



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

Case reference : **LON/00BD/LSC/2015/0103**

Property : **Flat 3, The Vineyards, High Street,
Feltham, TW13 4HH**

Applicant : **Lakeside Developments Ltd**

Representative : **Brady Solicitors**

Respondent : **Mr A Sirker**

Representative : **In Person**

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

Tribunal members : **Judge E Samupfonda
Mr K. M. Cartwright FRICS**

**Date and venue of
hearing** : **15 June 2015 at 10 Alfred Place,
London WC1E 7LR**

Date of decision : **17th July 2015**

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the following sums are payable by the Respondent; £850.28 in respect of the service charges for the year end 2012, £3,195 in respect of the major works carried out in 2010 and £67.20 in respect of the administration fee for the late payments of service charges.
- (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.
- (4) Since the tribunal has no jurisdiction over county court costs and fees, this matter should now be referred back to the Brentford County Court.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") as to the amount of service charges and administration charges payable by the Respondent.
2. Proceedings were originally issued in the Brentford County Court under claim no. 3XV05718. The claim was transferred to this tribunal, by order of District Judge Nisa on 18 February 2015.
3. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

4. The hearing of the application was held on 15 June 2015. Mr C Green, instructed by Bray solicitors represented the Applicant. Mr Keivit, Property Manager, from Trust Property Management, the Applicant's managing agents accompanied him. Mr Sirker the Respondent lessee appeared in person.

The background

5. The property that is the subject of this application is a three storey brick and concrete framed building with a flat roof.

6. Neither the Applicant nor the Respondent attended the inspection of the property carried out by the tribunal on 3rd July 2015.
7. 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 and will be referred to below, where appropriate.

The issues

8. At the start of the hearing the tribunal and the parties identified the relevant issues for determination as follows:
 - (i) The payability and reasonableness of service charges for the year end 2012. The sum claimed is £850.28.
 - (ii) The payability and reasonableness of service charges for the major works carried out in 2010. The amount claimed was £3,195.
 - (iii) The payability and reasonableness of the administration fee of £67.20 relating to the late payment fee applied to the service charge account following non-payment by the Respondent.
9. 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.

Service charge year end 2012-£850.28

10. Mr Green took the tribunal through the Income and Expenditure Account that was produced by the Applicant. He referred to the individual items, explained how the amount was expended and produced the supporting invoices. He submitted that all the costs are payable as they were reasonably incurred.
11. Mr Sirker produced photographs of the building externally that he had taken in May 2015 in support of his contention that the building is not well managed and it was not well maintained. The photographs depicted overgrown grass and a crumbling wall that he said had been repaired under the major works contract. When asked to comment on the service charges claimed, he said that the accountant's fee of £648 was excessive. He asked repeatedly "where has all the money gone?"

The tribunal's decision

12. The tribunal determines that the amount payable in respect of service charges for the year end 2012 is £850.28.

Reasons for the tribunal's decision

13. The tribunal carefully considered the Income and Expenditure account, the supporting invoices together with the submissions made by Mr Green and Mr Sinker. Although Mr Sinker challenged this item generally, he specifically referred to the accountancy fees, which he said were excessive. He did not produce any evidence to support his challenge and did not give any reasons for his views. His primary and sole contention was to ask and ascertain "where has all the money gone?" In the absence of any contra evidence, and from our consideration of the evidence provided, we concluded that the costs incurred are reasonable and therefore payable.

Major Works: Validity of the S20 Notice £3.195

14. Mr Green referred the tribunal to the section 20 Notice of Intention to carry out work dated 10 June 2010. He sensibly conceded that the Notice refers to an incorrect property address in that it stated "to all leaseholders of 13 Ridge Road London N8 9LE." Nevertheless he argued that the Notice was valid as it was correctly addressed to Mr Sinker who received it and so was aware of the proposed works but did not make any observations as invited to do so by the Notice. He added that Mr Sinker was not in any way prejudiced by what appeared to be "clearly a cut and paste error." He added that Mr Sinker was further made aware of the proposed work by the statement of estimates dated 14 March 2011 and this indicated that Benjamin Mire, Chartered Surveyors (BMCS) had been appointed as supervising surveyors. The Notice also informed Mr Sinker that the Applicant had invited four of its known contractors to tender for the works and following this, R & B Decorators and Refurbishments were appointed to carry out the work.
15. In response, Mr Sinker stated that when he received the Section 20 Notice he realised that it referred to leaseholders of 13 Ridge Road, therefore he assumed it did not relate to him so he ignored it. He was more concerned about the appointment of Benjamin Mires whom he considered to be disreputable for various reasons. When asked if he considered that he had been in any disadvantaged by the incorrectly address Notice, he simply repeated where has all the money gone and made references to the legal proceedings concerning Benjamin Mires.

The tribunal's decision

16. The tribunal decided that the Notice was valid.

Reasons for the tribunal's decision

17. The tribunal considered the Notice of Intention dated 10 June 2010. The issue was whether the Notice was valid and if not whether Mr Sirker had been prejudiced in any way. The tribunal and the parties acknowledged that the Notice incorrectly identified the property. The defect in the Notice was limited to the address only. In all other respects the Notice contained all the relevant information as required by the Act. Mr Sirker acknowledged that he received it and also received the Notice of Estimates. There was no evidence put before the tribunal indicating that Mr Sirker had been prejudiced by the incorrect address and that it had caused him to miss an opportunity to make observations. He told the tribunal that he ignored the notice upon receipt. He saw that the Notice made reference to the appointment of Benjamin Mires whom he considered was inappropriate. Mr Sirker made a number of allegations about Mr Mires' conduct. The tribunal makes it clear that it has not taken these allegations into consideration, they are irrelevant and do not have any bearing on this case. The matters to be determined by this tribunal are case specific and as outlined above.

Reasonableness of the cost of the Works

18. Mr Green stated that the final cost of the work was some £5,000 below the estimated cost, which in his view demonstrated reasonable conduct. Mr Sirker was required to contribute £3,195 and he has not made any payments. He referred the tribunal to the statement of account covering the period 18 February 2007 to 24 April 2015. He acknowledged that Mr Sirker's mortgage company First Direct made two payments. The account showed that £3,243.28 was paid on 18 May 2012 and this was applied to Mr Sirker's service charge account. A cheque for £3,980 was paid in on 1 April 2011 part of which was applied to the service charge account and the rest used to pay the legal fees. He said that there was no invoice for the legal fees. These are the only two payments made on the service charge account.
19. We asked Mr Green how the tribunal, tasked with determining reasonableness was expected to do so without any information that identified the work that had been carried out pursuant to the s20 Notice. After a short adjournment, Mr Keivit produced a copy of the Specification and Schedule of works prepared by BMCS dated July 2010. Mr Green referred to the invoices submitted by R & B Decorators and said that BMCS, as the project supervisors were responsible for checking progress of the work and would not have signed off the project unless the work was completed satisfactorily. Mr Keivit informed the

tribunal that the work was carried out between June –August 2010. Mr Keivit said that he had been recently appointed and therefore could not make any observations or comments on the major works and he was not able to produce the final accounts.

20. In response, Mr Sirker asserted that no work was carried out other than the internal decorations. When asked about the external works he responded “I am not a builder” and when asked about works to the roof and guttering he said that he could not comment as they were out of sight and too far for him to see. He confirmed that he did not live at the property and agreed that he may have missed the external works being carried out.
21. Mr Sirker challenged the apportionment of 1/12 on the basis that if he paid £7,000 and the other 11 lessees paid the same amount, “where had all the money gone?”

Decision of the tribunal

22. The tribunal decided that the cost incurred was reasonable and had been reasonably incurred. The description of the work as specified in the s20 Notice of Intention was accurately reflected in the specification of works prepared by BMCS. The tribunal determined that the amount payable by the Respondent to the Applicant for the major works was £3,195.

Reasons for the tribunal’s decision

23. The tribunal was greatly assisted by the site inspection that was carried out on 3rd July 2015. We inspected the property against the specification of works. Mr Sirker had agreed at the hearing that the interior works had been carried out; therefore there was no need for us to carry out an internal inspection of the property. Externally we could see that painting had been carried out to the critical windows and the concrete beams but we did notice that the rainwater pipes had not been painted. We noticed that the painting was in good condition. We were satisfied that the bulk of the external works had been carried out although we were not able to obtain a copy of the final account to ascertain the final list of work. We could see where the works had been carried out to the perimeter wall but further damage seems to have occurred since the major works.
24. There was no evidence produced from which the tribunal could conclude that the cost of the work was not reasonably incurred. From our inspection we were satisfied that the work that was invoiced was carried out.

25. With regards to Mr Sirker challenging the 1/12 apportionment, there are 12 flats and we were satisfied that this was in accordance with Clauses 1 and 2 of the lease which provides that the lessee should pay 1/12 of the service charge. Mr Sirker challenged the cost of the work on the basis that he had paid £7,000 and 11 others paid the same amount. We heard no evidence to support this assertion and what others paid had no bearing on determining whether or not the cost incurred was reasonable.

The Administration fee £67.20

26. Mr Green explained that an administration fee of £67.20 was applied to the service charge account because Ms Sirker failed to make payments of service charges when they were due.
27. Mr Sirker made no observations.

The tribunal's decision

28. The tribunal determined that the amount claimed was reasonable and payable.

Reasons for the tribunal's decision

29. The tribunal was satisfied the cost incurred was incurred as a result of non-payment of service charge. The Applicant produced a letter sent to Mr Sirker dated 27 November 2011 which was a request for late payment and it stated that non payment would result in further debt recovery and a charge of £67.20 being placed on to his account. The amount claimed was not challenged and we considered that it was reasonable.

Application under s.20C and refund of fees

30. The Respondent did not make an application under section 20c of the Act and the Applicant did not make an application for a refund of the fees that he had paid in respect of the application/ hearing¹.

The next steps

31. The tribunal has no jurisdiction over ground rent or county court costs. This matter should now be returned to the Brentford County Court.

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

Name: Judge E Samupfonda

Date: 17 July 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).