



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

Case reference : LON/00AL/LSC/2018/0016

Property : Flat 5, St James Court,
Wricklemarsh Road, London, SE3
0NE

Applicant : St James Court Residents
Association

Representative : Mr McKenna, Treasurer

Respondent : Mr Danny Law

Representative : In person

Type of application : For the determination of the
reasonableness of and the liability
to pay service charges

Tribunal members : Judge I Mohabir
Mr P Roberts DipArch RIBA

Venue : 10 Alfred Place, London WC1E 7LR

Date of decision : 31 May 2018

DECISION

Introduction

1. The Applicant commenced proceedings in the County Court to recover service charge arrears from the Respondent in the sum of £795.
2. The Respondent is the lessee of Flat 5, St James Court, Wricklemarsh Road, London, SE3 0NE having taken an assignment of the lease in April 2002. The Applicant is the freeholder.
3. The judgement in default obtained by the Applicant was set aside and the Respondent filed a defence to the claim and counterclaimed for loss and/or damages for various items he alleges the Applicant caused to his property.
4. By an order made by DDJ Martynski dated 30 November 2017, the claim and counterclaim were transferred to the Tribunal for determination.
5. At the case management hearing, the issues in this case were identified as being the reasonableness and payability of service charges demanded for 2015/16, 2016/17 and 2017/18 totalling £750. The Tribunal's determination takes place pursuant to section 27A of the Landlord and Tenant Act 1985 (as amended) ("the Act").
6. For reasons that will become apparent below, it is not necessary to set out either the relevant lease terms or the factual background of this case. It is sufficient to note that the lessees have historically, by informal agreement, agreed to pay monthly instalments of £55 rising to £70 from September 2015 in respect of the service charge expenditure.

Relevant Law

7. This is set out in the Appendix annexed hereto.

Decision

8. The hearing in this case took place on 31 May 2018. The Applicant was represented by Mr McKenna who is the Treasurer of the company. The Respondent appeared in person.
9. At the commencement of the hearing, Mr McKenna confirmed that each service charge year commenced on 1 April in each year and ended on 31 March of the following year.
10. The Tribunal explained that its jurisdiction in this case was limited to making a determination in relation to the years to which the service charges arrears had accrued. The Tribunal also explained that it had no jurisdiction to determine the Respondent's claim in damages made in the counterclaim and this had to be remitted back to the County Court once the service charge dispute had been decided.
11. The Tribunal then invited Mr McKenna to explain to which years the global service charge arrears of £795 as set out in the claim form were applied to and the amounts. He confirmed that the claim included arrears up to May 2016. Eventually, it was ascertained that it was £55 for 2014/15, £600 for 2015/16 and £140 (up to May 2016) for 2016/17 and not as set out in the Directions order dated 20 February 2018.
12. Mr McKenna conceded that no formal service charge demands had been served on the Respondent or other lessees as a consequence of the informal agreement to pay monthly instalments in respect of service charge expenditure. He confirmed that formal demands were served on the lessees in November 2017.
13. The Tribunal pointed out that the effect of section 20B of the Act meant that any service expenditure incurred more than 18 months prior to any demand in respect of them was irrecoverable. Mr McKenna conceded that the operative date after the service of the demands in November 2017 was in fact June 2016.

14. Given that the service charges that are the subject matter of this case accrued up to May 2016, it follows therefore, that none of the service charges in issue are recoverable. Mr McKenna agreed with this.
15. Accordingly, the service charge claim is dismissed and the matter is remitted back to the County Court to deal with the Respondent's counterclaim in damages and any consequential costs there.

Section 20C & Fees

16. In effect, section 20C of the Act gives the Tribunal a discretion to make an order to preventing a landlord from being able to recover all or part of any costs it may have incurred in these proceedings through the service charge account where it is fair and equitable to do so. The Tribunal heard submissions from both parties on this point.
17. As the service charge claim has failed entirely and appears to have been based on a misunderstanding of the legal entitlement to recover the service charge arrears, the Tribunal did not consider it just or equitable that it should nevertheless be able to recover the costs it had incurred in these proceedings. In other words "costs should follow the event". Therefore, the Tribunal makes an order under section 20C of the Act that the Applicant is not entitled to recover any costs it has incurred in these proceedings through the service charge account.
18. The Tribunal applied the same reasoning in relation to the fees paid by the Applicant to the Tribunal and makes no order requiring the Respondent to reimburse the Applicant any such fees paid.

Name: Judge I Mohabir

Date: 31 May 2018

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

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 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.