



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

**Case Reference** : **LON/00BD/LSC/2015/0035**

**Property** : **76A & 76C Station Road, Hampton  
TW12 2AX**

**Applicants** : **Mr Andrew Spillane and Miss  
Donna Wilson**

**Representative** : **In person**

**Respondent** : **Mrs Narinder K Sharma**

**Representative** : **Mr Ravinder Sharma**

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

**Tribunal Members** : **Mr J Donegan (Tribunal Judge)  
Mr M Taylor FRICS (Professional  
Member)  
Mrs L West (Lay Member)**

**Date and venue of  
Hearing** : **11 May 2015  
10 Alfred Place, London WC1E 7LR**

**Date of Decision** : **13 June 2015**

---

**DECISION**

---

### **Decisions of the tribunal**

- (1) The tribunal makes the determinations as set out under the various headings in this Decision.
- (2) The tribunal determines that the Respondent shall pay the Applicant £440 within 28 days of this Decision, in respect of the reimbursement of the tribunal fees paid by the Applicant.
- (3) The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 (“the 1985 Act”) so that none of the Respondent’s costs of these tribunal proceedings may be passed to the Applicants through any service charge.

### **The application**

1. The Applicants seek a determination pursuant to section 27A of the Landlord and Tenant Act 1985, as to the amount of service charges payable by them for the service charge years 2011-2016.
2. The application was submitted to the tribunal on 21 January 2015 and concerns the service charges for Flat A and Flat C at 76 Station Road, Hampton, Middlesex TW12 2AX (“the Building”). An oral case management hearing took place on 17 February 2015, which was attended by the Applicants and the Respondent. Directions were given at that hearing and a final hearing date of 11 May 2015 was agreed.
3. The relevant legal provisions are set out in the Appendix to this decision.

### **The hearing**

4. The Applicants appeared in person at the hearing. The Respondent attended the hearing and was represented by her son, Mr Ravinder Sharma.
5. The tribunal members were supplied with hearing bundles that included copies of the application, directions, statements of case, leases, service charge accounts and demands and relevant correspondence and documents.
6. 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.

## The background

7. The Building is a converted house comprising shop premises and two flats on the ground floor (Flats B and C) and a large flat on the first floor (Flat A). The shop premises are currently used as hairdressers. Previously they were used as dry cleaners.
8. The Applicants are the leaseholders of Flats A and C, which they sublet. The Respondent is the freeholder of the Building.
9. The Applicants hold long leases of Flats A and C. These require the Respondents to provide services and the Applicants to contribute towards their costs by way of variable service charges. The specific provisions of the leases will be referred to below, where appropriate.
10. At the time the lease of Flat A was granted, there were only two flats at the Building (Flats A and B). Flat C was converted at a later stage. The wording of the leases for Flats A and C is substantially different.

## The leases

11. The lease of Flat A was granted by Mr Christopher Del Taylor (*“the Lessor”*) to Mr Simon Oliver Taylor (*“the Lessee”*) on 31 May 1996, for a term of 125 years from that date. The definitions are at clause 1 of this lease and include:

*(g) “The Insurance Rent” is such sum or sums as are equal to 50% of the amount which the Lessor may expend in effecting and maintaining the insurance of the Building, with the exception of the plate-glass in accordance with the covenant on the Lessors part hereinafter contained such Insurance Rent to be payable immediately on demand*

*(h) “The Maintenance Rent” is such sum or sums as are equal to 50% of the amount which the Lessor may expend in maintaining repairing and decorating the Building in accordance with the covenant on the Lessors part hereinafter contained such Maintenance Rent to be payable immediately on demand*

12. The Lessor’s covenants are at clause 6 of the lease and include obligations to insure the Building and to maintain, repair and redecorate the Building. There is no covenant dealing with the appointment of managing agents or the recovery of agents’ fees.
13. There are no detailed service charge provisions in the lease, setting out how the charges are to be demanded or accounted for. Based on clause 1(g) and (h), the Insurance and Maintenance Rents are payable on demand once expenditure has been incurred. It follows that these

service charges are payable in arrears. There is no mechanism for payment of any advance charges.

14. The lease of Flat C was granted by The First County Trust Limited (*'the Landlord'*) to Donna Wilson (*'the Lessee'*) on 10 June 2008, for a term of 125 years from 02 June 2005. Again the definitions are at clause 1. These include:

*1.1.7 'The Initial Provisional Service Charge'*

*'The Initial Provisional Service Charge' means the yearly sum of £150.00*

*1.1.10 'The Landlord's Expenses'*

*'The Landlord's Expenses' means:*

*1.1.10.1 the costs and expenditure – including all charges, commissions, premiums, fees and interest – paid or incurred, or deemed in accordance with the provisions of Schedule 6 paragraph 6-2.3 to be paid or incurred, by the Landlord in respect of or incidental to any of the Services or otherwise required to be taken into account for the purpose of calculating the Service Charge, except where such cost and expenditure is recovered from any insurance policy effected by the Landlord pursuant to Schedule 7 paragraph 7-2; and*

*1.1.10.2 the gross sums including any commission that the Landlord is from time to time liable to pay:*

*1.1.10.2.1 by way of premium for insuring the Flat, including insuring for loss of rent, in accordance with his obligations contained in this Lease, or, where the insurance includes the Flat and other property, the proportion of those sums reasonably attributable to the Flat,*

*1.1.10.2.2 by way of premium for insuring in such amount and on such terms as are reasonable against all liability of the Landlord to third parties arising out of or in connection with any matter involving or relating to the Estate, and*

*1.1.10.2.3 for insurance valuations*

*1.1.16 'The Service Charge'*

*'The Service Charge' means the Service Charge Proportion of the Landlord's Expenses*

*1.1.17 'The Service Charge Proportion'*

*'The Service Charge Proportion' means a reasonable proportion determined by the Surveyor*

1.1.18 *'The Services'*

*'The Services' means the services, facilities and amenities specified in Schedule 6 paragraph 6-3 as added to, withheld or varied from time to time in accordance with the provisions of this Lease*

15. This lease contains detailed service charge provisions, which are set out in the sixth schedule. There is a requirement for "*Certificate of Landlord's Expenses*" for each financial year, which runs from 01 January to 31 December (paragraphs 6-1.1 and 6-2.1). There is also express provision for the recovery of various "*Deemed Landlord's Expenses*", including "*the supervision and management of the provision of services for the Building*" (paragraph 6-2.3.2.1).

16. Paragraph 6-2.6 provides:

*For each financial year the Lessee must pay to the Landlord on account of the Service Charge such a sum as is reasonable having regard to the likely amount of the Service Charge. That sum must be paid in advance by equal instalments on the usual quarter days, the first instalment to be paid on the quarter day immediately before the commencement of the financial year in question. During any financial year the Landlord may revise the contribution on account of the Service Charge for that financial year so as to take into account any actual or expected increase in expenditure*

17. The Services to be provided by the Landlord are set out at paragraph 6-3 and include obligations to repair the Building (6-3.1) and to employ "*..such persons as the Landlord, acting reasonably, considers necessary or desirable from time to time in connection with providing any of the Services..*". This wording entitles the Landlord to instruct managing agents and to charge their fees to the service charge account.

**The issues**

18. In their original application the Applicant sought a determination of actual service charges for the period 2011-15 and advance charges for 2016.
19. The hearing bundle included service charge accounts for the period 12 January 2011 to 31 December 2012 and for the year ended 31 December 2013. At the hearing, Mr Sharma explained that the accounts for the year ended 31 December 2014 were being prepared and would be served shortly. Given these accounts were not available, the tribunal is only able to determine the known expenditure for this year (buildings

insurance premium and management fees). In relation to the current financial year, the tribunal is only able to determine the advance service charges for Flat C (there being no provision for advance charges in the lease of Flat A). The tribunal is unable to determine the advance charges for the year ending 31 December 2016, as these have not yet been formulated.

20. The directions set out the issues to be determined by the tribunal. By the conclusion of the hearing and with some encouragement from the tribunal, the parties agreed the following issues:

Flats A and C

- The service charges for the flats and shop at the building are to be paid in the following proportions, for the years 2011-2015:

Flat A            40%

Flat B            24%

Flat C            24%

Shop              12%

- The Respondent's claims for interest were withdrawn.
- The buildings' insurance premium for the year ended 31 December 2014 was agreed in the sum of £371.

Flat A only

- The Respondent's claims for loss of rent for the shop premises, additional management fees and legal costs were all withdrawn but may be pursued separately in the County Court.

Flat C only

- The management fee was agreed at £150 plus VAT per unit, per annum for the year ending 31 December 2015.

21. The agreement over the service charge proportions only binds the parties to these proceedings and is not binding on the leaseholder of Flat B or the tenant of the shop.

22. The outstanding issues to be determined by the tribunal are:

- (i) The reasonableness and payability of the buildings insurance premiums for the period ended 31 December 2012 and for the year ended 31 December 2013;
  - (ii) Whether Flat A is contractually liable to contribute to the management fees at the Building, as a service charge;
  - (iii) The reasonableness and payability of the management fees for the period ended 31 December 2012 and for the years ended 31 December 2013 and 2014; and
  - (iv) The reasonableness and payability of the advance service charge for Flat C for the year ending 31 December 2015.
23. 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.

**Buildings insurance premiums**

24. The disputed premiums are:

Period ended 31 December 2012 - £1,033.51 and £1,313.42

Year ended 31 December 2013 - £1,258.15

25. The Applicants put forward five grounds for disputing the premiums:
- (i) They had not been consulted regarding the cost of the buildings insurance;
  - (ii) They had not been provided with evidence of “*proper cover*” and therefore arranged their own cover for Flats A and C;
  - (iii) There had been a substantial reduction in the premium in 2014, after the Respondent had tested the market;
  - (iv) The premiums might have been inflated by the former use of the shop premises as dry cleaners; and
  - (v) The policy included loss of rent cover, which was unnecessary.
26. Mr Sharma contended that the insurance premiums were reasonable and should be allowed in full. The Respondent had insured the Building in accordance with the leases. Up until 2014 it had been insured on a block policy. The Respondent has a direct relationship

with the insurers, which results in competitive premiums. In 2014 the Respondent tested the market and moved over to an individual policy for the Building, resulting in a substantial reduction in the premium. Given that the Respondent had insured the Building throughout her period of ownership, there was no need for the Applicant to take out separate policies.

27. Mr Sharma suggested that the Applicants had agreed the original insurance premium in an email to the Respondent dated 22 October 2011. He also pointed out that there was nothing in the Applicants' leases that prevented the use of shop premises as dry cleaners. Furthermore no cleaning had been undertaken on the premises, which was noted on the policy schedule issued on 09 May 2014. The schedule has since been amended to refer to the current use of the shop as hairdressers.
28. Mr Sharma also pointed out that the Applicants had produced no alternative insurance quotes for 2011-13. They had produced an alternative quote for 2014, which was higher than the premium paid.

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

29. The tribunal determines that the amounts payable for the insurance premiums are:

Period ended 31 December 2012 - £1,033.51 and £1,313.42

Year ended 31 December 2013 - £1,258.15

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

30. There was no requirement for the Respondent to consult the Applicants regarding the cost of the buildings insurance. Clearly the Building was insured for the years in question, as evidenced by the policy schedules in the hearing bundle. The Applicants were aware of the amount of the premiums, as these were detailed in the service charge accounts.
31. There was insufficient evidence to justify any need for the Applicants to arrange their own insurance. They stated that they had requested insurance details on numerous occasions but copies of the relevant emails or letter had not been included in the hearing bundle. They may wish to seek independent legal advice upon a potential claim in the Small Claims Court to try and recover part or all of the premiums they have paid.
32. The Applicants did not provide any evidence that the insurance premiums for 2011-13 were too high, in the form of alternative quotes.



Further there was no evidence that the former use of the shop premises had skewed the premium. Based on its own knowledge and experience, gained from determining other similar cases, the tribunal is satisfied that the amount of the premiums was reasonable. If anything the current premium of £371 looks suspiciously low and the parties may wish to investigate this.

33. It is reasonable for an insurance policy to include loss of rent cover. The shop premises are let and Flats A and C are sublet. The Applicants therefore benefit from this cover.

#### **Flat A – Contractual liability for management fees**

34. The Applicants contended that Flat A should not have to contribute to the management fees, as there is no contractual provision for this in the lease. Mr Sharma argued that the management cost spent carrying out the maintenance and insurance functions in the lease should be recoverable. He referred to the Lands Tribunal's decision in ***Brent v Hamilton [2006] EW Lands LRX\_512005*** but did not supply the tribunal or the Applicants with a copy of that decision.

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

35. The tribunal determines that no management fee is payable by Flat A.

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

36. The wording of clauses 1(g) and (h) of the Applicant lease is very limited. The Applicants are liable to contribute to "*..the amount which the Lessor may expend..*" in effecting and maintaining the insurance and maintaining, repairing and redecorating the Building. There is no mention of management fees or fees associated with management functions.
37. In the absence of a clear contractual provision in the lease, the Respondent is unable to recover any management fees for this Flat.
38. The tribunal did not find the decision in ***Brent***, which it managed to locate, to be of assistance. That case involved a local authority freeholder and the wording of the lease was quite different to that for Flat A.

#### **Management fees**

39. The Applicants contended that the management fee of £150 plus VAT per unit, per annum was unreasonable. They suggested that the limited service provided by the managing agents, London Land Securities

Limited (“LLSL”) did not justify this level of fee. The Applicants also challenged the quality of the service provided by LLSL, which is operated by the Respondent and her family. They suggested that the fees should be disallowed in full.

40. Mr Sharma argued that the management fees should be allowed in full. The sum charged is modest compared with other local managing agents who typically charge £300 plus VAT per unit, per annum. LLSL operates from the Respondent’s home address but are professional agents with professional indemnity and office insurance cover. Mr Sharma has an MSc in European Real Estate, which is an RICS accredited course and his father has an RICS accredited degree in Property Planning and Development.

### **The tribunal’s decision**

41. The tribunal determines that Flat C is liable to contribute to the following management fees:

Period ended 31 December 2012 (two years) - £900 plus VAT

Year ended 31 December 2013 - £600 plus VAT

Year ended 31 December 2014 - £600 plus VAT

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

42. The tribunal allows the management fees in full. Flat A is not liable to contribute to these management fees but Flat C is.
43. Clearly there was some management of the Building for the years in question. Insurance was arranged, bills were paid and service charge accounts and demands were produced. The Respondent is able to recover a reasonable management fee for the work undertaken by LLSL. Whilst the quality of the management was debateable, a fee of £150 plus VAT per unit per annum is justified. Based on the tribunal’s knowledge and experience, this is at the lower end of the ‘going rate’. Further the Applicants produced no evidence in the form of alternative quotes to justify a different charge.

### **Flat C – Advance service charges for year ending 31 December 2015**

44. The Respondent demanded an advance service charge of £150 per annum on 01 January 2015 and relies on clause 1.1.7 of the lease. This was not specifically challenged by the Applicants.

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

45. The tribunal determines that the Applicants are liable to pay an advance service charge of £150 per annum for the current financial year. This is payable by equal instalments on the usual quarter days in accordance with paragraph 6-2.6 of the sixth schedule to the lease. It follows that the sum of £37.50 was/is payable on 25 March, 24 June, 29 September and 25 December 2015.

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

46. Paragraph 6-2.7 provides for payment of advance service charges. The Respondent has limited the advance charge to the Initial Provisional Service Charge of £150 specified at clause 1.1.7 of the lease. The sum claimed by the Respondent is very modest and is reasonable, having regard to the likely service charge expenditure for the year.

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

47. 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 (total £440)<sup>1</sup>. Having heard the submissions from the parties and taking into account the determinations above, the tribunal orders the Respondent to refund the sum of £440 to the Applicant within 28 days of the date of this decision. As a result of the substantive application, the Respondents withdrew many of the disputed service charges. Further the tribunal has disallowed the management fee for Flat A in full. It follows that the Applicants have achieved substantial reductions in the service charges for their flats, as a result of these proceedings.
48. In their application form and at 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 service and the determinations above, the tribunal determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the Respondent may not pass any of her costs incurred in connection with the proceedings before the tribunal through the service charge. As explained at paragraph 47, the Applicants have achieved large reductions in the service charges. They have been largely successful in their pursuit of these proceedings.

### **The next steps**

---

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

49. The Respondent will need to serve revised service charge demands on the Applicants to take account of the matters agreed (including the revised service charge proportions) and the tribunal's determinations. These should each be accompanied by a summary of rights and obligations in accordance with section 153 of the Commonhold and Leasehold Reform Act 2002.
50. For the avoidance of doubt, the tribunal has made no determinations or findings in relation to the historic problems with the electricity supply at the Building, which form the basis of the Respondent's claims for loss of rent, additional management fees and legal costs.
51. Finally the tribunal urges the parties to try and set aside their historic grievances with a view to improving relations. The Applicants and the Respondents have a common interest in ensuring that the Building is properly managed and maintained. This can best be achieved by maintaining a constructive and open dialogue and further litigation should be avoided, if at all possible.

**Name:** Tribunal Judge Donegan    **Date:** 13 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 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.