



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

**Case reference** : LON/00AC/LSC/2016/0057

**Property** : Flat 3, Hendon Hall Court, Parson Street, London NW4 1QY

**Applicants** : Mr S Leslie and Mr A Barnett

**Representative** : Mr E Saleh (managing agent)

**Respondent** : Ms Soheila Mahdavi

**Representative** : Ms A Just of counsel

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

**Tribunal members** : Mr S Brilliant  
Ms S Coughlin

**Date and venue of hearing** : 27 June 2016  
10 Alfred Place, London WC1E 7LR

**Date of decision** : 21 September 2016

and other obligations under the lease. This certificate is the **certificate of expenditure**. The service charge year runs from 29 September to 28 September.

19. The Applicant suggest in their witness statement [147] that the service charge provisions in the lease and the overriding lease mirror each other. This is not true. The overriding lease is a more modern lease. The Applicants have to pay to Hendon Hall a service charge in respect of 1.8% of the total expenditure of Hendon Hall for that year in respect of its repairing and other obligations under the overriding lease. Clause 2(2)(b)(iv) of the overriding lease provides that this service charge is payable by two equal instalments in advance on 29 September and 25 March in each year subject to the usual balancing provisions.

### **The proceedings**

20. The Applicants commenced proceedings against the Respondent in the County Court for the amount set out in paragraphs 2 and 3 above on 30 June 2015. The Respondent served a Defence and Counterclaim dated 28 July 2015. On 8 January 2016 District Judge Silverman directed, by consent, that the matter be transferred to the Tribunal.
21. The Tribunal only has jurisdiction to deal with that part of the dispute which concerns the liability to pay and reasonableness of the service charges and the administration charges.

### **The facts**

22. Until 2014 the practice was for Hendon Hall to provide services directly to the Respondent and for the Respondent to pay service charges directly Hendon Hall. The Respondent stopped paying service charges in February 2013 because of a dispute over inspecting invoices.
23. On 7 January 2015 the Applicants issued the invoice to the Respondent which is at the heart of these proceedings [3]. It was for:

(1)	Opening balance.	£777.50
(2)	Service charge 29 September 2013 to 24 March 2104.	£1,089.00

24. On 30 March 2015 Hendon Hall sent to the Respondent the certificate of expenditure for the year 29 September 2013 to 28 September 2014 [42-44].
25. On 20 May 2015 the Respondent received the invoice by email from the Applicants for the first time despite it being stamped overdue for

payment [37].

### **Determination**

26. The Applicants have failed to give any particulars as to how the opening balance of £777.50 has been calculated. It can only be presumed that it relates to the period prior to 29 September 2013. There has been no demand made directly by the Applicants for any sum from the Respondent prior to the invoice dated 7 January 2015. There has not been demonstrated to our satisfaction any contractual basis upon which the Applicants can make out a claim to this sum.
27. Moreover, the invoice itself fails to include the information required by section 21B of the Landlord and Tenant Act 1985.
28. The figure of £1,089.00 was an estimated amount and not the actual expenditure for the period. As we have explained above, the lease does not provide for service charges to be demanded in advance. The certificate of actual expenditure did not come into being until 30 March 2015 so the earliest date on which a demand could have been issued in accordance with the lease was 1 July 2015.
29. For these reasons we find that the Respondent has no liability to pay the service charges.
30. The claim for administration charges is predicated on the basis that the Respondent was in arrears with her service charges. Since we have found that the Respondent has no liability to pay the service charges, it must follow that the claim for administration charges falls away.
31. We also accept the Respondent's submission that the Applicants' demand [3] relates to costs incurred between 23 September 2013 and 23 March 2014 and before. Since the Applicants have failed to serve a valid demand within 18 months of those costs having been incurred, the Respondent is now not liable to pay the service charges reflecting those costs, in accordance with section 20B of the 1985 Act.

### **Costs**

32. At the hearing we were addressed on whether we should make a costs order against the Applicants. Since the decision in Willow Court Management Co (1985) Limited v Alexander [2016] UKUT 290 (LC) decided on 21 June 2016 has only become widely circulated since the hearing, if the Respondent wishes to pursue an order for costs against the Applicants she should do so by serving representations in writing on the Applicants and the Tribunal within 14 days of this decision, together with a schedule of costs in form N260 or similar. The Applicants must then make representations in reply 14 days thereafter.

33. The Respondent made an application under section 20C of the Landlord and Tenant Act 1985. We consider it just and equitable in all the circumstances that the Applicants should not be entitled to recover the cost of these proceedings through the service charge.

**Name:** Simon Brilliant

**Date:** 21 September 2016

## 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.