

12859



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

Case Reference : **LON/00BK/LSC/2017/0191**

Property : **Flat A 141 Randolph Avenue
London W9 1DN**

Applicant : **Goodwyn Realty Limited.**

Respondent : **Mr Adrian Joseph Alves**

Type of Application : **Section 27A Landlord and Tenant
Act 1985 and Schedule 11
Commonhold and Leasehold
Reform Act 2002**

Tribunal Members : **Mrs E Flint DMS FRICS IRRV
Ms S Coughlin MCIEH**

**Date and venue of
determination** : **24 July 2017
10 Alfred Place, London WC1E 7LR**

Date of Decision : **13 September 2017**

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the administration charges are not payable.
- (2) The tribunal determines that the following amounts should be credited to the service charge account: £9.37 for emergency lighting in 2015, £341.25 and £453.75 being the credits for 2014 and 2015 respectively and that the budget figure for 2016-17 is £1728.00
- (3) The tribunal declines to make an order under section 20C of the Landlord and Tenant Act 1985.

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 of service charge payable for 2015 and 2016 and the budget for 2017 in respect of services provided to the lessee of Flat A 141 Randolph Avenue London W9 1DN, (the property) and a determination under Schedule 11 of the Commonhold and Leasehold Reform Act 2002 that administration charges are payable.
2. The relevant legal provisions are set out in the Appendix to this decision.

The property and the lease

3. The property which is the subject of this application is a basement flat in a four-storey semi-detached house converted into five flats.
4. Neither party requested an inspection and the tribunal did not consider that one was necessary in view of the nature of the issues in dispute.
5. The lease which is for a term of 99 years from 25 December 1980 at a rising ground rent is dated 6 April 1982. The Respondent is the registered leasehold proprietor of the subject premises.
6. The Lessee covenants at the Fifth Schedule to pay to the Lessor twenty five percent of the maintenance charge by half yearly instalments on account in advance. Under paragraph 2 of the Fifth schedule the maintenance charge specifies that the on account payments payable on 25th of March and 29th of September should be "*the sum specified in paragraph 8 of the Particulars or one half of the maintenance charge for the preceding maintenance year whichever is the greater*". The sum in the particulars is £100 per annum.

Decisions of the tribunal

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7. The amount of the service charge is to be certified as soon as practicable after the end of the financial year. Any shortfall is to be paid on receipt of the managing agents certificate and any excess carried forward to the next maintenance year as a credit.
8. The maintenance charge includes the cost of insuring the building, the cost of complying with usual landlord's repairing and maintenance obligations, employing a managing agent, all legal and other proper costs incurred in the running and management of the property, the cost of auditing the accounts and an amount to accumulate a reserve fund.

The background

9. A Case Management hearing was held on 20 June 2017 at which the Applicant was represented, the Respondent did not appear and was not represented. Directions were issued on the same date. The applicant prepared a bundle, no documents were provided by the Respondent for inclusion in the bundle nor did he provide his own bundle of documents.

The hearing

10. The Applicant was represented by Mr Jason Popperwell, a property manager with Blue Property Management UK Limited. The Respondent appeared in person.
11. At the outset of the hearing Mr Popperwell confirmed that no demands were in the bundle in respect of the demand for service charges for the period 25 March 2015 to 28 September 2015 and he was instructed not to pursue such sums before the tribunal. As regards the various administration charges shown on the service charge statement he was not able to confirm whether any invoices had actually been issued in respect of those charges.
12. Mr Alves confirmed that he had not prepared a bundle. He said that he was happy to pay the service charges providing the charges were reasonable and the applicant provided evidence of the costs; no works had been undertaken at the block. He had not received copies of the annual accounts prior to receiving the bundle on the previous Thursday, consequently he had insufficient time to provide a response. The previous freeholder had withdrawn an application to the tribunal and he did not consider that the present freeholder, via its management company, should pursue sums covered by the previous claim.

13. The Tribunal had sight of the consent order in respect of the previous application and was satisfied that there was no overlap with the charges being sought at this hearing.

The Issues

14. The service charges for the cleaning and caretaking, gardening, fire risk assessment, emergency lighting testing and the surplus from previous years and the administration charges were in dispute.
15. Having considered all of the documents provided, the tribunal has made a determination as follows.

Cleaning and Caretaking

16. Mr Popperwell explained that there is a dedicated caretaker who attends the property on a monthly basis. He cleans the common parts, sweeps the path, litter picks, tends the garden, tests the emergency lighting, changes light bulbs as necessary. There is a charge for three hours per month for the cleaning and gardening and separate charges for monthly testing of the emergency lighting, putting up signs, collecting keys from the locksmith etc. The caretaker's time is charged at £45 per hour. He has no electrical qualifications: he had only changed light fittings which were not working with replacement fittings and therefore did not need to be a qualified electrician.
17. Mr Alves said that the rear garden was demised with his flat. There was no front garden, only one or two shrubs adjacent to the path and steps leading to the front door. He has no access to the main part of the house despite the meter cupboard housing the meter for his flat being in the hall of the house. Mr Alves did not question the actual costs incurred in relation to the cleaning and gardening.

The decision of the Tribunal

18. The costs attributable to the cleaning and gardening are payable.

Reasons for the Tribunal's decision

19. The Tribunal has no evidence before it regarding the standard of or alternative costs for the work undertaken. The Respondent did not challenge the amounts charged.

Fire Risk assessment and emergency lighting

20. The Fire Risk assessment undertaken on 14 September 2015 indicated that there was no emergency lighting, no fire action plan, no fire exit

sign and no fire detection system in place. Mr Popperwell said emergency lighting had been installed in November 2015, a fire exit sign provided and a fire escape plan put in place. Consultation had recently commenced in respect of installing a fire alarm. During cross examination Mr Popperwell accepted that three invoices for £12.50 each for testing the emergency lighting had been charged in error since they predated the installation of the emergency lighting. The annual testing was carried out by a qualified member of staff based in Nottingham who inspected several properties when visiting London.

21. Mr Alves had nothing to add following the concession.

The decision of the tribunal

22. The three invoices in 2015 totalling £37.50 for testing the emergency lighting before it was installed are not payable.

Reasons for the Tribunal's decision

23. The emergency lighting cannot have been subject to monthly testing before it was installed in the property.

Surplus from previous years

24. Mr Popperwell said that the surpluses from previous years appeared in the income and expenditure account. He was unable to explain what had happened to the surpluses. He accepted during cross examination that the surpluses did not appear to have been credited to the service charge account, they were not shown on the statement of account dated 18 July 2017 which commenced with an entry dated 29 September 2010. He agreed that 25% of each year's surplus should be credited to the Respondent's account. After a short adjournment Mr Popperwell confirmed that credits of £341.25 and £453.75 were due in respect of the surpluses for 2014-2015 and 2015-2016.

25. Mr Alves said that the service charges should have been calculated reflecting the credits. He did not dispute the amounts to be credited to his account.

The decision of the Tribunal

26. The service charge accounts should be reduced by the amounts of the credits in paragraph 21 above.

Reasons for the Tribunal's decision

27. The service charge mechanism in the lease is based on interim estimated charges payable in advance with either balancing charges or credits to be applied following certification of each year's charges. The credits had not previously been applied to the Respondent's account as evidenced by the statement within the bundle.

28. The Budget for 2016-17

29. Mr Popperwell explained that the budget was prepared at the company's head office having regard to those items for which the landlord was required to maintain in accordance with the sixth schedule of the lease. He confirmed that his input was limited to a consideration of the amount to be included for repairs and maintenance. He said that he was not aware of the provisions in paragraph 2 of the Fifth Schedule.

30. Mr Alves said the service charge should comply with lease terms.

Decision of the Tribunal

31. The Budget for 2016-2017 should be £1728 based on 25% of the actual costs for the previous year (£6912).

Reasons for the Tribunal's decision

32. The lease requires the interim payments in advance to be based on the maintenance charge for the preceding year.

Administration charges

33. Mr Popperwell said he was unable to confirm that invoices had been issued for the following administration charges: Arrears admin charge £50 x 2; SLC solicitors costs £480; letter to mortgage provider £106.80 and letter before action £89.

34. Mr Alves said that he had not received invoices for any of these charges.

The Tribunal's decision

35. None of these amounts are payable.

Reasons for the decision of the tribunal

36. The Tribunal is satisfied that on the balance of probabilities no invoices have been rendered therefore the amounts cannot be said to be outstanding.

Section 20c Application

37. At the end of the substantive hearing Mr Alves made a verbal application for an order under section 20c and Mr Popperwell confirmed that he was happy to deal with the application at this juncture.
38. Mr Alves said that there were many discrepancies between the evidence at the hearing and the claim. He had only sought the evidence to justify the costs being claimed.
39. Mr Popperwell said that the case had generated more costs than the management fee. The bundle was prepared by one of the legal members of staff based in Nottingham and the cost was included in the management fee. His time at the tribunal and cost of travel from Brentwood were not covered; these costs amounted to £460 in total. He considered these costs should be recoverable.

The decision of the Tribunal

40. The Tribunal determines that it is not just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act.

Reasons for the Tribunal's decision

41. The Applicant had no option but to make the application in respect of the service charge arrears because the Respondent had not explained to the Applicant why he had not paid his service charges. The Applicant had adjusted the amounts being claimed during the course of the hearing.
42. The Respondent had not made any contribution to the service charge account for several years, not even the insurance premium had been paid. The Respondent had not engaged with the tribunal process until the hearing which had made it particularly difficult for the Applicant to prepare the case since there had been no indication of which costs were being challenged as the Respondent had not prepared a statement of case.

Name: Evelyn Flint

Date: 13 September 2017

ANNEX - RIGHTS OF APPEAL

- i. 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.
- ii. 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.
- iii. 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.
- iv. 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 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).