

10793



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

Case Reference : **LON/00AT/LSC/2015/0126**

Property : **Flat 4, 18 Maswell Park Road,
Hounslow, Middlesex, TW3 2DW**

Applicant : **Zvi Benveniste**

Representative : **N/A**

Respondent : **Mr N Ruparelia**

Representative : **N/A**

Type of Application : **For the determination of the
reasonableness of and the liability
to pay a service charge**

Tribunal Members : **Tribunal Judge Richard Percival
Mr C Gowman BSc MCIEH
Mrs L West**

**Date and venue of
Hearing** : **18 May 2015
10 Alfred Place, London WC1E 7LR**

Date of Decision : **10 June 2015**

DECISION

The application

1. The Applicant seeks a determination pursuant to section 27A of the Landlord and Tenant Act 1985 (“the 1985 Act”) as to the amount of service charges payable by the Respondent in advance in respect of the service charge year 2015.
2. The relevant legal provisions are set out in the Appendix to this decision.

Background

3. The application is dated 9 March 2015. The Applicant indicated that he was content for it to be heard on the papers. Directions were given on 26 March 2015. The Tribunal considered that the case could be determined on the papers.
4. 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. The specific provisions of the lease will be referred to below, where appropriate.
5. The directions required the Respondent to respond to the Applicant’s statement. That direction was not been complied with.

The issues

6. The Applicant seeks a determination of the payability and reasonableness of the interim service charge for 2015; the percentage of the interim service charge payable by the Respondent; and the date upon which payment falls due.

The lease

7. The lease was considered by another constitution of this Tribunal, in a previous application by the Applicant. The issues closely mirrored those before us in form (if not substance), being a broadly similar application in respect of the interim service charge demand for 2014 (LON/00AT/LSC/2014/0228; decision 7 August 2014). We agree with, and gratefully adopt, the analysis set out there, and quoted hereunder (unnecessary references to pages in the bundle, and paragraph numbers, deleted):

“The lease of the property is dated 10 December 1980. The lease granted a term of 99 years from 24 June 1975 at a ground rent of £30 pa rising to £150 pa during the term.

On 25 March 1999 the respondent and Dawn Ruparelia were registered at Land Registry as the proprietors of the lease.

Covenants on the part of the tenant are set out in clause 2. Material for present purposes is clause 2(5) which is the following terms:

'(5) To pay by way of further yearly rent a due proportion (to be determined conclusively by the Landlord's Surveyor) of the costs and expenses incurred by the Landlord in:

(a) [keeping the structure in repair and properly decorated]

(b) [insuring the building]

(c) [decorating, cleaning and lighting the forecourt and common parts]

(d) [landscape works]

(e) [such other acts or matters as may be in the landlord's discretion]

(f) Otherwise complying with the covenants on the part of the Landlord herein mentioned and contained or as may from time to time be implied SUCH PROPORTION to be paid on demand and in default to be recoverable by the Landlord as rent in arrear PROVIDED ALWAYS that the Landlord may from time to time demand (and the Tenant will thereupon pay to the Landlord) such as the Landlord may reasonably require in advance on account of such proportion of the said costs fees and expenses hereby covenanted to be paid by the Tenant'

No evidence was supplied as to the amount of the due proportion payable by the respondent as determined by the applicant's surveyor but we infer it was 25% because that is the proportion ascribed to the respondent – see the document at [34]. Paragraph 9 of the applicant's statement of case states that the landlord has ascribed 25%, but the lease specifies it is to be determined not by the landlord but by the landlord's surveyor. The respondent has not filed a statement of case contesting that proportion.

The service charge regime is crude and makes no express provision for the preparation of an annual budget, for payments on account to be made on specified days, for year-end accounts certifying the actual expenditure and the balancing debits/credits as the case may be.

The service charge is described as a 'yearly rent'. The lease obliges the tenant to pay sums on account 'that the Landlord may from time to time demand'. The landlord appears to have adopted the annual period December to 24 December and has accounted on that basis. Paragraph 10 of the applicant's statement of case states that in the absence of express dates for the payment on the advance sums the applicant has adopted the practice of demanding them on the usual quarter days and that, in the past, the tenants have paid on that basis. The respondent has not filed a statement of case contesting that arrangement. A demand for the four quarterly advance payments addressed to the respondent is at [69]. It will be noted that the applicant required instalments to be paid on 25 December 2013, and 25 March, 24 June and 29 September 2014."

The 2015 budget

8. In the earlier case, the Tribunal took the approach of looking at historic costs and making appropriate adjustments to reflect inflation, known cost increases, or changes to VAT rates; and to consider any proposed changes to delivery and the Applicant's proposals in terms of proposed works etc.
9. The result of that inquiry was to reduce the proposed budget from £7,621 to £4,934. The Tribunal indicated in a detailed narrative why the budget for particular items in that year was inflated.
10. In summary form, the budget for 2015 provides for:

Building repairs (reactive):	£600.00
Cleaning:	£1,872.00
Electricity supply:	£ 100.00
Buildings insurance:	£1,390.17
Management fee:	£ 960.00
Accounting/audit:	£ 300.00
TOTAL:	£5,222.17

The Tribunal's decision

11. The Respondent failed to provide a response to the Applicant's case statement. The Applicant reproduces in the bundle an email from the

Respondent, dated 11 February 2015, in which he says that he considers the charges unreasonable and intends to dispute them. He has failed to do so. It remains the responsibility of the Applicant to demonstrate that the service charges are reasonable, but in the light of the Respondent's failure to engage with the Tribunal, the burden is a light one.

12. We have taken the same approach to the budget for 2015 as the Tribunal took to the previous budget. We have accordingly considered each item individually, and the total, and have concluded that, in contrast to the previous year, the Applicant has produced a budget that is clearly reasonable.
13. In accordance with the previous finding of the Tribunal, it is reasonable for the Applicant to require payment of the interim service charge in advance on a quarterly basis. The proportion contended for by the Applicant remains 25%, and, as previously, that has not been contested. The application form refers to 33%, but that is acknowledged to be an error in the Applicant's statement of case (and the demand already issued for the first two quarters is based on 25%).
14. The Applicant has also applied to be reimbursed the Tribunal fee. In the light of our decision, and the failure of the Respondent to engage with the Tribunal, we consider it just in all the circumstances to allow the application.

Name: Tribunal Judge Richard Percival **Date:** 10 June 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 20

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
- (a) complied with in relation to the works or agreement, or
 - (b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .
- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

- (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
 - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
- (a) an amount prescribed by, or determined in accordance with, the regulations, and
 - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

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 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, paragraph 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.

Schedule 11, paragraph 2

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

Schedule 11, paragraph 5

- (1) An application may be made to the appropriate 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 the appropriate 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 sub-paragraph (1).