

12419



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

Case reference : **LON/00AH/LSC/2017/0136**

Property : **Flat 3, 22 Nicholson Road,
Croydon, Surrey CR0 6QS**

Applicant : **Mr G. A Sharpe**

Representative : **In person**

Respondent : **Southern Land Securities**

Representative : **In person**

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

Tribunal members : **Judge S O'Sullivan
L Jarero BSc FRICS**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of decision : **4 October 2017**

DECISION

Decisions of the tribunal

- (1) The tribunal makes the determinations as set out under the various headings in this Decision
- (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 payable by the Applicant in respect of the service charge years 2011-2016.
2. The relevant legal provisions are set out in the Appendix to this decision.

The background

3. The property which is the subject of this application is a first floor flat contained in a 3 storey converted Victorian house containing a total of 3 flats (the “Building”). It is said by the landlord that the right to manage was exercised in respect of the Building on 23 March 2015. The applicant is one of the leaseholders.
4. It is noted from papers received that there are proceedings in the County Court claim number C18YM887 in relation to this matter. However it is noted that the claim in the County Court was stayed pursuant to an order of District Judge Coonan on 28 April 2017 pending the outcome of this application to the tribunal.
5. The relevant lease is dated 14.10.74 for a term of 99 years from 25 March 1973. This has been replaced by a new lease dated 21 February 2—2 for a new term from 25 December 2001 but save as to review on the same terms as the original lease save for minor modifications which are said not be relevant for the tribunal’s purposes.
6. The relevant provisions of clause 2 of the lease are as follows;
 - The tenant covenants to pay a proportionate part of the landlord’s expenses and outgoings incurred in repair maintenance renewal and insurance of the Building and for the provision of services and other heads of expenditure as set out in the Third Schedule to the Lease

- The service charge period is 1 April to the following 31 March
 - The amount of the service charge is to be ascertained and certified by a certificate signed by the landlord's auditors , accountants or managing agents (at the discretion of the landlord) annually and so soon as practicable after the end of the landlord's financial year
 - A copy of the certificate is to be provided on request
 - The certificate should show a summary of the landlord's expenses and outgoings during the financial year to which it relates together with a summary of the details and figures forming the basis of the service charge and the certificate
 - If required by the landlord the tenant is to pay on 25 March and 29 September such sum in advance as the landlord or its accountants or managing agents shall specify at their discretion to be affair and reasonable interim payment
 - As soon as practicable after signature of the certificate the landlord is to provide to the tenant an account of the service charge payable for the year giving credit for interim payments and showing any relevant adjustments.
7. 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.
 8. 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 and will be referred to below, where appropriate.
 9. A case management conference was scheduled to take place on 27 June 2017 but neither party attended. Directions were made in this matter dated 27 June 2017 which provided that this matter be considered by way of a paper determination unless wither party requested an oral hearing. As no hearing was requested the application was therefore considered by way of a paper determination on 4 October 2017.
 10. The directions identified the following issue to be determined; whether the service charges demanded for the years 2011-2016 are reasonable and payable as no certification of the service charges as required by the lease has been provided.
 11. In accordance with the directions the parties both lodged statements of case. 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 landlord's case

12. The landlord relied on a statement prepared by Mr Milward, a paralegal dated 25 July 2015.
13. The landlord relies on clause 2(iii) in relation to its entitlement to recover a proportionate part of the expenses and outgoings incurred by the landlord in repair, maintenance, renewal and insurance of the building as set out in the Third Schedule of the Lease which are said to include;
 - The expenses of maintaining repairing redecorating amending cleaning painting the reserved property
 - The cost of insuring
 - The fees of managing agents and surveyor
 - Accountancy fees
 - Maintaining the aerals at the property
 - The cost of upkeep of the path entrance way paths and dustbin spaces
14. The landlord acquired the property on 7 May 2008 and since that date is said to have managed the property by way of managing agents and that relevant service charge accounts have been prepared and demanded in accordance with the lease.
15. The landlord points out that service charges predating November 2012 have been determined by the tribunal in decision reference LON/OOAH/LSC/2012/0421. Accordingly the landlord deals only with the years ending 25 March 2013 to 23 March 2015, being the date upon which the right to manage company took over management.
16. As far as the year ending 23 March 2013 is concerned the interim service charges in the sum of £923 were considered reasonable by the tribunal in that previous decision. This comprised a provision of £485 for repairs and £438 in respect of management fees. The tribunal found the management fee of £121.69 plus Vat per unit to be reasonable. The actual charge was £1,326.54 and the tenant's proportion was £442.18. A breakdown of the expenditure is produced which showed an

insurance premium of £746.58, surveyors' fees in the sum of £120 and management fees of £459.96.

17. As far as the year ending 24 March 2014 was concerned the interim service charge was £1,690 and the actual £3,564.29, the tenant's proportion being £1,188.09. This related to insurance, surveyors' fees, management fees, repairs and redecorations and a breakdown is attached.
18. In relation to the year ending 24 March 2015 the actual service charge was £3,166.20 and the tenant's proportion was £1,055.40. This related to insurance, surveyors' fees, management fees and repairs and redecorations and a breakdown of the expenditure is attached.
19. The landlord points out that as at the date of the statement the tenant had not produced reasons why the charges were disputed.

The Applicant's case

20. By an application dated 29 March 2017 the applicant sought the tribunal's determination in relation to the service charge years 2011 to 2016. The applicant was directed to serve his statement of case and schedule setting out the disputed items by 11 July 2017. As he failed to do so the tribunal served a notice that it was minded to strike out his application dated 22 August 2017 if he failed to serve his statement by 6 September 2017. His statement of case was received on 15 September 2017.
21. The applicant apologises for his failure to comply with the directions but says it is due to the "non compliant" way in which the landlord has acted.
22. The applicant says that the landlord has not provided evidence of service in compliance with section 153 of the Commonhold and Leasehold Reform Act 2002. On this basis he says that he is not obliged to pay any of the sums due as they were not accompanied by the requisite summary of tenants' rights and obligations.
23. The applicant does not appear to agree that the right to manage became effective on 25 March 2015.
24. In the year ending 25 March 2013 the applicant challenges the insurance premium on the grounds that it is excessive. However the applicant does not attach any alternative quotations as envisaged by the directions simply providing a spreadsheet showing the actual expenditure. The surveyors' fee of £120 is challenged as the applicant says he does not know what this is for and exhibits correspondence. The management charge of £121.69 per unit is said to be excessive as to his

knowledge no site visits have ever taken place and he suggests a fee of £100 to be reasonable.

25. In relation to the year ending 25 March 2014 the applicant appears to agree that actual costs of £3,166.20 were incurred. The applicant appears to refer to the planned major works and asserts that collusion between the landlord and its agents took place to increase the cost of the works. However he appears to accept that the major works did not take place. He does not appear to object to the costs of the internal repairs and redecorations, surveyors' fees and insurance in this year.
26. As far as the year ending 25 March 2015 is concerned the applicant makes no specific challenges.
27. The applicant does make some general complaints. He says that he has repeatedly asked for quotes for works and says that it is impossible to obtain alternative quotations when he cannot obtain information from the landlord. He says that the service charge rose each year for no apparent reason and that no works are ever carried out and the management fee is far in excess of that currently charges on other properties that he owns and manages in the same and adjacent roads.
28. The applicant also sets out the background. He says that there were issue between himself and the previous freeholders and that following their acquisition the landlord tried unsuccessfully to recover £25,000 in service charge arrears from him. Since September 2010 the applicant says the respondent has sought to recover legal fees which were subsequently withdrawn. The applicant says that he has been refused the right to inspect documents evidencing that the service charges are held on trust in accordance with section 42A of the Landlord and Tenant Act 1987. As a result he says he is entitled to withhold payments. It is also said that no maintenance has been carried out at the property since 8 November 2008 and that he sees no reason for the management fee to be increased.
29. The applicant also says that the landlord does not provide him with a copy of the certificate as required.

The tribunal's decision

30. As a preliminary point we note that due to the applicant's failure to comply with the directions his statement of case was not served first setting out his challenges. As a result the landlord was in the unenviable position of having to serve a statement of case with no knowledge of the particular challenges it faced. Indeed the only grounds identified in the application (and subsequently identified as the only challenge in the directions) was whether the service charges had been properly certificated in accordance with the lease. When the

applicant finally did serve his statement after a notice of intention to strike out, several new challenges were raised, all of which the landlord has not been able to respond to.

31. We deal firstly with the applicant's assertion that he is not obliged to pay any of the service charges due to failure to provide evidence that demands were accompanied by the requisite summary of tenants' rights and obligations. We note in this regard that the applicant does not say he did not receive that summary but rather that evidence of the summary has not been produced, i.e. is not in the landlord's bundle. We reject this assertion. This was not a ground raised in the application. The applicant did not attend the case management conference. Although he was directed to serve his statement setting out his disputes before the landlord he failed to do so and as a result this has not been addressed by the landlord. It is clear from the bundles that the applicant clearly has received the demands and he does not state that they were not accompanied by the summary of tenants' rights and obligations. Hamilton King were managing the property during this period who would have been well aware of the requirement to serve the summary and as most managing agents would be likely to have an automated procedure for ensuring the requisite summary was enclosed. We also note that in the previous determination it was noted that the requisite summary was printed on the reverse of the demands and we see no reason why this practice might have changed. In any event even if the requisite summary had not been enclosed this is a matter which can be rectified and merely would have suspended payment in any event until such time as the summary had been served.
32. As far as our jurisdiction is concerned we confirm that we are able to consider the years challenged ending 25 March 2013 (actual) to 25 March 2015. The previous years referred to by the applicant in his application have clearly already been the subject of consideration by the tribunal in case reference LON/OOAH/LSC/2012/0421.
33. In his statement the applicant refers only briefly to the particular service charge years and we deal with the challenges raised as best we can.
34. Turning to the issue of certification it appears that the applicant continues to assert that the landlord has not complied with the terms of the lease and has failed to provide a certificate. We have been provided with end of year statements provided to the applicant which would appear to have been sent to the applicant with a request for payment. As held by the previous tribunal the lease does not oblige the landlord to provide accounts certified by an accountant. It was held to be perfectly acceptable for the amount of service charge to be ascertained and certified by a certificate signed by the landlord or its managing agents. We note that previous tribunal's decision that the service charge statements provided meet the landlord's obligations under the lease. It

was also found by the previous tribunal that the fact that the statements had not been signed was not considered fatal and it was found that the landlord had complied with its statutory requirements. The statements produced to us are in the same form and we note that the decision was not the subject of a successful appeal. We agree and see no reason to depart from that tribunal's findings. We therefore find that the accounts were properly certified in accordance with the lease.

35. The applicant also challenges management fees across each of the three years. The previous tribunal found the sum of £121.69 plus Vat per unit to be reasonable and this is the sum charged for the year ending 25 March 2013 which has previously been found reasonable. We are bound by that finding. In the years ending 25 March 2014 and 2015 the sum of £161 inclusive of vat and £169.04 inclusive of Vat were demanded. The applicant produced no alternative quotations. We consider this represents a modest increase and falls within a reasonable range for the type of management in question.
36. In the year ending 25 March 2013 interim charges in the sum of £923 had already been found reasonable. Although the applicant asserted that the insurance was excessive he provided no alternative quotations in evidence. We found the cost of insurance to be reasonable having regard to our own expertise and experience. Surveyors' fees were charged in the sum of £120. We allow this charge. It is modest in amount and the landlord is entitled to recover such fees in accordance with the lease.
37. In the year ending 25 March 2014 we allow the insurance and surveyors' fees for the same reasons as above. We note that the survey was an asbestos survey. The applicant did not give any specific grounds for challenges in respect of the cost of repairs and redecorations and we allow the same.
38. In the year ending 25 March 2015 again we allow the insurance, surveyors' fees and management for the same reason as set out above. We note that the surveyors' fees are in relation to an asbestos revaluation and a fire risk assessment. Again the cost of repairs and redecorations is included but as the applicant made no specific challenge we allow the same as reasonable.
39. We would mention that many of the complaints made by the applicant are historic in nature and do not relate to the years before the tribunal.

Application under s.20C

40. In the application form the applicant applied for an order under section 20C of the 1985 Act. Taking into account the determinations above, the tribunal determines that no order should be made under section 20C.

Name: S O'Sullivan

Date: 4 October 2017

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

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 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.