



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

Case Reference : LON/00AL/LSC/2015/0421

Property : 33b St Johns Park London SE3 7JW

Applicant : The Royal Borough of Greenwich

Representatives : -

Respondent : Mr James Michael Butler

Representative : -

Type of Application : Reasonableness of and liability for service charges and administration charges under the Landlord and Tenant Act 1985 (Section 27A)/Commonhold and Leasehold Reform Act 2002 (Schedule 11)

Tribunal Members : Prof Robert M. Abbey (Solicitor)
Mr Ian Thompson (FRICS)

Date and venue of Paper Based Decision : 15th December 2015 at 10 Alfred Place, London WC1E 7LR

Date of Decision : 15th December 2015

DECISION

Decisions of the tribunal

1. The Tribunal determines that as at the date when the county court proceedings were issued by the applicant there was payable by the respondent to the applicant:

Service charges year ending 2015

Administration charges

Management fees £ 138.00

2. The file shall be returned to the County Court at Lambeth for the determination of the following claims which this tribunal does not have jurisdiction to determine:
 - Court fee and
 - Costs
3. The reasons for our decisions are set out below. Later reference in this Decision to a number in square brackets ([]) is a reference to the page number of the hearing bundle/file provided to the Tribunal for use at the hearing.

The application and procedural background

4. In the Autumn of 2015 the applicant landlord commenced legal proceedings [1] against the respondent as proprietor of a long lease [21] of the subject property.
5. The respondent did file a defence [43] which asserted that the Respondent was not liable for one aspect of the service charges claimed because he says the management fee of £138 was not reasonable.
6. The applicant's claim concerning the determination of service charges referenced A72YP721 was transferred to this Tribunal by order of District Judge Desai from the County Court at Lambeth. The date of the order [37] was 21 September 2015. The claim made in the county court was for unpaid service charges and the management charge being their administration costs of their collection.
 1. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

2. There was no oral hearing. Judge Martynski of this Tribunal issued Directions dated 2 October 2015 in which he directed that the matter proceed on the tribunal paper track meaning that the case was to be

decided on the papers alone. Neither party objected to this and as a consequence the papers were considered by the tribunal members set out above.

3. The tribunal had before it an agreed bundle of documents prepared by the applicant.

The background

4. The property which is the subject of this application is one of four leasehold flats. The respondent occupies flat 33B, and this is described in the lease [21] as being a ground floor property. Each lessee is liable for a due proportion of the total service charge expenditure incurred by the landlord.
5. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.
6. The respondent holds a long lease of the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge.
7. The landlord applicant claimed estimated service charges of £302 for the year ended 31 March 2015. A part of the demand was for £138 described as a management fee. It is this sum that is in dispute and is the item referred to the tribunal by Judge Desai.

The service charges claimed

8. Having read evidence and submissions from the parties and considered all of the documents provided, the tribunal determines the issue as follows.
9. In regard to the management fee for the year in question, this was set at £138 by the applicant. The local authority say that this was the fixed fee per flat for the Borough. The tribunal referred to a decision (*LON/OOAY/LSC/2014/0347 Bhundia v Primeview, 45a Conyers Road London SW16*) to clarify this claim as to the reasonableness of this method of charging. It would appear that this decision does not disallow a charge simply because it is a fixed fee. This tribunal was of the view that a fixed fee can be a simple and fair way of charging where there are not many flats in a building such as this one. However, this does not stop the tribunal from considering if that fixed fee is at a level that is reasonable. In this dispute the tribunal took the view that a reasonable fixed charge per flat for this building could be £138 in the year. In coming to these figures the tribunal was mindful of what the

applicant outlined as the work carried out by them when dealing with the management of the building.

10. With regard to the administration fees the tribunal was satisfied that these were reasonable and proportionate given the nature of the claim and the dispute. The tribunal therefore decided that the administration charges of £138 by way of a management fee were payable by the Respondent.
11. In passing the tribunal notes that the management charge appears to be applied across all properties controlled by the applicant whether in a large block or a converted "street property" such as this one. The applicant may wish to consider a two tier approach to these charges whereby the differences in the service provision can be reflected in this two tier approach. Secondly, the respondent supported a percentage charge approach that the local authority had adopted previously. The tribunal notes, and brings to the attention of the respondent, that the Royal Institution of Chartered Surveyors in its "Service Charge Residential Management Code", (2nd edition 2009), at paragraph 2.3 supports fixed fees rather than a percentage of outgoings.

Transfer back to the county court

12. There were some claims made in the court proceedings which we do not have jurisdiction to determine. We have therefore transferred the file back to the county court so that these claims may be pursued if the applicant wishes to do so.

Name: Judge Professor Robert
M. Abbey

Date: 15 December 2015

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

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 the appropriate 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 the appropriate 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 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 that tribunal;
 - (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property 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.

Commonhold and Leasehold Reform Act 2002

Schedule 11

Administration charges

Part 1 Reasonableness of administration charges

Meaning of “administration charge”

1(1) In this Part of this Schedule “administration charge” means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—

- (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
- (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
- (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
- (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.

(2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

(3) In this Part of this Schedule “variable administration charge” means an administration charge payable by a tenant which is neither—

- (a) specified in his lease, nor
- (b) calculated in accordance with a formula specified in his lease.

(4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Reasonableness of administration charges

2 A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

3(1) Any party to a lease of a dwelling may apply to a leasehold valuation tribunal for an order varying the lease in such manner as is specified in the application on the grounds that—

- (a) any administration charge specified in the lease is unreasonable, or
- (b) any formula specified in the lease in accordance with which any administration charge is calculated is unreasonable.

- (2) If the grounds on which the application was made are established to the satisfaction of the tribunal, it may make an order varying the lease in such manner as is specified in the order.
- (3) The variation specified in the order may be—
- (a) the variation specified in the application, or
 - (b) such other variation as the tribunal thinks fit.
- (4) The tribunal may, instead of making an order varying the lease in such manner as is specified in the order, make an order directing the parties to the lease to vary it in such manner as is so specified.
- (5) The tribunal may by order direct that a memorandum of any variation of a lease effected by virtue of this paragraph be endorsed on such documents as are specified in the order.
- (6) Any such variation of a lease shall be binding not only on the parties to the lease for the time being but also on other persons (including any predecessors in title), whether or not they were parties to the proceedings in which the order was made.

Notice in connection with demands for administration charges

- 4(1) A demand for the payment of an administration charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to administration charges.
- (2) The appropriate national authority 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 an administration charge which has been demanded from him if sub-paragraph (1) is not complied with in relation to the demand.
- (4) Where a tenant withholds an administration charge under this paragraph, any provisions of the lease relating to non-payment or late payment of administration charges do not have effect in relation to the period for which he so withholds it.

Liability to pay administration charges

- 5(1) An application may be made to a leasehold valuation tribunal for a determination whether an administration 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) Sub-paragraph (1) applies whether or not any payment has been made.
- (3) The jurisdiction conferred on a leasehold valuation tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.
- (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.

(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 subparagraph (1).