

12362



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

Case reference : LON/00AG/LSC/2017/0242

Property : Flat 36 Matilda Apartments, 4
Earnshaw Street, WC2H 8AJ

Applicant : Lara Rushby

Representative : N/A

Respondent : Circle 33 Housing Trust Limited, 2
Pancras Square, N1C 4AG

Representative : N/A

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

Tribunal members : Judge Abebrese
Stephen Mason

Venue : 10 Alfred Place, London WC1E 7LR

Date of decision : 11 September 2017

DECISION

Decisions of the tribunal

- (1) [The tribunal determines that the sum of £96.42 is payable by the Applicant in respect of the service charges for the years 2015/2016
- (2) The sum of £545.04 for general repairs which was subsequently reduced to £135.46 was no longer being disputed by the applicant and this issue therefore falls away as an issue to be determined by the Tribunal.
- (3) The tribunal makes the determinations as set out under the various headings in this Decision.
- (4) The tribunal makes no order under section 20C of the Landlord and Tenant Act 1985, the landlord's costs of the tribunal proceedings may be recovered from the lessees through the service charge if permitted under the lease.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") [and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act")] as to the amount of service charges and administration charges payable by the Applicant in respect of the service charge years 2015/2016.
2. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

3. The Applicant in her application informed the Tribunal that she was content for her application to be dealt with on the papers. The Tribunal is of the view that it is reasonable for this application to be dealt with on the papers.

The background

4. The property which is the subject of this application is defined in Schedule 1 Part 1 of the Head Lease in Schedule 1 part 1 of the Head Lease and Shown edged red on the plans.

5. By a lease dated 11 June 2010 (Head Lease) and made between Central Saint Giles Limited Partnership on one part and Circle thirty Three Housing Trust Ltd on the other part in respect of residential accommodation at Central Saint Giles London WC2 as specified in Schedule 1 Part 1 of the Head Lease (the premises) was demised for a period of 150 years from 11 June 2010
6. The tenant's proportion of the expenditure is stated as the total of the expenses reasonably and properly incurred in accordance with Schedule 2 of the Head Lease.
7. By a New Build Homebuy granted on shared ownership terms dated 3 August 2010 (the sub lease) and made between Circle thirty three Housing Trust on one part and Lara Rushby on the other part of a premises known as plot 11.03 Flat 36 Matilda Apartments, 4 Earnshaw Street, London WC2A. The premises was demised for a period of 150 years from 11 June 2011.
8. The Applicant/Respondent 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.

The issues

9. The issues in this application were identified at the directions hearing on 18 July 2017 as follows :
 - (i) The payability and/or reasonableness of service charges for years 2015/2016 relating to fire and smoke detection equipment to the cost of the applicant of £117.89
 - (ii) Leaseholder general repairs at a cost of £545.46. This issue as indicated above was not pursued by the applicant before the Tribunal and was therefore not considered substantively.
10. Having considered all of the documents provided to the Tribunal we made the following decision on the remaining substantive issue relating to the fire and smoke detection equipment.

Service charge for the amount of £117.89

11. The applicant in her statement states that following a request for further information by an email sent on 24 October 2016, which was replied to by the respondent in an email dated 24 November 2016 the cost regarding the fire and smoke detection equipment had been

reduced to £115.86. The applicant was not satisfied that the information provided by the respondent was sufficiently clear.

12. Following the directions hearing on 18 July the respondent issued a letter dated 15 August 2017 to the applicant stating a revised amount of £96.42, which the applicant claims is not reasonable and she seeks a further reduction of this sum.
13. In considering the claims of the applicant the Tribunal referred itself to the fire equipment schedule of invoices charged at pages 60-61, 176 and 180 of the hearing bundle. The applicant contends that she should not be liable for the cost of the smoke vent contractor because the respondent had instructed a contractor who was not competent to carry out the works. The respondent however at page 180 provides an explanation which is accepted by the tribunal as reliable, in that the contracted smoke vent specialist after his investigation of the problem found that it was necessary to further instruct the manufacturer to interrogate the panel to try to restore and upload a new version of the programme.
14. The tribunal finds that the attendance of the specialist smoke vent contractor was not only reasonable but also that his analysis and course of action outlined by him is also reasonable.
15. The Tribunal also dismissed the claims of the applicant that the charges should be further reduced because she alerted the respondent of the need to instruct a contractor to attend to the issues relating to the smoke vent and is seeking a reduction of the administration charges. The Tribunal finds that the respondent after they were alerted of the need to attend to the smoke event would in any event have incurred administration costs in obtaining a contractor, the cost of which falls on the applicant in accordance with clause 7 of the lease.
16. The claim therefore by the applicant for a reduction of the administration charges of 15% is dismissed.

The tribunal's decision

17. The tribunal determines that the amount payable in respect of [service charge item is **£96.42**

Reasons for the tribunal's decision

18. The Tribunal find that the respondent after the directions hearing on 18 July 2017 provided the applicant with a letter dated 15 August 2017 which stated that the amount owned was **£96.42** and not £117.89 as this sum had been reduced by the respondent.

Application under s.20C and refund of fees

19. The applicant made an application for an order under Section 20c which in the circumstances the Tribunal are not inclined to make such an order.
20. The Tribunal however do make an order that the applicant is to be refunded her application fee of £100 as it would appear that since she commenced the application this has resulted in a reduction of the initial amount being claimed by the respondent.

Name: Judge Abebrese

Date: 11 September 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 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