



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

Case Reference : LON/00BG/LSC/2015/0042

Property : Flat 7, Queen of Isle Apts, 1 East
Ferry Road, London E14 3NY

Applicant : Mr O A & Mrs K E Melbye

Representative : In person

Respondent : Wenghold Ltd

Representative : Ms E Fingleton of counsel
instructed on behalf of Estates &
Management Ltd.

Type of Application : Payability of service charges

Tribunal Members : Judge Tagliavini
Mr T Sennett MA FCIEH
Mrs L West

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

Date of Decision : 6 July 2015

DECISION

- (1) The tribunal determines that all sums for the service charge years 2012 and 2013 are reasonable and payable subject to the refunds/credits agreed by the respondent to be repayable to the applicants in respect of contribution to the cost of the roof vent work by Stonedale and reallocation of VAT on charges for electricity supply where VAT charged at standard instead of reduced rate.
- (2) The tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985.

The application

1. The applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges in respect of the service charge years 2012 and 2013.

NB: The tribunal was provided after the close of the oral hearing, with a County Court Consent Order dated 4 September 2014 in which, the applicants (defendants) agreed to pay the claimant (respondent) the sum of £2,605.89 in full and final satisfaction of the claim brought by the respondents for unpaid service charges, and a counterclaim brought by the applicants. Consequently, it appears to the tribunal that the applicants now seek to litigate matters for which a Consent Order has already been made and therefore the applicants are not entitled to make an application in respect of matters they have already agreed. Had the applicants wished to continue to dispute the demands made by the respondents for service charge arrears they could have sought a transfer of those proceedings to this tribunal. However, neither party has sought to raise any point of "estoppel" or "res judicata". A copy of the Claim Form and Particulars was not provided and as the applicants own three flats (2,7 & 11) in the building it is not clear to the tribunal to which flat or flats the Consent Order relates. Therefore, the tribunal makes the determinations as appear below.

2. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

3. The applicants appeared in person at the hearing and Ms Fingleton of counsel represented the respondent. The tribunal was provided with two lever arch files, one from each of the parties as there was no agreed bundle.

The background

4. The property, which is the subject of this application, is a purpose built block of 14 flats on 5 floors with ground and first floor commercial units.
5. 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.
6. The applicant tenant holds a long lease of the property, which requires the respondent 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.

The issues

7. At the start of the hearing the parties identified the relevant issues for determination as follows:
 - (i) The payability and/or reasonableness of service charges for 2012 and 2013 relating to:
 - (a) Reserve funds
 - (b) Replacement roof vent
 - (c) BT telephone
 - (d) Legal costs re Flat 7
 - (e) Flat 11 conveyancing
 - (f) Flat 11 storm damage
 - (g) Communal lighting
 - (h) Emergency lighting/project manager
 - (i) Accountant's fees
 - (j) Block door repair
 - (k) Electricity charges
 - (l) Late payment charge on water bill
 - (m) Exterior redecoration
8. 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. The tribunal as assisted by the oral evidence of the tenants and the written and oral evidence of Ms H J Quinn, Head of Property Management Estates & Management Ltd; Mr Charles Bettinson, Head of Insurance, Estates & Management Ltd; Mr Diaz Richards-Riant of Stonedale Property Management (the landlord's previous managing agents), Mr Sean Doherty of Peveral Property Management as a Client Accountant – Stonedale Property Management being part of the Peveral Group and

Mr Mark Tamuta, Director at Alliance Property Management Limited
(also the landlords previous managing agent).

9. In reaching its decisions the tribunal preferred the oral and written evidence of the landlord. The tribunal found the evidence presented on behalf of the landlord to be thorough and well supported by documentary evidence. The tribunal therefore finds the following:

- (a) Reserve funds – are payable under the terms of the lease and reasonable in amount collected from the tenants.
- (b) Replacement roof vent – replacement required due to state of disrepair and potential fire hazard caused. Cost is reasonable for the work carried out. A contribution of £4,279.80 was agreed to be paid by Stonedale, due to its earlier lack of repair, and this sum is being paid to the new managing agents thereby reducing the cost to the lessees.
- (c) BT telephone – a credit is to be provided pro rata over 2 years.
- (d) Legal costs re Flat 7 – the sum of £240 appeared to be in issue and subject to the Tomlin Order referred to above.
- (e) Flat 11 conveyancing – not a service charge issue.
- (f) Flat 11 - storm damage – work carried out and no recurrence of water leak.
- (g) Communal lighting – all lighting costs are reasonable and payable. Four electrical inspections were carried out each service charge year although billing for each inspection was sometimes delayed thereby creating the erroneous impression of extra electrical tests.

- (h) Emergency lighting – reasonable cost for specialist work requiring a specialist report.
- (i) Accountant's fees – reasonable and payable in accordance with the lease.
- (j) Block door repair – reasonable cost for improving security measures. The tribunal finds that the work was necessary and not a duplication of earlier work undertaken but implemented to provide greater security.
- (k) Electricity charges - reasonable and payable as actual readings taken to replace estimated charges and apportioned between two years. The difference between the standard rate and reduced of VAT is to be reallocated to the service charge account as a credit.
- (l) Late payment charge on water bill – was not in fact a late payment charge. Water charges considered reasonable and payable.
- (m) Exterior redecoration – works not yet carried out.

Other issues in respect of misuse of personal information for marketing purposes are not within the jurisdiction of this tribunal. A failure to recognise a Tenant's Association requires a separate application to this tribunal.

Section 20C costs

10. In light of the above findings the tribunal does not consider it reasonable or appropriate to make any order under this provision.

Signed: Judge Tagliavini

Dated: 6 July 2015

Appendix of relevant legislation

Landlord and Tenant Act 1985

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 a leasehold valuation 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 a leasehold valuation 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) a leasehold valuation 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.

Leasehold Valuation Tribunals (Fees)(England) Regulations 2003

Regulation 9

- (1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.
- (2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).

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 a leasehold valuation 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 a leasehold valuation 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).

Schedule 12, paragraph 10

- (1) A leasehold valuation tribunal may determine that a party to proceedings shall pay the costs incurred by another party in connection with the proceedings in any circumstances falling within sub-paragraph (2).
- (2) The circumstances are where—
- (a) he has made an application to the leasehold valuation tribunal which is dismissed in accordance with regulations made by virtue of paragraph 7, or
 - (b) he has, in the opinion of the leasehold valuation tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.
- (3) The amount which a party to proceedings may be ordered to pay in the proceedings by a determination under this paragraph shall not exceed—
- (a) £500, or
 - (b) such other amount as may be specified in procedure regulations.
- (4) A person shall not be required to pay costs incurred by another person in connection with proceedings before a leasehold valuation tribunal except by a determination under this paragraph or in accordance with provision made by any enactment other than this paragraph.

