



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

**Case Reference** : LON/00AE/LSC/2017/0363

**Property** : 82 Clarendon Court, Sidmouth  
Road, Willesden, London NW2  
5DH

**Tenant** : Mr Athir Al-Balhaa

**Representative** : Joshua Dubin of counsel  
accompanied by Ms Intesar Al-  
Balhaa, the tenant's sister

**Landlord** : Clarendon Court (London)  
Freehold Ltd

**Representative** : Terrance Gallivan of counsel

**Type of Application** : Service charge dispute

**Tribunal Members** : Tribunal Judge Adrian Jack and  
Tribunal Member Susan Coughlin  
MCIEH

**Date and venue of  
determination** : 26<sup>th</sup> April 2018 at 10 Alfred Place,  
London WC1E 7LR

**Date of Decision** : 16<sup>th</sup> May 2018

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**DECISION**

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## **Procedural**

1. By an application dated 3<sup>rd</sup> September 2017 the tenant sought determination of his liability for service charges in the years 2013, 2014, 2015 and 2016 and for the then current year 2017.
2. On 24<sup>th</sup> October 2017 Judge Mohabir gave directions following a hearing, however, the landlord did not appear due to a misunderstanding. In consequence further directions were given on 24<sup>th</sup> January 2018 following a further hearing at which both sides attended represented by counsel.
3. At that hearing it was agreed that the sole issues for the Tribunal were the determination of the service charges due in 2015-16 and 2016-17. The service charge year runs from 1<sup>st</sup> October to 30 September.
4. At the hearing before us, both side were again represented by counsel. They agreed that under the terms of the lease:
  - (a) the landlord is entitled to recover contributions to the reserve fund from the tenant; and
  - (b) the landlord is not entitled to recover through the service charge its legal costs incurred in litigation with the tenant.
5. This narrowed the issues for the Tribunal to determine very substantially.

## **The facts and discussion**

6. Clarendon Court comprises six blocks, each of ten flats. The tenant's flat is on the ground floor. The landlord is owned by the tenants. There has been very extensive litigation over several years between the landlord on the one hand and the tenant and his sister on the other, both in this Tribunal and in the County Court.
7. In 2015-16, the landlord sought to recover two sums of £2,385.01 as each half-year's service charge contribution. The £2,385.01 comprised the half year's service in advance of £1,057.19, a reserve fund contribution of £1,147.99 and insurance in advance of £179.83.
8. The final accounts were approved by Sproull & Co, Chartered Accountants, on 14<sup>th</sup> February 2017. They did not carry out a full audit, but their checking of the accounts had substantial similarities to an audit. Sproull & Co checked whether the figures in the service charge accounts were extracted correctly from the landlord's accounting records. They checked, based on a sample, that entries in the

accounting records were supported by receipts. Lastly they checked that the balance of service charge monies could be reconciled with the bank statements.

9. The figures challenged by the tenant were: £1,198 for water treatment; £2,480 company secretary's fees; £23,604 legal fees; £954 "other professional fees"; and £28,493 in respect of professional fees for major works.
10. The cost of water treatment arises in this way. There is a cold-water header tank in the roof of the block which ensures that all tenants in the block have a reasonable pressure on their water. The roof is in a poor state of repair, so it is necessary to test the water in the tank every year to ensure that it has not been contaminated.
11. Ms Al-Balhaa's complaint was that the water was nonetheless of poor quality. No bills had been produced to show that this money was expended. The accountants were not to be trusted, because they were appointed by the other tenants, who had a grudge against her and her brother.
12. We do not accept this criticism. Even if the water quality was poor, indeed especially if the water quality was poor, it was necessary to test it to ensure that it was nonetheless fit for human consumption, so this was a proper head of charge. Of necessity the accountants were appointed by the landlord, which was tenant-controlled. There is no basis for attacking the independence of the accountants. They are professionals. Further all the tenants were having to contribute to this head of charge. Given that the landlord is tenant-controlled, there would be no reason to put an expense in the service charge account when it had not been incurred.
13. As to the cost of the company secretary, the position is that the accountants provide this service. The cost included attendance at annual general meetings of the landlord and advising the board. The landlord explained that Ms Al-Balhaa had previously complained about the conduct of elections to the board of the landlord at the annual general meeting of the landlord was held. Ms Al-Balhaa accepted that she had made complaints of that nature. Given the background of extensive litigation between the parties, we consider that the landlord was acting reasonably in asking the company secretary to do more work that would be usual on a tenant-controlled estate. We repeat that all the tenants were having to contribute to this head of expense. We disallow nothing.
14. In relation to the legal fees of £23,604, the majority of these related to the litigation with the tenant. As a result of the agreement of counsel, that part of this figure stands to come out of the service charge. However, there was also a separate issue during this service charge year

concerning a potential dispute about a right of way. This issue (which never escalated to litigation) was completely unrelated to the current tenant. We consider that it properly falls to be paid as part of the cost of management of the estate under clause 4(A) of the lease. The amount attributable to advice on the right of way issue was £2,000. We allow that figure and disallow the balance of £21,604.

15. There was little evidence about the other professional fees of £954. However, against the background of major works being needed, the figure seems reasonable. Again all the tenants were having to contribute to this item.
16. The £28,493 in respect of supervision of the major works is low as a percentage of the value of the works. We disallow nothing.
17. The 2016-17 demands are payments sought on account. The final accounts are not available. Each half year the landlord seeks to recover £2,385.01, the same as in 2015-16. The budget includes a figure of £10,000 for "professional/legal fees".
18. Among the extensive litigation is a claim made by Ms Al-Balhaa against the caretaker on the estate. The landlord has taken over conduct of the defence of this action. We have not been asked to adjudicate on whether that was a proper course of action. Nor have we been asked to determine whether the costs of defending the caretaker can properly be put through the service charge account. (Ms Al-Balhaa is not the tenant, so the agreement of counsel as regards the irrecoverability of legal costs against Mr Al-Balhaa does not apply.) In these circumstances, we consider that the landlord is acting reasonably in putting a provision figure of £10,000 in the budget for this amount. (Whether the legal costs of defending the caretaker are recoverable through the service charge will have to await determination on a final account.)
19. Accordingly we disallow nothing in the payments sought on account in 2016-17.

### Costs

20. The Tribunal has a discretion as to costs. Here on the point of principle the tenant lost on the reserve fund, but won on the legal expenses. On the detailed points raised, the tenant lost on the four small items, but won in reducing the legal costs by over £20,000. The dispute on the 2016-17 budget took very little time before us.
21. Overall, we consider that the tenant has done slightly better than the landlord. The total costs payable to the Tribunal are £300. We

consider the fairest approach is to divide these two-thirds, one third, so that the landlord reimburses the tenant £200.

22. The tenant has sought an order under section 20C of the Landlord and Tenant Act 1985 to prevent the landlord recovering the costs of the current proceedings through the service charge. Since there is no single overall winner, we do not consider that it is appropriate to interfere with such contractual rights as the landlord may have. In the light of the concession as regards legal fees, there appears in any event to be no scope for the landlord to put the costs of the current proceedings through the service charge.
23. No grounds for making any costs order under rule 13 of the Tribunal's Procedure Rules has been shown.

### DETERMINATION

- 1. The figure of £21,604 in respect of legal costs is disallowed in the final service charge accounts for 2015-16. Otherwise nothing is disallowed.**
- 2. Nothing is disallowed in the service charge demands on account in 2016-17.**
- 3. The landlord shall reimburse the tenant £200 in respect of the fees payable to the Tribunal.**
- 4. The Tribunal refuses to make an order under section 20C of the Landlord and Tenant Act 1985 or a costs order under rule 13 of the Tribunal's Procedure Rules.**

Judge Adrian Jack, 16<sup>th</sup> May 2018

#### **ANNEX: The law**

The Landlord and Tenant Act 1985 as amended by the Housing Act 1996 and the Commonhold and Leasehold Reform Act 2002 provides as follows:

#### **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, improvement 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 of 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 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 provision 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 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) a leasehold valuation 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 charges 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 charges 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 27A**

- (1) An application may be made to a leasehold valuation 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 a leasehold valuation tribunal for a determination whether 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."

Sections 47 and 48 of the Landlord and Tenant Act 1987 require a landlord to give his name and address and to give an address for the

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service of notices by the tenant on him. The Service Charges (Summary of Rights and Obligations, and Transitional Provision) (England) Regulations 2007 requires a landlord to serve a summary of tenants' rights and obligations with any demand for service charges on pain of irrecoverability of the service charges demanded.