

12063



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

Case Reference : **LON/00BG/LSC/2016/0165**

Property : **Flat 312 417 Wick Lane London E3
2JJ**

Applicant : **417 Wick Lane RTM Company
Limited.**

Representative : **Brynmor Adams**

Respondent : **Ms Rakhi Pandya**

Representative : **Andrew Lane**

Type of Application : **Section 27A Landlord and Tenant
Act 1985 and Schedule 11
Commonhold and Leasehold
Reform Act 2002**

Tribunal Members : **Mrs E Flint DMS FRICS IRRV
Mrs L West**

**Date and venue of
determination** : **10 November 2016
10 Alfred Place, London WC1E 7LR**

Date of Decision : **5 December 2016**

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the administration charges are not payable.
- (2) 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 lessee through the service charge.
- (3) Since the tribunal has no jurisdiction over county court costs and fees, this matter should now be referred back to the Bow County Court.

The application

1. Proceedings were originally issued in the Northampton County Court on 12 November 2015. The claim was transferred to the Bow County Court on 3 March 2016 and then in turn transferred to this tribunal, by order of Deputy District Judge Holland on 4 April 2016 under claim number B27YP633.
2. The relevant legal provisions are set out in the Appendix to this decision.

The property and the lease

3. The property which is the subject of this application is a third floor flat in a block constructed c2004.
4. Neither party requested an inspection and the tribunal did not consider that one was necessary in view of the nature of the issues in dispute.
5. The lease which is for a term of 125 years from 25 March 2005 at a rising ground rent is dated 24 June 2005. The Respondents are the registered leasehold proprietors of the subject premises.
6. By clause 3 of the lease the Lessee covenants to pay to the landlord a fair proportion of the service charge on demand by half yearly instalments on account in advance. The amount of the service charge is to be certified as soon as practicable after the end of the financial year (Clause 3B). A copy of the Certificate is to be provided on written request free of charge to the Lessee (Clause 3D). The lessee also covenants to pay a fair proportion of the insurance premium in respect of the premises.
7. Clause 6 (xiv) entitles the Applicant to recover "*all reasonable expenses it may properly incur in collecting arrears of Service Charge and*

insurance premiums or enforcing any obligation of the Lessee whether or not proceedings are taken and whatever the outcome of such proceedings”

The background

8. Proceedings were issued in The Northampton County Court. The sums claimed were: £4607.85 service charges including reserve funds for 2013-14, 2014-15 and 2015-16, administration charges of £455 and other costs of £720, plus legal costs of £100 and £455 Court fee.
9. A Case Management hearing was held on 12 May 2016 at which the Applicant was represented, the Respondent did not appear and was not represented. Directions were issued on the same date and varied on 20 June 2016.
10. At the outset of the hearing Mr Adams confirmed that there was no provision in the lease to collect a reserve fund, the sums totalling £504.25 in respect of the fund had been credited to the respondent's service charge account. In view of the concession the Tribunal no longer has jurisdiction in respect of these sums.
11. Mr Lane confirmed that there were no issues re reasonableness of the service charges, the matter before the tribunal was one of payability and the reasonableness and payability of administration charges. During the course of the hearing it was confirmed that all the service charge items the subject of the claim have now been paid. The administration charges remain outstanding.

The Issues

12. The Defence lodged raised the following issues: it was stated that the lease provisions do not allow the landlord to collect a reserve fund towards future expenditure, whether the service charges are due since no certificates have been issued in accordance with clauses 3B and 3D of the lease. The reasonableness of the service charge in excess of £760 pa and whether costs had been incurred more than 18 months before those costs were demanded.
13. Having considered all of the documents provided, the tribunal has made a determination as follows.

The Hearing

14. Mr Adams referred to the service charge provisions in the lease and to *Pendra Loweth Management Ltd v North* [2015] UKUT 91 (LC) where it was held that payment of on account sums is not conditional on the

provision of a budget provided that the estimate is made in good faith. If the Respondent was aggrieved at the absence of a certificate then an application under S27A L & TA 1985 for a determination could have been made.

15. As regards compliance with L & TA 1985 he referred to the copy demands included in the bundle. The demands were on pre-printed paper with tenants' rights and obligations printed on the reverse. The demands were therefore compliant.
16. The Respondent has put the Applicant to proof that the service charges were demanded within 18 months however no items have been identified by the Respondent as being outside of this period. There is no dispute that demands were received, only as to their validity therefore the 18 month rule has not been breached as the Respondent was aware that the sums were due.
17. The lease provides for the payment of administration charges. The individual charges are modest: £30 each reminder letter, £120 each debt referral fee and £150 PDC legal fee. It was reasonable for the Applicant to turn to a debt collection agency prior to issuing legal proceedings. He agreed that there had been a refund of a total of £150 administration charges in 2014 however there was no evidence that further charges would not be added.
18. Mr Lane said that the Respondent was seeking a determination of whether the 2015-2016 arrears of service charges and administration fees are payable. He agreed that the service charges based on a budget were payable by two 6 monthly tranches in advance.
19. The Respondent had not been a bad payer however in 2013 the service charge payments increased significantly when new managing agents took over. She had sought clarification on many occasions, reference was made to thirteen queries requesting information regarding the service charges and the reserve fund. A debt collection agency had been employed before these queries had been answered. The Respondent understood that by March 2014 it had been agreed that "all fees" would be waived and no further action taken. This would have included £180 late payment and debt referral fee. The statement of account dated 23 October 2015 indicates that debt referral fees of £120 and late payment fee of £30 were refunded to the Respondent's account in August 2014. The fees for debt collection after March 2014 were unreasonable because the Respondent's queries relating to the service charges had not been answered.
20. The Applicant only conceded that the reserve fund charges were not payable post issue of the proceedings.

21. Mr Lane said that the demands were not accompanied by the summary rights and obligations and therefore they were not payable. In any event he considered that in all the circumstances the administration charges were unreasonable since it is not only the cost which should be taken into account but the behaviour of the parties too.
22. Mr Lane referred to the demands at pages 80 and 183 of the bundle which he noted were not the same. The applicant stated that page 80 was a copy of the demand sent on 14 April 2015 however it includes the half yearly payment from September 2014 and does not have a copy of the summary rights and obligations attached. The demand at page 183 dated 14/04/2015 is in respect of the period 25/03/2015 – 28/09/2015 only.

The decision of the Tribunal

23. On the balance of probabilities the Tribunal determines that the summary rights and obligations were not enclosed with all the demands.

Reasons for the Tribunal's decision

24. The Tribunal has considered all the copy invoices included in the bundle and one attached to an email and is satisfied that the correspondence does not definitively show that the summary was consistently enclosed with each and every demand.

Section 20c Application

25. Mr Adams said that a section 20c order would not be appropriate unless the Respondent was successful in relation to the validity of the demands.
26. Mr Lane submitted that the Respondent was entitled to withhold payments until the summary rights and obligations have been served with the demands; the Respondent had been correct as regards the reserve fund and that the Applicant had failed to comply with its s21 obligation to provide a summary of service charges. It was just and equitable that a s20c order be made.

The decision of the Tribunal

27. 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 any of its costs incurred in connection with the proceedings before the tribunal through the service charge.

Reasons for the Tribunal's decision

28. The Respondent has been successful in defending the application. The concession regarding the reserve fund was prior to the hearing however once legal advice was sought regarding the unpaid charges the Applicant should have been aware that there was no lease provision relating to a reserve fund. The Respondent had paid the service charges claimed by the date of the hearing.

The next steps

29. The tribunal has no jurisdiction over county court costs and statutory interest. This matter should now be returned to the Bow County Court.

Name: Evelyn Flint

Date: 6 December 2016

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 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).