

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

Case reference : **LON/OOAH/LSC/2015/0175**

Property : **286 Old Lodge Lane, Purley, Surrey
CR8 4AQ**

Applicant : **M & J Partners (managing agents)**

Representative : **Ms T Darnley of M & J Partners**

Respondent : **Mr F Hydari (leaseholder)**

Representative : **Not represented**

Type of application : **Liability to pay service charges
under section 27A of the Landlord
and Tenant Act 1985 ('the Act')**

Tribunal member : **Professor James Driscoll (Tribunal
Judge), and Mr Richard Shaw
FRICS**

Date of hearing : **12 August, 2015**

Date of decision : **12 August, 2015**

DECISION

The Decision Summarised

1. The applicant's claim for service charges and an administration charge for the service charge year 2014 is dismissed.
2. This matter is to be returned to the Croydon County Court (under claim number B30YJ140).

The hearing and the reasons for our decision

3. This concerns a claim for service charges in the sum of £883.70 and an administration charge in the sum of £50 both said to have been incurred during the 2014 service charge year.
4. Proceedings were commenced to recover the total sum (£883.70) in the county court. On 21 April 2015 the Croydon County Court ordered that the claim be transferred to tribunal to determine the correct amount of outstanding service charges due under the terms of the lease.
5. A pre-trial review was held by the tribunal on 14 May 2015 when the claimant was represented by Mr N Mocha of counsel who was instructed by Thackery Williams, solicitors. The leaseholder did not attend.
6. The tribunal gave directions for the hearing of the claim. The hearing date was set for 12 August 2015. A few days before the hearing the tribunal was informed that the landlord's solicitors were no longer acting for them.
7. At the hearing date on 12 August 2015 the landlord was represented by Ms T Darnley of M & J Partners. She told us that she did not have a file of documents and that she works for the company as a part-time receptionist having started work for them the previous week. Ms Darnley told us that she has no knowledge of the case but that she had been told that the leaseholder's service charge account now had a nil balance.
8. Mr Hydari, the leaseholder told us that he and his family own six of the twelve flats in the building containing the subject flat. As he has already indicated in the county court proceedings, he denies that the landlord is entitled to recover any charges for 2014. He lodged photographs and other evidence in the county court. We told him that these documents had not been sent to the tribunal.

9. Ms Darnley told us that she did not have a copy of the relevant service charge demand and that she did not have any information or knowledge of the work or services for which the charges were made.
10. The leaseholder suggested that the claimants are not the landlord and are in fact their managing agents. Neither the leaseholder or Ms Darnley were able to tell us who the current landlord is. No explanation was given for the failure to lodge bundles of documents.
11. In these circumstances we have concluded that the claimants have failed to establish their case justifying the service charge. They were unable to produce the service charge demands, information on how the expenditure had been incurred or how the administration charge had been calculated. Nor were any invoices or receipts produced.
12. The burden of proving that the charges are recoverable clearly lies with the claimants and they have manifestly failed to prove that the charges are recoverable.

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.

Landlord and Tenant Act 1987

Section 24 Appointment of manager by the court.

(1)

A leasehold valuation tribunal may, on an application for an order under this section, by order (whether interlocutory or final) appoint a manager to carry out in relation to any premises to which this Part applies—

(a)

such functions in connection with the management of the premises, or

(b)

such functions of a receiver,
or both, as the tribunal thinks fit.

(2)

A leasehold valuation tribunal may only make an order under this section in the following circumstances, namely—

(a)

where the tribunal is satisfied—

(i)

that any relevant person either is in breach of any obligation owed by him to the tenant under his tenancy and relating to the management of the premises in question or any part of them or (in the case of an obligation dependent on notice) would be in breach of any such obligation but for the fact that it has not been reasonably practicable for the tenant to give him the appropriate notice, and

.....that it is just and convenient to make the order in all the circumstances of the case;

where the tribunal is satisfied—

(i)

that unreasonable service charges have been made, or are proposed or likely to be made, and

(ii)

that it is just and convenient to make the order in all the circumstances of the case;

(ac)

where the tribunal is satisfied—

(i)

that any relevant person has failed to comply with any relevant provision of a code of practice approved by the Secretary of State under section 87 of the M1Leasehold Reform, Housing and Urban Development Act 1993 (codes of management practice), and

(ii)

that it is just and convenient to make the order in all the circumstances of the case; or]

(b)

where the tribunal is satisfied that other circumstances exist which make it just and convenient for the order to be made.

In this section “relevant person” means a person—

- (a) on whom a notice has been served under section 22, or
- (b) in the case of whom the requirement to serve a notice under that section has been dispensed with by an order under subsection (3) of that section.]

For the purposes of subsection (2)(ab) a service charge shall be taken to be unreasonable—

- (a) if the amount is unreasonable having regard to the items for which it is payable,
- (b) if the items for which it is payable are of an unnecessarily high standard, or
- (c) if the items for which it is payable are of an insufficient standard with the result that additional service charges are or may be incurred.

In that provision and this subsection “service charge” means a service charge within the meaning of section 18(1) of the Landlord and Tenant Act 1985, other than one excluded from that section by section 27 of that Act (rent of dwelling registered and not entered as variable).]

(3) The premises in respect of which an order is made under this section may, if the tribunal thinks fit, be either more or less extensive than the premises specified in the application on which the order is made.

(4) An order under this section may make provision with respect to—

- (a) such matters relating to the exercise by the manager of his functions under the order, and
- (b) such incidental or ancillary matters, as the tribunal thinks fit; and, on any subsequent application made for the purpose by the manager, the tribunal may give him directions with respect to any such matters.

(5) Without prejudice to the generality of subsection (4), an order under this section may provide—

- (a) for rights and liabilities arising under contracts to which the manager is not a party to become rights and liabilities of the manager;
- (b) for the manager to be entitled to prosecute claims in respect of causes of action (whether contractual or tortious) accruing before or after the date of his appointment;
- (c) for remuneration to be paid to the manager by any relevant person, or by the tenants of the premises in respect of which the order is made or by all or any of those persons;

(d) for the manager's functions to be exercisable by him (subject to subsection (9)) either during a specified period or without limit of time.

(6) Any such order may be granted subject to such conditions as the tribunal thinks fit, and in particular its operation may be suspended on terms fixed by the tribunal.

(7) In a case where an application for an order under this section was preceded by the service of a notice under section 22, the tribunal may, if it thinks fit, make such an order notwithstanding—

(a) that any period specified in the notice in pursuance of subsection (2)(d) of that section was not a reasonable period, or

(b) that the notice failed in any other respect to comply with any requirement contained in subsection (2) of that section or in any regulations applying to the notice under section 54(3).

(8) The Land Charges Act 1972 and the Land Registration Act 1925 shall apply in relation to an order made under this section as they apply in relation to an order appointing a receiver or sequestrator of land.

(9) A leasehold valuation tribunal may, on the application of any person interested, vary or discharge (whether conditionally or unconditionally) an order made under this section; and if the order has been protected by an entry registered under the Land Charges Act 1972 or the Land Registration Act 1925, The tribunal] may by order direct that the entry shall be cancelled.

the court shall not vary or discharge an order under subsection (9) on the application of any relevant person unless it is satisfied—

(a) that the variation or discharge of the order will not result in a recurrence of the circumstances which led to the order being made, and

(b) that it is just and convenient in all the circumstances of the case to vary or discharge the order.

(10) An order made under this section shall not be discharged by a leasehold valuation tribunal by reason only that, by virtue of section 21(3), the premises in respect of which the order was made have ceased to be premises to which this Part applies.

(11) References in this to the management of any premises include references to the repair, maintenance or insurance of those premises.