sets out the meanings of 'service charge' and 'relevant costs'.

27. Section 19(1)(a) of the 1985 Act provides that "relevant costs shall be taken into account in determining the amount of a service charge payable for a period only to the extent that they are reasonably incurred".

28. Section 19(1)(b) of the 1985 Act provides that "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".

Discussion & determinations

The jurisdiction issue

29. Mr Khan argues that this tribunal has no jurisdiction to determine the reasonableness of and liability to pay service charges because that issue has been determined in August 2014 by a judge sitting in the county court. He says that the issue is 'res judicata'.
30. 'Res judicata' is the Latin expression used in law to identify a matter already determined by a court or tribunal which should be treated as finally decided and closed and so not be subsequently revisited by a court or tribunal.
31. This principle is expressly incorporated into the jurisdiction of this tribunal by s27A(4)(c) of the Landlord & Tenant Act 1985 which provides that no application to this tribunal in respect of a matter which has been the subject of determination by a court.
32. Mr Khan argues that an order made by District Judge Bishop sitting in the county court at Croydon on 12 August 2014 is such a determination by a court. He bases this argument entirely on the order itself. He confirms to us that he was not at that hearing. No evidence is produced from anyone who attended that hearing with or for Mrs Mohammed. No evidence is filed from Mrs Mohammed.
33. The applicant has previously issued county court proceedings (No. A1QZ1551) against the defendant in respect of the services charges which are now the subject of this application to the tribunal. The amended particulars of claim filed makes reference to the previous tribunal determination in 2012 and state "...there has been no substantial change in the services provided or service charge amounts demanded since this decision. The leaseholder has not raised any new disputes that would require an application to the [tribunal]".
34. A defence was filed on behalf of the defendant Mrs Mohammed by her husband. The matter came before District Judge Bishop on 12 August 2014. 242 Management are recorded as attending by a representative and Mrs Mohammed is recorded as attending by counsel. The district judge dismissed the application and ordered 242 Management to pay costs assessed at £250. There is no narrative to indicate anything more.
35. In its written submission to this tribunal dated 19 February 2015 the applicant states that it expected the 12 August 2014 hearing to be a procedural or case management hearing. It did not appreciate that it would be treated as a final hearing. Accordingly, it did not file any evidence at all as to the reasonableness of the service charges being claimed.
36. Paragraph 12 of that submission states "the judge made it very clear in the hearing that she was not making any ruling on the issue of service charges but was dismissing the application on procedural grounds. She stated that a new claim could be made to deal with the matter again." Although included in this written submission this is in fact the direct evidence of Mr Steven Charles who represented the claimant at that hearing and represents the applicant again at this hearing before us today. He has confirmed his clear recollection of the hearing on 12 August 2014 to us orally during this hearing. We accept his account of that hearing.
37. Part way through this hearing Mr Khan has produced for the first time a skeleton argument dated 6 August 2014 and written by counsel for Mrs Mohammed which he believes was used for or at the 12 August hearing. Mr Mohammed has provided no reasonable explanation for the failure to include this in the argument or evidence filed in advance of this hearing.

Nonetheless, mindful that Mr Khan is a lay representative, we have considered it and indeed Mr Steven Charles who represents the applicant has not sought to dissuade us from considering it.

38. That skeleton argument raises a number of points : the amended particulars of claim have no statement of truth, the amended particulars of claim do not explain how the sum demanded is calculated, the claimant had filed no witness statement despite a directions order dated 2 June 2014 which required one, the claimant had produced no evidence of service charge demands, the defendant had produced no 'express certification of the reasonableness of the service charges' and the defendant disputed the service charge account annexed to the particulars of claim. The tribunal takes the view that this reinforces the analysis that the order made on 12 August 2014 is based on a finding of procedural failure rather than a determination of the substantive dispute.
39. By letter dated 4 September 2014 the court has confirmed the following comment by District Judge Bishop on her order made on 12 August 2014 : "the decision was made on the basis that no evidence had been filed which could allow the court to reach a decision within the proceedings". The tribunal takes the view that this further reinforces the analysis that the order made on 12 August 2014 is based on a finding of procedural failure rather than a determination of the substantive dispute.
40. Having regard to the evidence and information before us including the wording of the order made on 12 August 2014, the explanatory comment by District Judge Bishop on 4 September 2014 and the evidence of Mr Steven Charles who attended that hearing we are satisfied that the order dismissed the claim for a procedural failure (not filing evidence to support the claim) rather than any determination of the substantive dispute being the reasonableness of and/or liability to pay the service charges being pursued.
41. Accordingly, Mr Khan's argument is rejected. The order made by District Judge Bishop on 4 September 2014 is not a determination for the purposes of s27A(4)(c) of the Landlord & Tenant Act 1985. This tribunal has jurisdiction to determine the reasonableness of the service charges demanded.

The procedural breach issue

42. The tribunal directions order dated 5 February 2015 required the applicant to file and serve "a skeleton argument as to why it contends that the tribunal has jurisdiction in respect of the service charges which were the subject of the county court claim....this must include copies of any judgements cited as authorities".
43. The preamble to that order stated "failure to comply with directions could result in serious detriment to the defaulting party eg. the tribunal may refuse to hear or all or part of that party's case and orders may be made for them to reimburse costs or fees thrown away as a result of the default".
44. Mr Khan argues that the applicant has failed to comply with that directions order as it has not filed a skeleton argument and has not filed any copies of legal authorities.
45. Mr Charles argues that the document titled "written submission on behalf of the applicant" dated 19 February 2015 is in effect a skeleton argument, and that no copy legal authorities were filed as none are relied upon.

46. The requirement of the directions order is clear : it requires a written argument in relation to the jurisdiction issue, and copies of any legal authorities which are relied upon to support that argument.
47. The applicant's written submission document dated 19 February is exactly that. It sets out the argument pursued perfectly clearly and adequately. When asked by this tribunal what is missing from 'this written submission' which would be required in a 'skeleton argument' Mr Khan has been unable to identify anything other than the differing title for the document itself.
48. It is obviously apparent that no copy legal authorities are provided as no authorities are relied upon or cited in the written submission.
49. This tribunal is satisfied that the applicant is not in breach of the tribunal direction order and Mr Khan's argument is rejected.

The service charge demand issues

50. Mr Khan argues that no service charges are due as no service charge demands have been served, or alternatively no such demands have been validly served.
51. The claim that no demands have in fact been served is made for the first time during the hearing and is not previously relied upon before the county court or in the written materials filed for these tribunal proceedings. Mrs Mohammed, as lessee and respondent, has filed no evidence to support this argument. Mr Steven Charles has taken us to the relevant service charge administration documentation in the applicant's hearing bundle (pages 122-138) and has explained in detail the administrative procedures used to serve service charge demands on Mrs Mohammed in common with the 23 other lessees in Rutland Avenue. He states that no other lessee has suggested that they do not receive their service charge demands, and that in fact all are up to date with their payments.
52. Mr Charles states that Mrs Mohammed has never raised this issue before and reminds us that it was not raised in the service charge proceedings before the tribunal in 2012. Mr Khan accepts that Mrs Mohammed has never raised the issue of non-receipt of service charge demands. Nonetheless, he maintains that he raises it now on her behalf and instructions.
53. Having regard to the evidence before it on this issue the tribunal has no hesitation in rejecting Mr Khan's contention that no service charge demands have in fact been served. His argument is ill conceived. We fear it is not taken on Mrs Mohammed's instructions. It is clearly pursued in the absence of any evidence whatsoever to support it. All of the available evidence suggests that service charge demands have been received by Mrs Mohammed. The argument has no merit whatsoever.
54. Mr Khan further argues that, even if service charge demands were in fact served, such service is ineffective because the lease requires service by recorded delivery. The applicant accepts that, until October 2014, service charge demands were served on the respondent by normal first or second class post.
55. Clause 8.6 of the lease provides "section 196 of the Law of Property Act 1925 (as amended by the Recorded Delivery Act 1962) shall apply to any notice demand or instrument authorised to be served and any notice served by the lessor shall be sufficiently served if served by any agent of the lessor".

56. Section 196(3) of the 1925 Act provides that "any notice required or authorised by this Act to be served shall be sufficiently served if it is left at the last-known place of abode or business in the United Kingdom of the lessee, lessor, mortgagee, mortgagor, or other person to be served, or, in case of a notice required or authorised to be served on a lessee or mortgagor, is affixed or left for him on the land or any house or building comprised in the lease or mortgage".
57. Section 196(4) of the 1925 Act provides "any notice required or authorised by this Act to be served shall also be sufficiently served, if it is sent by post in a registered letter addressed to the lessee, lessor, mortgagee, mortgagor, or other person to be served, by name, at the aforesaid place of abode or business, office, or counting-house, and if that letter is not returned by the postal operator undelivered; and that service shall be deemed to be made at the time at which the registered letter would in the ordinary course be delivered.
58. As a matter of law any requirements for the service of demands, whether contractual or statutory, must be strictly complied with. Clause 8.6 must be considered strictly and within the context of the whole lease. The lessor is concerned to ensure that the demand can be served on the lessee and not be avoided. The lessee is concerned to ensure that the demand is received by her so that she knows how much is due, when it due, and what it is due for.
59. In the judgement of this tribunal clause 8.6 is not intended to be mandatory provision which requires that the service of demands by post is to be effected exclusively by registered post or recorded delivery. This view is supported by the decision of the Upper Tribunal (Lands Chamber) in *G&O Investments Ltd & Naznin Khan [2014] UKHT 0096 (LC)*.
60. In any event, it is apparent from the documentary evidence before this tribunal that the demands were re-served on Mrs Mohammed by recorded delivery on 3 October 2014. The tribunal records that Mr Khan accepts this. It follows that, even if this tribunal is wrong in its interpretation of clause 8.6 of the lease, the service charge demands have nonetheless been validly served on Mrs Mohammed by 3 October 2014.
61. In relation to service charge demands Mr Khan's final argument, pursued orally before us for the first time, is that the demands served by recorded delivery on 3 October 2014 are not effective as they are not served within 18 months of the costs being incurred.
62. The last tribunal decision dealt with service charges up to 31 March 2012. Mr Charles confirms to us that the relevant costs giving rise to the service charges now being considered were incurred from April 2012 onwards.
63. Section 20B(1) of the Landlord & Tenant Act 1985 requires that demands be served within 18 months of the relevant costs being incurred. In the event that they are not then section 20B(2) of the 1985 Act operates so that they are payable if the landlord has, within eighteen months of incurring the costs, notified the tenant that those costs have been incurred and that the tenant will subsequently be required under the terms of the lease to contribute to them by way of service charge.
64. Having already found that the service charge demands included within the hearing bundle were validly served it follows that Mrs Mohammed was certainly notified of the costs incurred within the prescribed time limit, and has on any analysis now received valid demands for the same.

The service charges challenged

65. The 'response statement' filed by Mr Khan on behalf of Mrs Mohammed does not challenge individual service charge years or items but restricts itself to the generic issue challenges determined above. Nonetheless, he has now sought to challenge the management charges as being too high, and the accountancy fee on the ground that no accounts have been produced.
66. Mr Khan's conduct of these proceedings is similar to his conduct of the previous tribunal proceedings in 2012. In effect he acts so as to delay, obfuscate or prevaricate when service charges are demanded. This causes delay, inconvenience and cost to the applicant and to the other lessees in Rutland Avenue. To avoid further delay and expense by Mr Khan simply re-directing his challenge to the individual service charge items at a later date this tribunal has considered whether they are reasonable and payable.
67. The relevant service charge years are confirmed in the application (page 4 of the applicant's bundle) as April 2012-September 2012, 2012-2103 and 2013-2014. The service charge items are detailed in the application (page 9 of the bundle). The service charge account is produced in the bundle (page 47) and the account from 12 March 2012 is relevant to this present application.
68. Mr Charles has conceded that the account shows two charges included in error which will be deleted : 6/11/12 disbursement of £182 and 6/11/12 legal costs of £945.
69. In relation to the management charge Mr Charles states this is has increased since the previous tribunal decision in September 2012 because Urban Owners have taken on a full management role since October 2012. Mr Khan argues that such an arrangements does not provide value for money as a lower charge can be achieved by appointing one agent to carry out all management and maintenance tasks including lease management, service charge recovery, common parts cleaning and grounds maintenance. He states that he has another flat in a 6 unit block which has a global service charge of £250p/a. He provides no evidence in relation to this.
70. The tribunal is satisfied that the management arrangement comprising Urban Owners as managers and others appointed to carry out repairs, maintenance, cleaning and gardening is a perfectly reasonable arrangement which provides value for money and results in reasonable relevant costs.
71. The tribunal is satisfied that the relevant cost, being the management charge levied by Urban Owners is reasonable and payable. It is within the reasonable scale of charges for a block of this type requiring management of this type. Mr Khan has provided no useful comparator evidence to suggest otherwise.
72. In relation to the accounts both the tribunal and Mr Khan have been handed copies of the accounts for the relevant years during the hearing. This disproves Mr Khan's contention that none have been prepared. Further, correspondence in the applicant's hearing bundle between Urban Owners and Mrs Mohammed evidences that she has been provided with copy accounts. This disproves Mr Khan's contention that she has not received accounts. The accounts are produced by Messrs Winter & Co. The circumstances are the same and the relevant costs similar to the position in the previous decision on this tribunal in 2012. Once again, this tribunal considers the costs to be reasonable and payable.

The costs of the proceedings before this tribunal

73. Mr Charles indicates that the applicant will seek to recharge its costs. It appears to the tribunal that the applicant is entitled to recharge its costs of these tribunal proceedings pursuant to clauses 7 and/or 14 of Part B of the 6th Schedule to the lease.
74. The respondent has made an application for an order pursuant to section 20C of the Landlord & Tenant Act 1985 to preclude the applicant from re-charging its costs of these tribunal proceedings as a service charge. The grounds for challenging the service charges have been rejected and, in large part, been misdirected and without merit. In the circumstances the tribunal declines to make an order.
75. Given that the grounds for challenge have been in large part misdirected and without merit the tribunal makes an order requiring the respondent to reimburse to the applicant the whole of the tribunal issue fee and the tribunal hearing paid by the applicant, pursuant to regulation 13(2) of the First-Tier Tribunal (Property Chamber) Rules 2013).
76. The respondent is directed to the comments made in this decision about Mr Khan's conduct of these proceedings on her behalf. Both she and Mr Khan are reminded that the tribunal has the power to make an order requiring a party to pay the costs of the other party on the ground that the paying party has acted unreasonably in bringing, defending or conducting the proceedings before the Tribunal, pursuant to regulation 13(1)(b) of the First-Tier Tribunal (Property Chamber) Rules 2013). No such order is made on this occasion. No such indulgence might be afforded on a future occasion if similar conduct is repeated before the tribunal.



Stephen Reeder
Judge of the First Tier Tribunal

May 2015