

12365



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

Case Reference : **LON/00AN/LSC/2017/0161**

Property : **270 Wandsworth Bridge Road,
London SW6 2UA**

Applicant : **Jonathan Goater**

Representative : **Graham Sinclair - Counsel**

Respondent : **Amek Investments Limited**

Representative : **n/a**

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

Tribunal Members : **PMJ Casey MRICS
M Mathews FRICS**

**Date and venue of
Hearing** : **27 July 2017
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 £159.50 per quarter is payable by the respondent in respect of the service charge for the year 2017/18.
- (2) The tribunal further determines that an administrative charge of £1,062.50 plus VAT is payable by the respondent in respect of legal fees incurred by the applicant.
- (3) The tribunal makes the determinations as set out under the various headings in this Decision.

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 2015/16, 2016/17 and 2017/18.
2. The application is dated 14 April 2017. The tribunal issued directions for the conduct of proceedings arising from the application on 4 May 2017 which were sent to both parties and provided for an oral hearing on 27 July 2017.
3. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

4. The applicant was represented by Mr Graham Sinclair of Counsel at the hearing. The respondent did not appear at the hearing nor comply with the directions or make any contact with the tribunal.
5. At the hearing Mr Sinclair handed in a further document, namely the invoice for Mr Andrew Marsden of Counsel.

The background

6. The property which is the subject of this application is a basement flat situated in a four storey, inner terrace Victorian building now comprising three flats numbers 266-270 Wandsworth Bridge Road, London SW6 2UA (the property).

7. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.
8. The 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 will be referred to below, where appropriate.

The issues

9. At the date the application was made, 14 April 2017, the sums said to be outstanding and demanded totalled £4,120.19 comprising £2,245.19 in respect of service charge items and £1,875 in respect of administration charges. Following a letter sent by the applicant to the respondent on 14 March 2017 demanding immediate payment of "maintainance contribution" in the sum of £1,943.94 a cheque was received from the respondent for this amount on 11 May 2017. The applicant replied in a letter dated 12 May 2017 to say that "without prejudice" to our rights to forfeit the lease payments are accepted as mesne profit. A statement of account was enclosed showing £310.25 remained outstanding in respect of the first quarter's service charge contribution for the year 2017/18 as well as the £1,875 administration fee. As far as we are aware the payment made by the respondent was without any reservations or caveats and they have declined to take any part in these proceedings. Thus all sums owing in respect of the service charge years 2015/16 and 2016/17 have been paid and no decision in respect of that part of the application is required by the tribunal. This leaves as the relevant issues for determination as follows:
 - (i) The payability and/or reasonableness of service charges for 2017/18
 - (ii) The payability and/or reasonableness of administration charges amounting to £1,995.
10. 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.

Service charge item & amount claimed

11. The lease under which the respondent holds the property is dated 15 June 2012 for a term of 999 years from that date and largely on the terms of a pre-existing underlease dated 12 November 1987. It was granted by the applicant, who acquired the freehold of the building numbered 266-270 Wandsworth Bridge Road from the respondent in the exercise of his rights under the provisions of the Leasehold Reform

Housing and Urban Development Act 1993, in response to the respondent's claim for a leaseback under the provisions of the same Act. The lease provides for a maintenance year ending on 25 March and for payments of contributions in advance by four equal payments on 25 March, 24 June, 29 September and 25 December in each year. The budget on which those payments in advance are estimated for 2017/18 was set in the sum of £2,500 comprising Insurance £2,000, Accountancy £200 and Reserve fund £300. The respondent's proportion of this is set by the lease at 29% and on 14 March 2017 the sum of £181.25 was demanded (along with other sums) and accompanied by a summary of tenants' rights and obligations. The amounts included in the budget are the same as the sums appearing under those heads on expenditure in the budgets for 2015/16 and 2016/17 and in that there is no specific challenge to them from the respondent we can only determine that, save in one respect, they are reasonable sums on which to base the demands for payments in advance for the 2017/18 service charge year. The one exception is in respect of the reserve fund contribution for which there is no provision in the lease and as such is not payable.

The tribunal's decision

12. The tribunal accordingly determines that the amount payable in respect of the service charge budget for 2017/18 is £638 in four equal instalments of £159.50.

Administration charges

13. With the invoice of 14 March 2017 the applicant included a demand for two further amounts described as administrative fees, together with a summary of tenants' rights and obligations in respect of administration charges. These were £35 plus VAT for an unpaid cheque and £65 plus VAT for service charge arrears. The lease makes no provision for the respondent to be contractually liable for charges of such a description and we accordingly determine that these are not payable. On 13 April 2017 the applicant invoiced the respondent again with other amounts, the sum of £1,875 as an administration charge in respect of legal fees.
14. Mr Sinclair told us this sum was in respect of the fees of Mr Andrew Marsden of Counsel whom the applicant had gone to for advice on the possibility of forfeiting the respondent's lease. He had done this because almost from the beginning of his time as freeholder the respondent had been a late payer of service charges. A schedule showing amounts demanded, the date of the demand and the time outstanding was included in the bundle and the applicant had become frustrated with the time and effort it had taken to get monies owing paid as well as having to use his own money to cover the shortfall in the interim. His desire to forfeit the lease could not be doubted and the lease made the respondent contractually liable for the landlord's costs

in such circumstances. Clause 3 of the lease dated 12 November 1987 incorporated into that dated 15 June 2012 contains the tenant's covenants. Clause 3(16) says "To pay all expenses (including Solicitors' costs and Surveyors' fees) incurred by the Lessor incidental to or in contemplation of the preparation and service of a notice under Section 146 of the Law of Property Act 1925 notwithstanding forfeiture is avoided otherwise than by relief granted by the Court". It was perfectly reasonable for the applicant, a lay man, to take legal advice in contemplation of bringing forfeiture proceedings. A certain urgency had been added by the fact that he believed the respondent was in negotiation with its tenants to extend their long sub-lease which if finalized would leave an asset of very little value in the respondent's hands. The amounts outstanding in service charges and administration charges exceed the limitation imposed by the Rights of Re-Entry and Forfeiture (Prescribed Sum and Period) (England) Regulations 2004.

The tribunal's decision

15. The tribunal determines that the amount payable in respect of administration charges is £1,062.50 plus £212.50 VAT.
16. We are satisfied on the evidence that the applicant incurred legal costs in contemplation of bringing forfeiture proceedings for breach of covenant and that the lease makes the respondent contractually liable. We are not considering whether or not there has been a breach but merely that the cost was incurred in connection with a breach or alleged breach so that it falls within the definition of variable administration charge under Schedule 11 of the 2002 Act which it clearly does. Paragraph 2 of the Schedule provides such a charge is only payable to the extent that the amount is reasonable. The invoice for Counsel's fees that we were given at the hearing shows advice given in writing and by telephone against a date of 7 February 2017 for which a fee of £1062.50 plus VAT was charged. Further telephone advice on 23 March 2017 was charged at £250 plus VAT as was, on 7 April 2017, advice by email on Draft Application. We allow the initial sum but are not persuaded that further telephone advice or advice on drafting the application to the tribunal was necessary or reasonable and we disallow those sums.

Name: P M J Casey

Date: 11 September 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 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).