

10884



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

**Case reference** : **LON/00AG/LSC/2014/0518**

**Property** : **Flat 29, The Chenies, Pancras Road,  
London NW1 1UH**

**Applicant** : **London Borough of Camden**

**Representative** : **Ms I. Ettienne, Consultation and  
Final Accounts Officer; London  
Borough of Camden**

**Respondent** : **Mr Shamum Uddin**

**Representative** : **No appearance**

**Type of application** : **Liability to pay annual service  
charges (Section 27A and 20C  
Landlord and Tenant Act 1985)**

**Tribunal members** : **Judge Lancelot Robson  
Mr W. R. Shaw FRICS**

**Venue** : **10 Alfred Place, London WC1E 7LR**

**Date of decision** : **29th April 2015**

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**DECISION**

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**Decision Summary**

- (1) The total amount of service charge claimed in this application, as claimed by the Applicant at the start of the hearing, is £3,331.76.
- (2) The sum of £3,331.76 is reasonable and payable by the Respondent.
- (3) The sum due shall be paid by the Respondent within 21 days of the date of this decision.

- (4) The Tribunal made no order limiting the landlord's costs under Section 20C of the Landlord and Tenant Act 1985.
- (5) The Tribunal made an order for reimbursement by the Respondent of the fees totalling £190 paid by the Applicant to the Tribunal, under Regulation 13(2) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.
- (6) The Tribunal makes the other determinations as set out under the various headings in this decision.
- (7) This case shall now be referred back to the County Court at Bow to decide upon costs in the County Court action and any other outstanding matters not within the Tribunal's jurisdiction.

### **Application**

1. The Applicant seeks a determination pursuant to Section 27A of the Landlord and Tenant Act 1985 as to the reasonableness of demands made in respect of service charges falling due on 1<sup>st</sup> April 2012 and estimated service charges falling due on 1<sup>st</sup> April 2013 payable pursuant to the terms of a lease (the Lease) dated 16<sup>th</sup> April 2007.
2. This case was referred to the Tribunal by an order of District Judge MacKenzie dated 2<sup>nd</sup> October 2014 in the County Court at Bow in case no A7XZ5725.
3. The Tribunal gave Directions on 30<sup>th</sup> October 2014 supplemented by Directions on 24<sup>th</sup> February 2015, and 9<sup>th</sup> April 2015. The effect of the Directions given on 9<sup>th</sup> April 2015 was to debar the Respondent from adducing taking any further part in the proceedings, but would proceed using the Respondent's defence in the County Court proceedings as his case.
4. The Applicant made a formal statement of case dated 14<sup>th</sup> April 2015 with relevant documents annexed, supplemented with oral evidence and submissions made at the hearing. Mr N. Goodes, Principal Accountant made a written witness statement signed on 12<sup>th</sup> April 2015 and gave oral evidence at the hearing.
5. The Respondent applied by email on 22<sup>nd</sup> April 2015 to have the hearing adjourned. A Deputy Regional Judge refused that application on the same day. The reasons were fully set out in the refusal decision.
6. Extracts from the relevant legislation are attached as Appendix 1 below.

### **Hearing**

7. Ms I. Ettienne, Consultation and Final Accounts Officer presented the case for the Applicant. In reply to questions Ms Ettienne confirmed that the

amount sought by the Applicant totalled £3,331.76, made up of £342.14 owed by the Respondent for the year 2012/13, and £2,989.62 for the year 2013/14. The Respondent's defence disclosed the following items of dispute; Non-disclosure of documents invoking Sections 21A and 22 of the 1985 Act, validity of landlord's rent demands by reference to Sections 47 and 48 of the Landlord and Tenant Act 1987, and the prescribed notice of tenant's rights and obligations under Section 21B of the 1985 Act; and reasonableness and costs of a) management and administration charges; b) boiler fuel; c) works not done; d) works not reasonably done and/or not to a reasonable standard. The Respondent also made an application under Section 20C of the Act to limit the landlord's costs of the application.

8. The Tribunal, after reading the defence, concluded that the most contentious issues related to the communal heating charges and management. The more general references to the standard and reasonableness of works had to be limited to those items, as the Respondent had given insufficient indications of discontent relating to other items, which would allow the Applicant to respond in any meaningful way to the criticisms being made. Further, the Tribunal noted the limitations to its jurisdiction imposed by Section 27A. It has no jurisdiction to order a party to carry out any particular works in any particular way. The jurisdiction allows it only to consider the cost and reasonableness of works.
9. The Applicant submitted that the Lease, clauses 3.1, 3.2.1 and 3.2.2, the definition of "Service Charge", and the Fifth Schedule, entitled it to charge for all the specific items in dispute. The Applicant supplied the Respondent with audited accounts and supporting details on numerous occasions. It had complied with Sections 21A and 22 of the Act. The Applicant had issued all accounts in compliance with Sections 47 and 48 of the Landlord and Tenant Act 1987, and also Section 21B of the 1985 Act. Mr Goodes gave evidence and was examined on his statement. He explained specifically to the Tribunal how the contributions to heating costs were calculated. The Building has its own communal heating system. The associated total fuel and maintenance costs are charged to the lessees by "weighting" the proportion payable by reference to the number of bedrooms in each flat. Also the extent of heating and heating periods have an effect. The method was not perfect, but was reasonably fair to individual leaseholders. The method had changed in 2011, but made no appreciable difference to the costs payable by leaseholders. The current scale for this block was B2, which indicates full heating and hot water for 52 weeks of the year, with a "night setback" which lowers the temperature at night. The hot water boiler was believed to be quite old, but its repair costs were very low. The Applicant produced a sample of the service charge demands and accompanying information it sent to each leaseholder by post at the request of the Tribunal to deal with the claim that these did not meet the statutory requirements.
10. The Tribunal raised all the items questioned in the defence to the Applicant. Generally its replies were satisfactory.

11. Dealing with the issues raised by the Respondent in order:

a) Failure to comply with Sections 21A and 22 – The Respondent gave no details of the omissions he complained of, indeed the whole defence suggested a general “standard” defence, but with no specific evidence to back the assertions being made. The Applicant referred to statements and emails in the bundle, sent to the Respondent. The Tribunal decided that in the absence of specific allegations from the Respondent, that it preferred the Applicant’s submissions on this point.

b) Failure to comply with Sections 47 and 48 of the 1987 Act, or supply the necessary information under Section 21B of the 1985 Act – Again, the Respondent gave no details to support his assertions. The Respondent produced a sample demand, which appeared to comply in all respects. The Tribunal decided that the relevant notices complied with the statutory requirements.

c) Reasonableness of Management and administration charges – The Respondent gave no details of the assertions. The Applicant submitted that it had demanded no administration charges. The Tribunal noted that the Management cost was 10%, or £297.13, which appeared reasonable and in line with the market, given the extent of the estate, services and charges. The Tribunal allowed the charge in full.

d) The boiler fuel charges were unreasonable – again this was a mere assertion with no evidence. The Respondent submitted that the property had 4 bedrooms, and that the fuel costs were £1,159.25 in the year ending on 31<sup>st</sup> March 2013, were relatively low. The Respondent had offered no alternative comparable charge, and the Applicant was apparently using a reasonable method of to divide the costs. The Tribunal decided to allow the charges as demanded

e) Works to the boiler not to a reasonable standard – The Respondent submitted that the boiler was inefficient and that the costs for maintenance and repair were unreasonable, but gave no details or figures which the Applicant could answer. The Applicant conceded that the boiler might be old, but the small repair costs to date suggested that the boiler continued to give good value for money. In the absence of any useful evidence from the Applicant, the Tribunal decided that the cost was reasonable and payable.

12. On a more fundamental point, the Tribunal was not entirely convinced that the terms of the Lease entitled the Applicant to cover the cost of heating throughout the year. The relevant part of Clause 4.4 of the Lease which was the only specific reference to heating provides:

*Provided...at all times during the Term to supply hot water for domestic purposes to the Flat by means of the boiler and heating installations serving the Block and also from 1<sup>st</sup> October to the 30<sup>th</sup> April inclusive in each year to supply hot water for heating to the radiators fixed in the Flat so as to maintain a reasonable and normal temperature”.*

It is unclear from the immediate context of the words as to whether the restriction imposes a cap on the landlord's ability to charge, but a close reading of the Lease as a whole, and particularly the definition of "service charge" in clause 1.1. yields the following:

*"Service Charge"*

*All those reasonable costs overheads and expenses outgoings incurred or to be incurred by the landlord in connection with*

- a) the management and maintenance of the Estate*
- b) the carrying out of the Landlords obligations and duties and providing all such services as are required or appropriate to be provided by the Landlord under the terms of the Lease and:*
- c) the repair and maintenance, renewal , decorations insurance and management of the Block*

*including all such matters set out in the Fifth Schedule"*

13. The Tribunal considered the evidence and submissions on this point. While the wording was not particularly clear, a reasonable interpretation would be that heating in the summer period could be covered and that the summer heating service currently given by the landlord was appropriate, even if not required.

**Costs – Section 20C and Rule 13**

14. The Respondent made this application under Section 20c in his defence, but with no evidence. The Applicant submitted that it had acted properly throughout in dealing with this case. The Tribunal noted that the Respondent had failed to attend two case management conferences without prior notice, and then made no statement of case, in breach of Directions. The Tribunal decided that it would make no order to limit the landlord's costs of this application.
15. The Applicant applied at the hearing for reimbursement of its fees of £190 paid to the Tribunal, under Rule 13 of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013.
16. The Respondent was unable to make any submissions on this point, having been debarred.
17. The Tribunal decided that the Respondent appeared to have failed to engage with the process, in any meaningful way, and had caused much delay. It decided to grant the order for reimbursement of the Applicant's fees by the Respondent.

**Signed: Lancelot Robson**

**Dated: 29th April 2015**

## **Appendix 1**

### **Landlord & 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 21B**

- (1) A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges.

- (2) The Secretary of State may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.
- (3) A tenant may withhold payment of a service charge which has been demanded from him if subsection (1) is not complied with in relation to the demand.
- (4) Where a tenant withholds a service charge under this section any provisions of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.
- (5) and (6)...

### **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.

**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.
- (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

**The Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013**

Regulations 13(1) - (3)

- costs
- 13.-(1) The Tribunal may make an order in respect of costs only-
- (a) under Section 29(4) of the 2007 Act (wasted costs) and the incurred in applying for such costs;
  - (b) if a person has acted unreasonably in bringing, defending, or conducting proceedings in-
    - (i) an agricultural land and drainage case,
    - (ii) a residential property case, or
    - (iii) a leasehold case; or



(c) in a land registration case.

to (2) The Tribunal may make an order requiring a party to reimburse  
by any other party the whole or part of the amount of any fee paid  
the other party which has not been remitted by the Lord  
Chancellor.

or (3) The Tribunal may make an order under this rule on application  
on its own initiative.  
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