



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

**Case reference** : **LON/00AZ/LSC/2014/0665**

**Property** : **22 St Mildreds Road, London SE12  
ORA**

**Applicant** : **The leaseholders listed in the  
application**

**Representative** : **Mr Femi Adedeji of Flat 22A  
Mr Morris Rothbart of Flat 22C**

**Respondent** : **Southern Land Securities Limited**

**Representative** : **Mr Hinds of Counsel instructed by  
Hamilton King Management  
Limited, the managing agents  
For the determination of the**

**Type of application** : **reasonableness of and the liability  
to pay a service charge**

**Tribunal members** : **Judge E Samupfonda  
Mr A Manson FRICS  
Ms J Dalal**

**Date and venue of  
hearing** : **10 Alfred Place, London WC1E 7LR**

**Date of decision** : **15 May 2015**

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**DECISION**

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### **Decisions of the tribunal**

- (1) The tribunal determines that the sums claimed for all the items as set out in the Scott Schedule are reasonable and payable by the Applicants in respect of the service charges for the years 2010-2014.
- (2) The tribunal makes the determinations as set out under the various headings in this Decision.
- (3) The tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985 so that the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge.

### **The application**

1. The Applicants seek a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the Act") as to the amount of service charges payable by the Applicants in respect of the service charge items as set out in the Scott Schedule in respect of the years 2010 -2014.
2. The Applicants also seek an order for the limitation of the landlord's costs in the proceedings under section 20C of the Act.

### **The hearing**

3. The hearing of this matter took place on 20 April 2015. Mr Rothbart, lessee of flat 22C appeared on behalf of the Applicants. Mr Hinds of Counsel represented the Respondent landlord. Mr Fitch, managing agent of Hamilton King Management Limited (HKML), the landlord's managing agents accompanied him.
4. Immediately prior to the hearing Mr Rothbart informed the tribunal that he had not received a copy of the hearing bundle. Mr Fitch said that it had been sent to Mr Adedeji as the named representative for the Applicants. We provided Mr Rothbart with a bundle and gave him an opportunity to read it before starting the hearing. We asked Mr Rothbart whether he was in a position to effectively represent the Applicants, he indicated that he was, and said that he was already familiar with the material in the bundle. He did not make an application for the proceedings to be adjourned.
5. Both Mr Hinds and Mr Rothbart confirmed to the tribunal that the issues to be determined were those as set out in the Scott Schedule

## **The background**

6. The property, which is the subject of this application, is a detached house converted into four flats, three of which are one bedroom and the other two bedrooms. There is a large front garden, part of which is demised to Flat A without clear demarcation lines. The common parts comprise the stairs and communal entrance.
7. Photographs of the property were provided in the hearing bundle. 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.
8. The Applicants hold long leases of the property, which require the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge.

## **The issues**

9. At the start of the hearing the parties identified that the relevant issues for determination were follows:

The payability and/or reasonableness of service charges for the service charge years 2010- 11, 2013-2014. The items in dispute were, accountancy, gardening, insurance, repairs and management fees. There was no challenge made in respect of the service charges for the year 2012.

10. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

## **Accountancy**

11. Mr Rothbart explained that the grounds for the application under this head were the same for each service charge year in dispute. He said that the actual amount charged for accountancy services was not in dispute. What was in issue was the additional amount charged for collation of documents. He said that the Applicants considered that it was unnecessary for the Respondents to employ a separate company that was solely responsible for collating documents for the accountants and what he could not understand was that in some years this service cost more than the accountancy fees. He added that he had 28 companies and he has never been charged a collation fee. He said that in his view £100 was a reasonable fee for each year including collation. He also indicated that £178 was a reasonable fee for accountancy services.

12. Mr Fitch confirmed that the Respondents employ a company known as JL Information Services Ltd whose role is to prepare and collate information and deliver it to Crawfords Chartered Accountants. He explained that HKML found it more cost effective and beneficial to separate out the roles because previously when Crawfords conducted both roles it was more expensive. He also explained that the amount charged for accountancy included the collation fee. The collation fee was only shown on the invoice for the sake of transparency.

### **The tribunal's decision**

13. The tribunal determines that the amounts claimed in respect of accountancy services for each service charge year in dispute was reasonable and payable.

### **Reasons for the tribunal's decision**

14. There was no evidence from which the tribunal could conclude that the overall amount claimed in respect of each year was not reasonable. From 2010-2014 the accountancy fees ranged between £178-198.00. We were informed that this final figure charged in each year included a sum for collating documents, which for the sake of transparency was shown separately. In our view, collating documents is a pre requisite and necessary part of preparing accounts and it is an activity, which is likely to incur a fee from whoever performs that function. Mr Rothbart indicated that a sum of £178 for accountancy was reasonable but there should be no charge for collation. We consider that the cost incurred by the Respondent is reasonable and therefore payable by the Applicants.

### **Gardening**

15. The tribunal was shown pictures of the property and the front garden. In summary Mr Rothbart said that the basis of the Applicants' challenge was that the amount charged in each year was unreasonable given the size of the garden and the standard of work done. He stated that the gardeners do not attend fortnightly and when they do attend they do not stay for more than 20 minutes. The Applicants were concerned by the fact that there was no mechanism for HKML to monitor the gardeners' attendance. He confirmed that he would be prepared to pay the sum claimed if the garden was maintained to a higher standard and the garden was enhanced in some way e.g. by planting flowers. He considered that £20 per hour would be a reasonable fee based on the standard of work currently carried out. Mr Rothbart said that Mr Adedeji lives at the property and works from home. He has seen the gardeners conduct and reported it many times to HKML without a response.

16. Mr Fitch said that HKML maintains a robust complaints system and he was not aware of any complaints from this property regarding the gardening. He acknowledged that it would be a good idea to have a system for monitoring the gardeners and agreed to discuss how this maybe achieved with the Applicants. He explained that the contract for gardening services was competitively tendered and awarded to a two - man team. This team has been awarded the contract for 2/3 years successively because the company has proved the cheapest available. The contract requires the gardeners to attend fortnightly and to perform a number of seasonal tasks that include weeding, clearing of debris, trees and ground maintenance. He said that he was happy to provide the Applicants with a copy of the contract. He considered that the amount charged was reasonable.

### **The tribunal's decision**

17. The tribunal determines that the amount claimed in respect of gardening services throughout the service charge years in dispute was reasonable and payable.

### **Reasons for the tribunal's decision**

18. From the photograph produced, the tribunal observed that the front garden was quite a sizeable area measuring approximately 60ft in length and 40ft wide. There were a few shrubs and trees. The annual cost of maintenance was 12 x £42.00 plus vat @20% and included the December 2010 cost of £42.00 plus vat 17%. Mr Rothbart stated that the amount charged does not appear to be outrageous and we agreed with that assessment. However we do not have sufficient evidence from which we can safely conclude that the work carried out by the gardeners is not of a reasonable standard or that the work does not justify the fee charged as claimed by the Applicants. From what we could see the gardens appeared to be well maintained.

### **Insurance**

19. Mr Rothbart stated that this item was the most contentious because the Applicants were of the view that the insurance premium has been way too high over the years. He said that he had a lot of experience of the insurance industry and it was well known that everyone gets commission and kickbacks and this caused the premium to increase. It was his view that the landlord was in receipt of a commission as this was the norm. He said that the property is not in a high-risk flood area and from his knowledge using his broker the insurance should cost no more that £250 per flat and not £500 as charged.

20. The tribunal agreed to a short adjournment to allow Mr Rothbart an opportunity to consult his broker further and to produce like for like alternative quotes.
21. When we resumed, Mr Hinds highlighted the differences between the landlord's policies and those produced by Mr Rothbart. Essentially Mr Hinds said that the differences were due to factors such as type of tenancies permitted, subsidence, public liability, accidental damage and escape of water that contributed to the increase in the landlord's premium. Whilst Mr Rothbart agreed that the comparables were not on a like for like basis, he maintained his view that the landlord's premium was unreasonably high.

### **The tribunal's decision**

22. The tribunal observed that the insurance premium between 2010 -2015 ranged from £1,875.80 to £1995.00. The tribunal determines that the sum claimed in respect of insurance in each service charge year in dispute is reasonable and payable.

### **Reasons for the tribunal's decision**

23. Both Mr Rothbart and Mr Hinds took the tribunal through their own policies and schedules in some detail. On first observations, the tribunal agreed that the landlord's insurance appeared to be on the high side in comparison to the quotes provided by Mr Rothbart. Mr Hinds also acknowledged this. However, on closer examination we were not convinced that they were comparing like for like. The schedules provided by the landlord contained more comprehensive cover. There were items in the landlord's premium that were not covered in Mr Rothbart's. We consider that it was reasonable for the landlord to increase its cover to include students, tenants in receipt of benefits and asylum seekers. Such tenants would very likely lead to an increase in the cost of the premium. Other factors that may have led to a significant difference was the level of cover for loss of rent, subsidence, escape of water and comprehensive public liability. The Applicants took no issue with type of insurers selected by the Respondents. We therefore assumed that the insurers were reputable within the market. The tribunal then considered the level and type of cover provided under each of the landlord's policies and could find no reasons to criticise the premium charged. Although we were not provided with a broker's letter from the Respondents demonstrating that they had researched the market, there was insufficient evidence provided by the Applicants to show that the cost of the landlord's insurance was unreasonably high or outside the market norms.

### **Management fees**

24. Mr Rothbart stated that the Applicants challenged the amount claimed in respect of management fee based on the fact that there is very little management required at this type of property. Managing this property comprised arranging the insurance and gardening only. He also said that from his personal experience his companies charged between £85-100 per flat, per annum for this type of property. He considered the amount claimed of £196 to be unreasonable and suggested £150 per flat per annum plus vat as an alternative reasonable offer.
25. Mr Fitch stated that in his view the amount claimed was reasonable because it ranged from £107.66-£215.31 per flat per annum over the years in dispute. It covers a number of tasks including generating an annual budget, arranging repairs, processing payments, responding to queries and general administration.

### **The tribunal's decision**

26. The tribunal determines that the amount claimed in respect of the management fee for each service charge year in dispute was reasonable.

### **Reasons for the tribunal's decision**

27. There was no evidence produced to demonstrate that the cost incurred was unreasonable. From the information provided it was clear that HKML performed functions that went beyond simply arranging the insurance and gardening. There was information in the bundle that showed evidence of general administration from raising invoices, arranging repairs to instructing and liaising with contractors and setting the budget. Management functions went beyond simply arranging the insurance and gardening. The amount charged for the services performed appeared to be reasonable to the tribunal in the absence of any evidence showing otherwise.

### **Repairs and asbestos**

28. Mr Rothbart confirmed that the Applicants were not pursuing their challenge to the cost of repairs in 2011 and 2013 given the explanation provided by the Respondents. Mr Rothbart did however question the need for the annual fee claimed in respect of asbestos.
29. Mr Fitch explained that the annual fee for an asbestos survey arises from the Respondent's legal obligation under the Control of Asbestos

Regulations to annually inspect the asbestos previously identified in the asbestos survey within the backing of the basement door.

**Application under s.20C and refund of fees**

30. At the end of the hearing, the Applicants made an application for a refund of the fees that they had paid in respect of the application and hearing<sup>1</sup>. Having heard the submissions from the parties and taking into account the determinations above, the tribunal does not order the Respondent to refund any fees paid by the Applicants.
  
31. At the end of the hearing, the Applicants applied for an order under section 20C of the 1985 Act. Having heard the submissions from the parties and taking into account the determinations above, the tribunal determines that it is just and equitable in the circumstances for an order not to be made under section 20C of the 1985 Act, so that the Respondent may pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge.
  
32. The Applicants as leaseholders were entitled to challenge the reasonableness of the landlord's costs and the landlord was obliged to provide an explanation as to how these costs were incurred. In this case the application was robustly resisted and the Applicants produced very little evidence in support of their claim. Furthermore, we were informed that there has been ongoing dialogue between the parties following the Applicants' application for enfranchisement and this, in our view afforded the parties an opportunity to discuss the service charge issues brought by this application. We saw no reason to suggest that this might not have been possible or achievable to the extent that the Applicants had no choice but to make this application for the issues to be determined by this tribunal.

**Name:** Judge E Samupfonda      **Date:** 15 May 2015

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<sup>1</sup> The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 SI 2013 No 1169



## **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 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.