



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

Case reference : **LON/00BH/LSC/2014/0534**

Property : **Flat 1, 139-141 Hainault Road,
London E11 1DT**

Applicant : **Mr C. Hurst (Landlord)**

Representative : **In person**

Respondent : **Connica Investments Ltd
(Leaseholder)**

Representative : **Mr M. Patel; Company Secretary
and Director of Respondent**

Type of application : **Reasonableness of and the liability
to pay a service charge – Section
27A Landlord & Tenant Act 1985**

Tribunal : **Tribunal Judge Lancelot Robson**

**Date and venue of
determination** : **5th March 2015
10 Alfred Place, London WC1E 7LR**

DECISION

Decisions of the Tribunal

- (1) The Tribunal has jurisdiction to deal with claims relating to service charge years ending on 30th June 2008 and 2009 only, as no other years were pleaded in the claim transferred from the County Court.
- (2) The Tribunal determines that nothing is payable by the Respondent in respect of the service charges for the years ending on 30th June 2008 and 2009.
- (3) The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the Tribunal proceedings may be passed to the Respondent through any service charge.
- (4) Since The Tribunal has no jurisdiction over county court costs, fees, or other matters beyond the terms of Section 27A, this matter is now referred back to the County Court at Bow.
- (5) The Tribunal makes the other determinations as set out under the various headings in this Decision

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 payable by the Applicant pursuant to a lease dated 6th December 1976 (the Lease) in respect of the service charge years ending on 30th June 2008, 2009, 2010 and 2011. The Respondent also seeks an order for limitation of the costs in these proceedings under Section 20C of the 1985 Act.
2. Proceedings were originally issued in the County Court at Bow under claim no. A8QZ8137. The claim was transferred to this Tribunal, by order of District Judge North on 20th October 2014. .]
3. The relevant legal provisions are set out in the Appendix to this decision.
4. Pursuant to Directions given on 11th November 2014 for a paper determination, both parties submitted written statements of case and bundles of documents which were considered by the Tribunal Judge sitting alone on 5th March 2015.

The background

5. The property subject to this application is on the ground floor of a block of six flats. By clause 3(c) and the 4th Schedule of the Lease the Respondent is obliged to contribute to the cost of services and insurance provided by the Applicant. No point was raised by the parties on the effect of the terms of the Lease.

The issues

6. After examining the Court file and the bundles, the Tribunal noted that despite the terms of the Directions dated 11th November 2014, it had no jurisdiction to rule on matters not raised in the original claim made in the County Court, nor has it jurisdiction to deal with costs incurred in the county court, rent or interest (other than any contractual interest reserved by the Lease). Thus the relevant issues for determination are:
 - (i) The payability and/or reasonableness of service charges for the years ending 30th June 2008 and 2009 relating to electricity for the common parts and insurance charges.
 - (ii) Section 20C
7. Having seen evidence and submissions from the parties and considered all of the documents provided, the Tribunal has made determinations on the various issues set out below.

Payability of Service charge demands

8. The Applicant in (unsigned statements) submitted that he had served copies of the relevant demands at the property on 27th December 2008 and 24th November 2009 respectively, being unaware that the Respondent had changed its address. The demands were attached to a covering letter, which he described as “produced by cut and paste from previous years service charge requests”, but no copy was included in the bundle. He conceded that the sum payable by the Respondent for electricity in the service charge year ending in 2008 was in fact £102.40, not £124.05 as stated in the County Court claim, and included copies of the relevant EDF invoices. He admitted that neither demand contained the required statutory statement of lessees’ rights and obligations, but had copied all the relevant invoices. Also, he had reserved the relevant demands on 23rd June 2014 and again on 23rd November 2014 with the statutory statement attached, in connection with these proceedings. (The Tribunal notes that these letters also sought payment of service charges for other years).
9. While the Applicant did not refer to them, the Respondent stated in its statement of case that the Applicant in his letter of 23rd June 2014 had

also included a copy of a letter dated 27th December 2010 headed “Rent Increase Notice”, and another letter demanding service charges totalling £2,096.81 dated 31st December 2012, purporting to have been sent to the Respondent. The Respondent did not include copies of these two letters in its bundle.

10. The Respondent submitted that it had received no notice at all of the service charges in dispute prior to 24th June 2014, when the Applicant had given the Respondent 4 working days to pay the demands or face court action. The Respondent had replied the same day offering to negotiate on this matter, and also relating to appointing an arbitrator to settle an overdue review of the ground rent, and a possible extension of the lease. The County Court claim was served on the Respondent on 3rd July 2014.
11. The Respondent submitted that the service charge claim was time barred by the 18 month rule contained in Section 20B of the Landlord and Tenant act 1985. The Respondent had made attempts to contact the Applicant over a number of years about various matters, even writing to the Applicant’s address noted in the title at the Land Registry, but having received no reply it had found itself obliged to insure the property to protect its own interests in the period 2007 - 2011. In support, the Respondent included a copy of a letter written to the Applicant about the lack of contact, the insurance problem and other matters dated 14th June 2012. That letter was returned unopened. However in July 2012, a fellow leaseholder contacted the Respondent, inviting Mr Patel to a meeting between the leaseholders and the landlord. That meeting was the first time there had been any contact between the parties. The subject of the meeting was discussion of many matters the Respondent had raised in its letter dated 14th June 2012.
12. The Tribunal considered the evidence and submissions. It considered the Applicant’s evidence and submissions to be incomplete, inconsistent and muddled. By contrast the Respondent’s evidence and submissions, although not without limitations, appeared relatively full and consistent. They also revealed matters which might be prejudicial to its case. All things considered, the Tribunal generally preferred the evidence of the Respondent. Thus the Tribunal decided that the Applicant’s letter dated 23rd June 2014 was the first intimation of the service charges demanded by the Applicant for the years ending on 30th June 2008 and 2009. Therefore the claims were time barred by virtue of Section 20B.

Reasonableness of Service Charges (Not part of the Decision)

13. While the issues decided above dispose of the substantive claim, to assist the parties the Tribunal notes its findings on other matters, which may help in moving the relationship between the parties forward. These findings are not part of its decision.

14. On the facts admitted by the Applicant, no valid demand for service charges appears to have been made until 23rd June 2014. Serving invalid demands has consequences for any claims for interest.
15. The insurance policy obtained by the Applicant from Royal Sun Alliance for the year from 15th August 2007, was not completely copied but appeared to comply with the requirements of the 4th Schedule to the Lease as it seemed to be a “comprehensive” policy. The copy policy from Allianz for the year commencing 15th August 2008 also appeared incomplete, but seemed not to be a “comprehensive” policy, and thus inadequate.
16. While the EDF invoices relating to the electricity charges demanded were tortuous, they added up to the figures (eventually) demanded. It is difficult to see how a demand based on meter readings could be deemed unreasonable (as suggested by the Respondent) if the service was for the common parts.

Payment of Fees, Costs and Application under s.20C

17. Although not specifically pleaded, it seemed clearly implied from the original court application that the Applicant wished to make an application for costs and a refund of the fees that he has paid in respect of the application to this Tribunal¹, The Respondent made a specific application for a costs order in the witness statement of Mr Patel dated 11th February 2015.
18. Having considered the submissions from the parties and taken into account the determinations above, the Tribunal did not order the Respondent to refund any fees paid by the Applicant to the Tribunal. The Respondent appears to have paid no fees to the Tribunal.
19. Briefly stated, the jurisdiction of the Tribunal over recovery of costs in Rule 13 relates only to cases where one party has behaved very unreasonably. The Respondent has substantially won its case, and has conducted itself properly in the proceedings. The Tribunal made no order for costs against the Respondent.
20. Relating to the Respondent’s application for costs, the Tribunal is mindful that, unlike the Court, the Tribunal is intended by Parliament to be a low/no costs jurisdiction, and that the costs provision in Rule 13 is intended (as was its predecessor) as a sanction against parties whose conduct is deemed vexatious or otherwise grossly unreasonable. The Tribunal decided that the Applicant’s conduct of this case was muddled

¹ The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 SI 2013 No 1169, Rule 13

and inept, but did not reach the necessary threshold of unreasonableness envisaged by Rule 13.

21. In its statement of case Respondent applied for an order under section 20C of the 1985 Act. This section is for the benefit of leaseholders. Having considered 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 to be made under section 20C of the 1985 Act, so that the Applicant may not pass on any of its costs incurred in connection with the proceedings before the Tribunal through the service charge.

The next steps

22. The Tribunal has no jurisdiction over ground rent, statutory interest, or county court costs. This matter is now returned to the County Court at Bow for determination of any outstanding matters

Name: Lancelot Robson

Date: 5th March 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 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.

Section 21B

- (1) A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges.
- (2) The Secretary of State may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.
- (3) A tenant may withhold payment of a service charge which has been demanded from him if subsection (1) is not complied with in relation to the demand.
- (4) Where a tenant withholds a service charge under this section any provisions of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.
- (5) and (6)....

The Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013

Regulations 13(1) - (3)

- 13.-(1) The Tribunal may make an order in respect of costs only-
- (a) under Section 29(4) of the 2007 Act (wasted costs) and the costs incurred in applying for such costs;
 - (b) if a person has acted unreasonably in bringing, defending, or conducting proceedings in-
 - (i) an agricultural land and drainage case,
 - (ii) a residential property case, or
 - (iii) a leasehold case; or
 - (c) in a land registration case.
- (2) The Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor.
- (3) The Tribunal may make an order under this rule on application or on its own initiative.