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

**Case reference** : LON/00BG/LSC/2014/0575

**Property** : 81 Medland House, 11 Branch Road,  
London E14 7JT

**Applicant** : Mr TJ Williamson

**Representative** : None

**Respondent** : Limehouse West Management  
Limited

**Representative** : None

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

**Tribunal members** : Tribunal Judge R Percival  
Mr M Cairns MCIEH

**Date and venue of  
hearing** : 10 Alfred Place, London WC1E 7LR  
19 January 2015

**Date of decision** : 20 January 2015

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**DECISION**

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## **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 Applicant in respect of the service charge year 2013.
2. With the consent of the parties, the application was determined on the papers without a hearing. No inspection was necessary.
3. The relevant legal provisions are set out in the Appendix to this decision.

## **The background**

4. The property which is the subject of this application is a three bedroom flat in a purpose build block of 38 dwellings. It is part of a larger development known as Limehouse West, comprising six buildings divided into 262 flats.
5. The Applicant 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.
6. On 21 November 2014, Tribunal Judge Andrew gave directions providing for the Applicant to serve on the Respondent a statement explaining his objection; for the Respondent to provide a case in response to the Applicant’s statement and for the Applicant to provide a reply. The Applicant was to be responsible for preparing a bundle.
7. These directions have largely been honoured in the breach. The papers on which the Tribunal is determining this case comprise, in addition to the application form and the directions, a copy of the lease, a copy of two service charge demands (26 September 2013 and 25 September 2014), a single sheet of paper headed “additional information” and an email from the Applicant to a representative of the managing agent dated 16 December 2014. These papers have been assembled into a bundle, of sorts.
8. From the Respondent, we have a letter indicating they do not wish to take part in the proceedings.
9. The Applicant informed us that the application under section 27A of the 1985 Act relating to the property at 112 Berglen Court, 7 Branch Road, London E14 7JX, decided by the Tribunal on 20 January 2014,

concerned another block in the same development, and the same issue. It is clear more information was available to the Tribunal considering that case. The Tribunal found for the Applicant tenant.

### **The issue**

10. The issue is the apportionment of the building service charge and the building or buildings to which it applies.
11. The Applicant's lease provides a fixed percentages for his contribution by way of service charge to the relevant total expenditure on two separate accounts, one for the building ("Part A") and one for the wider estate ("Part B"). The Part A percentage is 2.9223% and that for Part B 0.4586%. It is clear from the lease that "the building" means block A3, as marked on plan 3 attached to the lease. The other blocks (in some cases, shown as sub-divided single structures on the plan) are labelled A2 and A1; and B1 to B6. We infer that the A blocks constitute Medland House, and the B blocks Berglen Court.
12. The Applicant claims that from 1 April 2012 the Respondent changed the percentages unilaterally to 1.424946% and 0.459708 respectively; and at the same time changed the definition of "building" to include blocks A1 and A2 as well as block A3. Thus although the percentage contribution for Part A markedly reduced, the charges upon which that percentage operated increased (while the percentage for Part B increased infinitesimally).
13. We have before us no justification for this change from the Respondent. We note that the only provision for changing the percentages in the lease has as a precondition the re-planning of the layout of the estate or the building (fourth schedule, part II, paragraph 2). That is not, on the material before us, relevant.
14. It appears that it was argued in the Berglen Court application that the term "building" should be more widely construed in order to correct a clear mistake in the drafting of at least some of the leases of properties on the estate. The point was not argued before us. Had it been so, we would have respectfully agreed with Tribunal Judge Moh abir in rejecting it.

### **Decision**

15. We only have before us the demands mentioned above. It is not possible on the basis of them alone for us to calculate the Applicant's liability in monetary terms.
16. However, the Applicant is liable only for such sums in service charges in respect of the building (Part A) as are the product of the application

of the percentage of 2.9223% to the relevant costs incurred by the landlord in respect of the building marked as block A3 on plan 3 attached to his lease. He is liable for service charges in respect of the estate in the percentage of 0.4586% of the relevant costs incurred by the landlord in respect of the wider estate.

**Name:** Tribunal Judge R Percival      **Date:** 20 January 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.