

12197



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

Case reference : **LON/00AM/LSC/2017/0001**

Property : **Flats 1 and B C D and E, 173-179
Morning Lane, London E9 6ND**

Applicant : **Popinder Dhillon**

Representative : **Mr Iqbal Mohammed, Counsel
instructed by ANP Solicitors**

Respondent : **Strange Glue Limited**

Representative : **Mr Simon Roberts, Director and
Mr Andy Chan Shareholder**

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

Tribunal members : **Judge Evis Samupfonda
Mr Andrew Lewicki**

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

Date of decision : **15 May 2017**

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the total sum of £6,832.41 is reasonable and payable for the service charge year 2012. The sum of £10,599.94 is reasonable and payable for the service charge year 2013. The sum of £8,953.00 is reasonable and payable for the service charge year 2014 and for the service charge year 2015, the sum of £7,539.70 is reasonable and payable. The tribunal did not consider the reasonableness and payability of the service charge year 2016 for the reasons set out below.
- (2) The tribunal makes the determinations as set out under the various headings in this Decision.
- (3) The tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985 so that the landlord's costs of the tribunal proceedings may be passed to the lessee through any service charge.

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 payable by the Applicant in respect of the service charge years 2012, 2013, 2014, 2015 and 2016. The tenant also seeks an order for the limitation of the landlord's costs in the proceedings under section 20C of the Landlord and Tenant Act 1985.
2. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

3. The Applicant attended the hearing held on 24 April 2017. Mr I Mohammed of Counsel represented her. Mr S Roberts, Company Director and Mr CA Chan, Shareholder represented the Respondent Company.

The background

4. The Applicant is the owner of five flats in the property, which is the subject of this application.
5. Neither party requested an inspection and the tribunal did not consider that one was necessary given the nature of the of

the application. Photographs of the building were provided in the hearing bundle.

6. The Applicant holds a long lease of each flat that 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

7. At the start of the hearing the parties identified the relevant issues for determination as follows:
 - (i) The payability of service charges for the costs incurred in the years 2012-2016
 - (ii) Whether section 20B of the Act applies in respect of the years 2012-2014
 - (iii) Whether the demands for payment are valid
8. 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.

Year 2012-Amount claimed £6,839.41, Year 2013-Amount claimed £10,614.94, Year 2014-Amount claimed £11,293

9. The Applicant produced a schedule of the items of expenditure in each service charge year in question. In this schedule, the Applicant identified the invoices produced by the Respondent in support of the expenditure. Mr Mohammed explained that the Applicant did not challenge the reasonableness of the costs incurred or the standard of work carried out. Rather, the Applicant was concerned about the validity of the invoices, whether section 20B of the Act applied and whether the demands served were valid. He also said that the Respondent had failed to comply with section 22 of the Act by denying the Applicant her right to inspect service charge documents.
10. Mr Mohammed took the tribunal through the schedule of expenditure. He submitted that the service charges claimed in the years 2012 and 2013 were not payable because the demands for payment were not made within 18 months of the costs being incurred as required by

section 20B of the Act. He stated that the demands were first served on 9 June 2015. He added that these demands were also invalid because they did not contain the Summary of Rights and Obligations. The Summary of Rights and Obligations were served on 16 August 2016 in respect of Flat 1 only for the years 2012-2017 and not in respect of 2012-2013. Mr Mohammed also argued that the demands for payment contained the wrong amounts because there are 14 units; 11 flats and three retail units but the service charge is only spread across the leasehold flats. The figures in the demands were also incorrectly calculated. Mr Mohammed confirmed that he did not challenge the reasonableness of the costs incurred but rather he challenged the validity of some of the invoices for the reasons set out in the schedule provided.

11. In respect of the year 2014, Mr Mohammed said that the amount claimed was not payable because the Respondent had denied the Applicant her right to inspect service charge documents in accordance with section 22 of the Act.
12. He also said that the Respondent had failed to respond to the Applicant's request for confirmation that the service charge contributions are held in trust in a separate bank account.
13. Mr Roberts stated that when the Respondent company acquired the freehold it sought advice from solicitors on how to deal with service charges. He was informed about the service charge provisions and in particular the need to serve service charge demands within 18 months of the costs being incurred. The solicitors provided him with templates, which he said he completed. He said that he believed that the templates included the service charge demands and contained the Summary of Rights because each envelope contained a number of pages. Once he received the accounts, he said that he physically hand delivered at each flat, the demands for payment on 14 March 2014. He referred the tribunal to the schedule of arrears drawn up by the solicitors that accompanied the demands that he served by hand. With regards to apportionment, he explained that the leaseholders contribute 100% of all the costs incurred except for the building insurance, professional services and accountancy services for which they contribute 70%. He also said that since the service charge was not paid, further demands were served on 16 August 2016. With regards to the invoices, Mr Chan told the tribunal that the Respondent Company found that foreign builders were cheaper and so in order to keep costs down they often instructed them and received the invoices produced. He took the tribunal through some of the work that had been carried out where the invoices had been challenged. Mr Roberts accepted that some of the costs relating to work carried out to individual flats should not be attributed to the service charge account.

14. With regards to the request for an inspection Mr Roberts referred the tribunal to the correspondence and said that the matter had been dealt with by the parties' solicitors and they had always been willing to meet the Applicant.
15. Mr Roberts said that the Respondent had recently received the letter from the Applicant requesting confirmation that the funds were held in a separate account and this was being dealt with.

The tribunal's decision

16. The tribunal determines that the amount payable in respect of the year 2012 is £6,832.41. For the year 2013, the amount payable is £10,599.94. For the year 2014, the amount payable is £8,953.00.

Reasons for the tribunal's decision

17. The tribunal considered the relevant law, submissions made and the documentary evidence provided. In particular the tribunal considered the service charge provisions under the Act and the schedule of expenditure in each service charge year produced by the Applicant together with the reasons why the Applicant considered the amounts claimed were not payable.
18. Section 19 of the Act provides that service charges are payable only to the extent that they are reasonably incurred and where they are incurred on the provision of services or carrying out of works, only if the services or works are of a reasonable standard. The tribunal understood from Mr Mohammed's submissions, witness statement of Navjot Dhillon that he referred to and the schedule of expenditure that the Applicant's challenges to the costs incurred were not based on the reasonableness of the cost incurred and neither did the Applicant challenge the reasonableness of the standard of the work carried out with exception to the carpet in 2012, which the Applicant said was not a new carpet installed by the Respondent. The Applicant stated that she did not live at the property and was therefore not in a position to counter the Respondent's assertions that work had been carried out.
19. The tribunal's view was that an invoice should ideally at the very least contain a unique identification number, the supplier and customer's company name address and contact information, a description of what the cost relates to and supply dates as well as the amount being charged. However under the Act, the tribunal's jurisdiction is limited to determining whether a service charge is reasonable in amount and/or whether the standard of the work carried out has been carried out to a reasonable standard. In the absence of a challenge as to reasonableness, the tribunal was bound to conclude that the costs incurred were reasonably incurred and any work carried out to a reasonable standard

and therefore the amounts claimed were payable by the Applicant. There was no evidence presented to the tribunal to demonstrate that the works identified in the individual invoices had not been carried out. Indeed the tribunal accepted the explanations given by Mr Chan and Mr Roberts, who through some photographic evidence showed the tribunal some of the works carried out under the contested invoices. The tribunal had no reason to disbelieve their evidence that English was not the first language of some of the contractors that they instructed and consequentially the invoices they produced were less than satisfactory. However, the failure to produce "perfect" invoices did not automatically lead to a conclusion that the cost incurred is not payable or that the amount claimed was not reasonable or the work was not carried out at all or was not carried out to a reasonable standard.

20. For the year 2012, the tribunal disallowed £7 from the "invoice" for £1700.42 as we considered that this cost was attributable to a key obtained on behalf of the leaseholder of flat 2. For the year 2013, the tribunal disallowed the £15 for the work attributed to keys cut for flat 2 door. The tribunal accepted Mr Roberts' evidence that the Company structure included a Richard Klin who was a director of both the Respondent Company and Urbanshare Ltd and that as a consequence some invoices referred to Urbanshare Ltd as opposed to the Respondent because Mr Klin had instructed the contractors. We also accepted his evidence that the Respondent only managed this property. For the year 2014, the tribunal disallowed the amounts claimed by Warren Stewart Accountants of £2340 as this related to preparation of the financial statements of the Respondent as a Company for filing at Companies House and is therefore not a service charge item.
21. The tribunal then considered Mr Mohammed's submissions under section 20B of the Act. This section provides that a landlord must, within 18 months of the cost being incurred, either demand it from the tenant as a service charge or notify the tenant in writing that the cost has been incurred and that the tenant will subsequently be required under the terms of the lease to contribute towards the costs incurred by the payment of a service charge. There is no requirement for the landlord to detail in the demand the exact cost that the tenant will be subsequently be required to pay. The tribunal had no reason to disbelieve Mr Roberts' evidence that he hand delivered them on 14 March 2014, which is within 18 months of the costs being incurred. Further the tribunal did not have any reason to disbelieve Mr Robert's evidence that the solicitors prepared the templates for him to complete and that they included a Summary of rights and Obligations. The tribunal was provided with a copy of the schedule of arrears prepared by SLC solicitors that covered the years 2012-2014. Having read the contents of the demand dated 16 August 2016, the tribunal was satisfied that this was an additional demand issued as a result of non payment by the Applicant of the service charge demanded earlier. Further

demands were served on 16 February 2017 as a result of non-payment. Therefore the tribunal concluded that section 20B did not apply.

22. With regards to apportionment, Part 1 to the Fifth Schedule to the lease provides that the lessee covenants to pay a contribution which shall be a fair proportion of any service charge levied on the whole property. The tribunal did not consider that the method of apportionment adopted by the Respondent had been demonstrated as being unfair.

Year 2015-Amount Claimed £11,687.37

23. Mr Mohammed submitted that the amount claimed is not payable because the Applicant has not been granted her request to inspect the accounts, receipts and other documents in accordance with her right under section 22 of the Act. He referred the tribunal to a series of correspondence between the parties' solicitors. He accepted that the Respondent had not positively denied the Applicant's request. Mr Mohammed also stated that the Respondent had not replied to the Applicant's request for confirmation that the service charge monies are held in a separate bank account. is a separate
24. Mr Roberts also referred the tribunal to the parties' correspondence on this issue. Mr Chan added that he had met with "Jaz" who he understood to be the Applicant's managing agent in order to discuss a leak on 8 June 2016. He offered to discuss the service charge accounts with him on that date but Jaz refused to do so.

The tribunal's decision

25. The tribunal determines that the amount payable in respect of the year 2015 is £7,539.70.

Reasons for the tribunal's decision

26. The tribunal disallowed £150 from the invoice of Handys Handyman Services as it was agreed that this was a reasonable amount to attribute to the costs incurred to "replace a set of taps in the upstairs flat where the leak was coming from". We disallowed £50 from the invoice of Dritan Dauti as this was considered a reasonable amount to attribute to the work carried out in flat 2. It was agreed that the invoice from Hackney Building Supplies of £47.67 should be disallowed as it was a duplicate. The invoice of £3,900 from Warren Stewart Accountants was disallowed for the same reasons set out above.
27. The tribunal followed the correspondence trail between the parties' solicitors on the issue of access to carry out an inspection. There is no evidence to show that the Respondent has positively refused the Applicant's request to inspect service charge documents. The letter

dated 15 November 2016 from the Respondent's solicitors SLC indicates that the Applicant has not taken up the Respondent's invitation to their offices to either discuss the building or the accounts. The tribunal observed that the Applicant's request regarding the service charges being held on trust in separate bank account is dated 17 March 2017, and as such was too recent for the tribunal to conclude that the Respondent had failed to comply.

Service Charge year 2016

28. The parties informed the tribunal that the accounts and invoices for this year were not available. In the absence of such information, the tribunal could not consider the reasonableness of the service charge in respect of this year.

Application under s.20C

29. In the application form and at the hearing, the Applicant applied for an order under section 20C of the 1985 Act and the Respondent opposed that application. In determining this application, the tribunal had regard to all the circumstances of the case that included the parties' conduct and circumstances as well as the outcome of the hearing. The tribunal acknowledges that lessees are entitled to raise issues with the landlord with regards to their service charge account and to seek a determination from this tribunal as to whether the costs incurred by a landlord are reasonable and payable. However, in this case, in considering the Applicant's conduct, she has not paid service charges for a period of 4 years and the tribunal found her explanation in that regard to be implausible and without real justification. The Respondent was put in a position to defend these proceedings following her application to the tribunal. In the circumstances, the tribunal concluded that it would be unjust for any other tenants to pay the costs incurred by the Respondent in these proceedings. Furthermore, having heard 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 not to be made under section 20C of the 1985 Act, so that the Respondent may pass any of its costs reasonably incurred in connection with the proceedings before the tribunal through the service charge lease permitting and subject to the reasonableness test.

Name: Evis Samupfonda

Date: 15 May 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.

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.