

12866



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

<b>Case reference</b>	:	<b>LON/00AM/LSC/2017/0052</b>
<b>Property</b>	:	<b>Flats 1 and 2 Lorne House, 126/128 Lower Clapton Road, London E5 oQR</b>
<b>Applicants</b>	:	<b>Dr P. Came (Flat 1, No 126) Ms K Rudland (Flat 2, No 126) Mr W. Smith (Flat 4, No 126) Mr A. Payter (Flat 5, No 126) Westmil 75 Limited (Flat 6, No 126) Mr S. Mongan (Flat 2, No 128) Mr T. Keating (Flat 3, No 128) Ms A. Mason (Flat 4, No 128)</b>
<b>Representatives</b>	:	<b>Ms Rudland and Dr Came</b>
<b>Respondent</b>	:	<b>Mr Y. Schiner</b>
<b>Representative</b>	:	<b>Moreland Estates Limited (managing agents)</b>
<b>Type of application</b>	:	<b>Reasonableness of and liability to pay service charges – Section 27A and 20C Landlord and Tenant Act 1985</b>
<b>Tribunal members</b>	:	<b>Judge Lancelot Robson Mr I. Thompson FRICS</b>
<b>Date and venue of hearing</b>	:	<b>10 Alfred Place, London WC1E 7LR</b>
<b>Date of decision</b>	:	<b>15th August 2017</b>

---

**DECISION**

---

### **Decisions of the Tribunal**

- (1) The Tribunal determines that the respective estimated sums of demanded of each Respondent on completion of their purchase in the service charge years 2014 and 2015 were not reasonably demanded.
- (2) The service charge percentages shown in the relevant leases shall be deemed correct for the purposes of accounting in this application, despite the resulting over-recovery.
- (3) The service charges demanded for the service charge years 2016 and 2017 shall be reduced to the figures noted in the Table set out below. The Respondent shall reimburse the balances owed to the Applicants within 28 days of the date of this decision.
- (4) An order under section 20C of the Landlord and Tenant Act 1985 was made limiting the landlord's costs of this application.
- (5) Any party shall be entitled to make a Rule 13 application in accordance with the Further Directions made below. Such application should be made within 28 days of the date of this decision.
- (6) The Tribunal issues the Directions for the further written submissions, noted below.

### **The application**

1. The Applicants seek a determination pursuant to s.27A of the Landlord and Tenant Act 1985 (the 1985 Act) as to the amount of estimated service charges payable by the Applicants in respect of the service charge years commencing on 1st January 2014, 2015, 2016, and the estimated service charge for the year commencing on 1st January 2017 under a (specimen) lease (the Lease) dated 14<sup>th</sup> July 2015. A Section 20C Order (limiting the landlord's costs of this application) is also sought.
2. Extracts of the relevant legal provisions are set out in the Appendix to this decision.

### **Background**

3. The Tribunal made a previous decision in this application dated 4th May 2017. Pursuant to Directions given in that decision the Applicants were allowed to amend their application to request a final service charge determination for the years 2016 and 2017, in the light of

evidence and explanations provided by the Landlord in an open letter dated 3rd May 2017. The Tribunal also directed that other leaseholders be given notice of this application in case they wished to be joined, as they were persons likely to be affected by the application. The leaseholders of Flats 4, 5, and 6 at No 126, and of Flats 2, 3, and 4 at No 128 asked to be joined as Applicants. The Tribunal understands that the Respondent landlord remains the owner of Flat 3, at No 126. Mrs Abbott of Flat 1, at No 128 was unable to be joined due to illness. The Tribunal directed on 1st June 2017 that those wishing to be joined, be joined. The Tribunal notes that it was unclear whether Mr M. Pertile made the request for himself, or for the company of which he was a Director. The Tribunal notes from the Respondent's evidence that in fact Westmil 75 Limited is noted as the registered leaseholder, and has corrected this item accordingly. The new applicants all confirmed to the Tribunal that Ms Rudland and Dr Came had been appointed as their representatives.

4. The Leaseholders of Flats 4, 5, and 6 at No 126, and Flat 3 at No 128, noted in their applications that they had paid certain sums in respect of estimated service charges in 2014, and asked that this matter be considered by the Tribunal. Copies of the spreadsheet dealing (inter alia) with this item had been sent to the Respondent in the Applicants' joint statement of case dated 9th June 2017, (as amended on 11th July 2017). The Respondent, in breach of the Tribunal's Directions given on 4th May 2017, again took no further part in the application. The Tribunal therefore made a determination of this item, in the interests of achieving finality, and reasonable despatch of cases.
5. Ms Rudland and Dr Came made oral representations on behalf of the Applicants at the hearing. The Respondent did not appear, although the Tribunal delayed the start of the hearing for 10 minutes in case it appeared.
6. The property which is the subject of this application is a double fronted house recently converted into 10 flats. There are two communal entrances, and a small front garden. At the side are a bin store and a communal bike store. There are three external lights, two lights and two power points in the internal common parts. The external common parts are mainly paved but also include a small flowerbed/shrubbery.
7. The Applicants each hold 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 Applicants raised no point on the service charge covenants in the Lease.

### The issues

8. The Tribunal identified the following issues for determination:

\* Estimated Service charges paid in 2014 and 2015 (other than those of Ms Rudland and Dr Came dealt with previously).

\* The final service charge for the years 2016 and 2017 (to 10th April 2017 when the new manager took over).

\* Section 20C application

### Hearing

#### **Applicant's case**

##### 2014/15

9. The Applicants' unchallenged evidence was that on completion of their leases in 2014 and 2015, each had been required to pay an "on account" contribution to the service charge of varying amounts, evidenced by their respective completion statements. No management or services had taken place in that period, and no account for the monies paid had ever been produced. They submitted that the estimated charges made were entirely unreasonable.

10. The Applicants made oral submissions following the spreadsheet they had prepared and served on the Respondent, in the form of a Scott Schedule.

##### 2016

11. Electricity - £500 - no invoices had been produced in 2016. The charge was disputed.

12. Cleaning - £585 - The Respondent had agreed with Ms Rudland in April 2015 that the cleaning should only be done quarterly. In any event only one visit had been observed, again by Ms Rudland. In November two contractors had appeared. They both swept the external common parts, and one hoovered the internal common parts while the other watched from the van. They were on site for 50 minutes. Due to the main road passing the property, rubbish inevitably was blown into the external common parts and bin area. If it had been cleaned on other occasions there would have been signs of it. Also no explanation had been offered as to why the price had doubled in November 2016. The Respondent

had only charged from June/July 2016. Ms Rudland submitted that none of the Applicants had seen any cleaning done, except for the November visit seen by herself. They offered £195.

13. Fire Alarm - £1,035.45 - both these invoices related to an incident in Flat 6, at No 126, on 8th June 2016, when a sub-tenant had sublet to a group of youths who used it for a party. The police were called and eventually they were ejected, but on the way out they set off the alarm and damaged it by breaking the glass covers in several places. The initial visit by Titan was to reset the system and assess the damage. A report was produced after their second visit to repair the damage, noting that additional works were recommended to upgrade the system, (which was not acted upon by the agent, despite requests). The agent's Mr Emanuel had agreed in an email exchange at the time that the cost would be for the account of Flat 6, but no notice of this matter was given to the leaseholder of Flat 6 until nearly a year later. The invoices were a matter between the Respondent and Flat 6, not for the general service charge.
14. General Maintenance - £205.75 - the £108 charge for the aerial cable was not disputed. The charge for £97.75 for repairs to the gate lock was made by Morelands, apparently on behalf of a contractor. There was no contractor's invoice. The invoice was suspicious, and the work had in fact been done by the leaseholder of Flat 6. This invoice was disputed.
15. TV Aerial - £169.97 - was not disputed.
16. Health & Safety - £175 - the invoice dated 21st April 2016 was not disclosed until 3rd May 2017. No Responsible Person was ever notified to any of the Applicants, even when concerns over the fire alarm system were raised (see above), and no action was taken. The invoice was disputed.
17. Management Fee - £1,665 - It was agreed that some management had taken place, but overall the management of the property was inadequate and serious concerns were left unaddressed. Information provided by the manager was inconsistent (leading to charges for arrears being incurred). The Applicants offered £555.
18. Audit - £500 - no accounts or accounting information had been produced by auditors. It had mostly been compiled by Ms Rudland. The accounts for 2016 and up to April 2017, had not been produced by 31st May 2017 as promised by the Respondent. The charge was disputed.

2017

19. Electricity - £863.33 - the estimated invoices for British Gas could not be traced to any meter in either No 126 or 128, despite a search being made. Ms Rudland had queried invoices sent to the property with British Gas, and they stopped coming. The Applicants submitted that these charges were in error. The meter in the Eon invoices existed, and the Applicants accepted that actual readings had been taken. The invoices showed large amounts outstanding at the beginning of the periods billed. The charges seemed too high for the electricity being used. After discussion, the Applicants invited the Tribunal to decide an appropriate figure based on the consumption for the periods they considered were likely to be correct.
20. Insurance - £2,569.30 - This amount appeared to have been billed in arrears. There was no charge for 2016, but the charge made in 2017 was apparently related to the insurance premium due on 8th April 2016. No details of the new insurance policy had been provided to Prime Property Management, which had taken over the management on 10th April 2017 pursuant to the Applicants' RTM application. An insurance quote had appeared in the Respondent's documents on 3rd May 2017, but this was too late. The Applicants were prepared to accept the 2016 premium, but only 2 days at the same premium for the period 8-10th April 2017, i.e. £12.14.
21. Cleaning and Gardening - £390 - The Applicants had agreed quarterly cleaning in 2016, and referred to the comments for 2016. The charge was too high, and should cover only one visit, i.e. one quarter of the year until 10th April. The Applicants offered £65.
22. General Maintenance - £415 - there were 3 invoices. The first for £125, relating to work on the lock of the main front door in December 2016 (billed in 2017), was agreed. The £95 invoice for changing the light sensor was not requested by any Applicant, and the invoice was again produced by Moreland Estates apparently for a contractor. No Applicant noticed any problem to which this invoice applied. It was not sufficient evidence and was disputed. The third invoice for plastering and painting mentioned Mrs Abbott. The Applicants were prepared to accept this item.
23. Health and Safety - £320 - no health and safety invoices were in the bundle. The total amount was disputed.
24. Management Fee - £1,100 - the period was only one quarter, not two. Again the Applicants noted their view that the management was

inadequate, and offered £85.38 representing 2 weeks when the Respondent had done some work.

25. Audit - £250 - the same comments applied as for 2016, and there was no accounting reconciliation handed over to the new agents. The Applicants had had to prepare a new summary budget. This amount was disputed.

### **Respondent's Case**

26. As noted above, the Respondent made no reference whatever to the service charges in 2014 and 2015. His representative, Mr L. Freilich, (whose firm Moreland Estates was appointed in January 2016) wrote an open letter to the Applicants on 3rd May 2017 with evidence of expenditure for 2016 and 2017. That letter also offered certain concessions on the charges supported by the accompanying documentation, but these were to be deemed withdrawn if not accepted by the start of the first hearing on 4th May 2017. The Applicants refused those offers and thus all items of service charge fall for determination by the Tribunal. The total figures offered as final accounts for 2016 and 2017 appear in the table below.

#### 2016

27. Cleaning - £585 - The Respondent considered that the property required cleaning monthly. The total cost was £585, broken down to £65 per month from June - October, and £130 per month for November and December.
28. Fire Alarm - £1035.45 - The invoice for £312 was for general maintenance. The contractor had not agreed that the damage to the smoke vents was not chargeable solely to the owner of Flat 6.
29. TV aerial - £169.97 - the charge accorded with the invoice attached.
30. General Maintenance - £205.75 - the invoices totalled that figure and the Respondent believed that it was correct
31. Health and Safety - £175 - the charge was providing the Responsible Person
32. Insurance - £2,569.30 - the cover included both Property and Terrorism cover, which explained the discrepancy noted by the Applicants.

- 33. Management Fee - £1,655 - the invoices were attached.
- 34. Auditor - £500 - this was an estimate for independently prepared accounts which would be circulated by the end of May 2017.

#### 2017

- 35. Cleaning - £390 based on £130 per visit.
- 36. Electricity - £863.33 - the invoices in the bundle seemed to be correct for the period but seemed to be for 2 years or so.
- 37. General Maintenance - £415 - both invoices were attached
- 38. Insurance - figure demanded unclear - see comments for 2016
- 39. Management Fee - £1,100 - this was the cost
- 40. Auditor - £250 - see comments for 2016

#### Generally

- 41. The Respondent noted that under the leases there was a 7.5% over-collection, which would be refunded.

#### **Decision**

- 42. Generally, the Respondent had provided some evidence, but little explanation. It had not appeared at the hearing to challenge the Applicants' evidence. The Tribunal decided as set out below;

#### Service Charges for 2014/15

- 43. The Tribunal determines that in the absence of any invoices, accounts or other evidence from the Respondent, the sums charged to the Applicants on completion are entirely unreasonable and should be credited to their accounts in accordance with the terms of clause 5(d) of the Lease.

#### 2016

- 44. The Respondent's budget figures (on which service charges were raised) and sums actually invoiced are shown in the Table below.



45. Electricity - The Tribunal accepted the Applicants' evidence. The British Gas accounts appeared irrelevant. They also seemed to have been tampered with to hide the fact that they were estimated. The amounts being consumed as shown on the Eon meter seemed quite likely for the electrical equipment concerned. The Tribunal commenced its calculation from 1st January 2016. The Applicants accepted that electricity had been consumed and standing charges incurred. In the absence of invoices, the Tribunal determines that £345.16 was reasonable and payable. This is based on a charge of £88.54 per quarter incurred in 2017 and in the absence of any other evidence, the Tribunal uses this as the calculation of the electricity charges for 2016.
46. Cleaning and Gardening - The Tribunal accepted the Applicants' submissions. There was no explanation offered for the doubling of the charge. Based on Ms Rudland's evidence, the charge of £65 per visit appeared reasonable. Three quarters totalled £195.
47. Fire Alarm (included in general maintenance account) - £1,035.45 - again the Tribunal accepted the Applicant's evidence. It decided that the work was done as all as a result of damage caused by the occupants of Flat 6. These charges were entirely unreasonable.
48. General Maintenance - the Tribunal agreed that billing on behalf of contractors seemed irregular. The invoice disputed was not sufficient evidence, particularly when the work done was disputed. The Tribunal decided to deduct £97.75. The account for £108 was not disputed.
49. TV Aerial - not disputed - £169.97 payable
50. Health and Safety - By statute, the owners and agents of property become Responsible Persons. However they may appoint a Competent Person and charge for that item, but this is not shown on the invoice at all. The Tribunal deducted this item (£175) from the service charge.
51. Management Fee - the Tribunal accepted the Applicant's submissions. It deducted £1,100.
52. Audit - Again the Applicants' submissions were accepted. The Tribunal deducted £500.

2017

53. Electricity - the Tribunal adopted the same procedure as for 2016 and calculated a reasonable figure to be £354.16, being £88.54 per quarter. In doing so, the Tribunal accepts the Applicant's evidence that the large brought forward amounts from previous periods were not costs which have been reasonably incurred.
54. Cleaning and Gardening - the Tribunal accepted the Applicant's submissions. It deducted £325.
55. Insurance - again the tribunal accepted the Applicants' submissions. Only £12.14 was payable
56. General Maintenance - the Tribunal accepted the Respondent's evidence. It decided that £320 was payable.
57. Health and Safety - the Tribunal decided that the estimated amount of £270 was entirely unreasonable, in the light of the Applicants' evidence.
58. Management Fee - again some work had been done, but not to an adequate standard. In the absence of any contrary evidence it decided that the Applicant's offer of £85.38 was a reasonable amount.
59. Audit - the Tribunal accepted that no work appeared to have been done, nor who was supposed to have done it. The sum estimated was entirely unreasonable.

## TABLE

2016

Item	Estimate	Invoiced	Applicants' Offer	Tribunal Decision
Electric	500	Nil	Ni	354.16
Alarm	Nil	1035.45	Nil	Nil
Cleaning	1500	585	195	195
Maint.	2000	205.75	108	108
H & S	450	175	Nil	Nil

Mgmt	2220	1665	555	555
Audit	500	Nil	Nil	Nil

---

Total	7170	3666.20	858	1203.16
-------	------	---------	-----	---------

2017

Item	Estimate	Invoiced	Applicants' Offer	Tribunal Decision
Electric	500	863.33	Nil	354.16
Insurance	2670	2569.30	2581.44	2581.44
Cleaning	1500	390	65	65
Maint.	2000	415	320	320
H & S	270	Nil	Nil	Nil
Mgmt	2220	1110	85.38	85.38
Audit	500	Nil	Nil	Nil

---

Total:	7390	5762.63	3051.82	3405.98
--------	------	---------	---------	---------

**Costs**

Section 20c

60. The Applicants sought an order limiting the landlord's costs paid in connection with this application and payable by the Applicants under the Lease, to nil. In the circumstances, as the Respondent was seriously in breach of Directions, the Tribunal decided to make such an order.

## Rule 13

61. The Applicants indicated that they wished to apply under Rule 13(1) (b) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 against the Respondent for unreasonable behaviour in the conduct of his case. The Tribunal notes that any party is entitled to apply, and parties should consider the guidance given in such applications in the group of cases known as Willow Court (Willow Court Management (1985) Ltd v Alexander [2016 0290 UKUT (LC) . A further Direction is given below.

### Further Direction

#### IMPORTANT NOTE:

- **These directions are formal orders and must be complied with**
- **They are intended to help the parties and the Tribunal deal with applications swiftly and economically**
- **Failure to comply with Directions could result in serious detriment to the defaulting party e.g. the Tribunal may refuse to hear all or part of that party's case and orders may be made for them to reimburse costs or fees thrown away as a result of the default**
- **Whenever you send a letter or email to the Tribunal you must also send a copy to the other parties and note this on the letter or email**

1. Any party wishing to bring an application under Rule 13(1) (b) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 should send the Tribunal a detailed statement of case within 14 days of the date of this decision. The other party shall then be entitled to make a statement in Reply within a further 14 days. Thereafter the Tribunal proposes to make a determination based on the papers.

**Tribunal Judge: Lancelot Robson**

**Dated 15th August 2017**

### 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.