

11670



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

**Case Reference** : **LON/00/AN/LSC/2016/0062**

**Property** : **Flat 2 582 Fulham Road London  
SW6 5NT**

**Applicant** : **Heath Gray**

**Representative** : **In person**

**Respondent** : **Fleetwood Developments**

**Representative** : **Roger Kilby**

**Type of Application** : **S27A and s20C Landlord and  
Tenant Act 1985**

**Tribunal Members** : **Mrs F J Silverman Dip Fr LLM  
Mr M Cartwright JP FRICS**

**Date and venue of  
paper consideration** : **10 Alfred Place, London WC1E 7LR  
1 August 2016**

**Date of Decision** : **1 August 2016**

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## DECISION

**Subject to compliance by the Respondent with s21 Landlord and Tenant Act 1985 the Tribunal declares that the sums demanded by the Respondent in respect of management charges for the years 2014 and 2015 are reasonable and are payable in full by the Applicant.**

**The accountant's fees charged for the years 2014 and 2015 are disallowed and the estimated managing agents' fee for the year 2016 is not approved.**

**The Tribunal makes an order under s20C Landlord and Tenant Act 1985.**

**The Tribunal does not order the repayments of the Applicant's application fee.**

**The Tribunal does not make an order for costs under Rule 13 of the Tribunal Rules of Procedure.**

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## REASONS

1 The Applicant is the tenant of the premises known as Flat 2 582 Fulham Road London SW6 5NT (the property) and the Respondent is the landlord of the property.

2 The Applicant filed an application in the Tribunal on 31 January 2016 seeking a determination of the reasonableness of the service charges demanded by the Respondent in respect of service charge years 2014, 2015, 2016 and future years. He also asked for an order under s20C of the Landlord and Tenant Act 1985 and for an order for costs under Rule 13 of the Tribunal Rules of Procedure.

3 Directions were issued by the Tribunal on 16 February and 26 April 2016. The latter Directions had been issued by the Tribunal who were to consider this matter as a paper determination on 26 April 2016 but had been unable to do so because the parties had at that stage provided insufficient details of their respective cases to allow the Tribunal to reach a decision. The matter came before a differently constituted Tribunal on 1 August 2016 who considered the matter and made a decision in this case.

4 Each party had prepared a separate (but very similar in content) bundle for the Tribunal. Neither party had included the Directions dated 26 April 2016 but correspondence on the Tribunal file indicate that both parties had received and were aware of those Directions. The Tribunal file (but not the bundles) also contained a statement made by the Applicant which the Tribunal took into account in making its decision because its contents were not prejudicial to the Respondent's case.

5 In relation to service charges the Applicant was asking the Tribunal to consider the reasonableness of service charges and insurance payments demanded from the Respondent for the years 2014-2016 inclusive and for future years. The service charge year runs from 1 January to 31 December in each year.

6 The Applicant asserted that all the demands served by the Respondent were defective in that they failed to comply with s21 Landlord and Tenant Act 1985 (summary of rights and certification of accounts). The Respondent in its statement of case conceded these points but has now complied with s21 in relation to demands for the periods January 2015 to 2016 inclusive. This

latter point was conceded by the Applicant in his statement dated 6 June 2016. Sums payable under the terms of this Decision are in all cases subject to prior compliance with section 21 by the Respondent.

7 In his statement dated 6 June 2016 the Applicant states that he no longer wishes to challenge the amounts charged by the Respondent for cleaning and insurance. These amounts do not therefore form part of the Tribunal's consideration.

8 The Applicant's complaint about the account in which the Respondent keeps the sinking fund is not an issue which falls within the Tribunal's jurisdiction under s27A Landlord and Tenant Act 1985.

9 The only issues remaining in dispute are those pertaining to the landlord's Management fees and accountant's fees. Clause 5 of Schedule 5 of the lease entitles the landlord to charge 'all other expenses.... incurred by the Lessor in and about the maintenance and proper convenient management and running of the Building...'. This clause therefore permits the landlord to make a charge for management and for accountancy services. The annual charges levied (£684.02) of which the Applicant is responsible for 12.5% amount to less than £90 per flat which is in the Tribunal's opinion entirely reasonable. These fees are therefore recoverable in full for the service charge year 2014 and 2015. The fee of £400 charged for the accountant's fee is disallowed as the accountant has not provided any form of certification of the accounts as required by the lease.

10 The accountant's fees for the year 2015 are similarly disallowed because no certification of the accounts has been provided by the accountant. In respect of the year 2016, no accounts have yet been provided and the year has not yet ended thus the only liability of the Applicant to date rests with the payment of the twice yearly advance payment of £820 in accordance with Clause 4 (2) (b) of the lease. It is noted that the revised estimate provided by the Respondent now makes provision for a managing agent's fee of £5,116 which, in the Tribunal's view is excessive and would result in a charge to each tenant of over £600. In the Tribunal's view, and based on their considerable experience, a sum of £250 per flat would represent a more reasonable figure for this type of property in the current market.

11 The Tribunal is unable to make any determination in relation to future years because no estimates for future expenditure have been provided.

12 The Tribunal makes an order under s20C. The Respondent has not substantively succeeded in its defence and therefore should not be allowed to require the tenants to pay the costs of defending this application.

13 An award of costs under Rule 13 of the Tribunal Rules of Procedure is not made as a matter of course. The Tribunal has no evidence that the Respondent has acted vexatiously or unreasonably and therefore does not find that the grounds on which such an award could be made have been established. The request for such an award is declined.

14 The Respondent is reminded that the Tribunal expects a landlord to be aware of and comply with the RICS Codes relating to service charges and the management of property.

15 The Tribunal has no jurisdiction over ground rent.

16 The Tribunal did not consider it necessary to inspect the property.

**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 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) the appropriate 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.

## **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).

**Orders for costs, reimbursement of fees and interest on costs**  
**Rule 13. Tribunal Rules of Procedure**

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.

Judge F J Silverman as Chairman  
**Date 1 August 2016**

Note:  
Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking