

12622



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

**Case reference** : **LON/00AM/LSC/2017/0244**

**Property** : **31a Cotesbach Road, London E5  
9QJ**

**Applicant** : **Ms Margaret Josephine Heaven**

**Representative** : **In person**

**Respondent** : **Ms Elizabeth Martins**

**Representative** : **Kyriakides & Braier Solicitors**

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

**Tribunal members** : **Judge O'Sullivan**

**Venue** : **10 Alfred Place, London WC1E 7LR**

**Date of decision** : **12 February 2018**

---

**DECISION**

---

### **Decisions of the tribunal**

- (1) The tribunal determines that the sum of £113.56 and £127.35 are payable by the applicant in respect of the insurance premiums for the years ending 24 March 2016 and 2017.
- (2) The tribunal determines that the sum of £200 and £50 are payable by the applicant in respect of the management fee for the years ending 24 March 2016 and 2017.
- (3) The tribunal does not allow the administration fee in the sum of £250.
- (4) The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the tribunal proceedings may be passed to the lessee through any service charge.
- (5) The tribunal makes an order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002

### **The application**

1. The applicant tenant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to whether service charges are payable.
2. The tenant also seeks an order for the limitation of the landlord's costs in the proceedings under section 20C of the 1985 Act and an order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (the "2002 Act").
3. The relevant legal provisions are set out in the Appendix to this decision.

### **The background**

4. 31 Cotesbach Road was originally constructed as a house but at some point was converted into two self contained flats. The applicant is the leaseholder of the basement and ground floor flat known as 31A Cotesbach Road pursuant to a lease dated 20 July 2017 made between Gerald Feldman and Angela Feldman (1) and Ms Heaven (2) (the "Lease"). The specific provisions of the Lease and will be referred to below, where appropriate.
5. 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.

## **Background**

6. A case management hearing took place on 20 July 2017 attended by both parties in person following which directions were issued on the same date. At that case management hearing the parties confirmed the issues in dispute to be as follows;
  - i. The reasonableness of the insurance premiums for the years ending 24 March 2016 and 2017 in the sum of £113.56 and £127.35 respectively;
  - ii. The reasonableness of the management charges for the years ending 24 March 2016 and 2017 in the sum of £500 and £50 respectively;
  - iii. Whether an order under section 20C of the 1985 Act should be made;
  - iv. Whether an order for reimbursement of the application fee should be made.
  - v. Whether an order under paragraph 5A of Schedule 11 to the 2002 Act should be made.
7. The total amount in dispute is £841.36.
8. The respondent has also made an application under Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. This was adjourned until after the issue of the decision in this substantive application.
9. At both parties' request this matter was considered by way of a paper determination on 12 February 2018. Both parties have filed bundles. Ms Martins has been assisted by recently appointed solicitors to prepare a statement of case. In making this decision I have also considered all of the correspondence received from both parties on the tribunal's file.
10. Both parties have suffered from medical problems throughout these proceedings and this has necessitated the dates for compliance with the tribunal's directions and determination date being varied on multiple occasions. It is also clear that the relationship between both parties has broken down and there is a huge degree of hostility and mistrust on both sides. Much of this breakdown relates to the sewage and drainage problems that the applicant suffered in 2015 and 2016. The administration of the insurance claims appears to have been slow which has resulted in the applicant engaging the builders and paying for the

works in advance of the settlement of the claim. Even now the property is said to remain in a state of disrepair. The application to the tribunal included a claim for set off in relation to alleged breaches of covenant by the landlord resulting in a claim for the reimbursement of costs such as for the unblocking of drains, various CCTV surveys and reports and so on. As this potential claim was far in excess of the amount challenged in these proceedings the tribunal declined to deal with it and confirmed that the correct venue for that claim would be the county court or mediation. These issues clearly remain ongoing and are having a huge impact on the parties and it would be in both parties' interests if a resolution could be reached.

11. In this application the tribunal is only considering two insurance premiums and two administration charges. The parties have wider disputes between them which do not fall within our jurisdiction and I wish to make it clear that any comments on those matters which are contained in the parties' statements and correspondence with the tribunal have not been taken into account in making this decision.
12. Having considered evidence and submissions from the parties and considered all of the documents provided, I have made determinations on the various issues as follows.

### **Insurance**

13. Ms Heaven challenges the reasonableness of the insurance premiums for the years ending 24 March 2016 and 2017 in the sum of £113.56 and £127.35 respectively.
14. The applicant does not dispute the reasonableness of the premiums but rather is concerned that they are "too cheap". She says the policies are inadequate as she is not included as an interested party. By this what appears to be meant is that she is unable to make an independent claim. This frustration appears to arise from her inability to correspond with the insurers directly and the insurer's past refusal to provide details of claims to her. She is also concerned that the policy does not cover the flat roof over her study and bathroom. It is also said that there has been a history of inappropriate policies. She says that she is happy to pay the full amount for any years in which the policy has protected her rights and covered all insurance obligations in the Lease and that she never wants to be in this situation again with the drains.
15. The respondent says that at all times whilst she has been a freeholder full insurance has been in place. The applicant has previously challenged the premiums for the year ending 24 March 2013 and 24 March 2015 and both were found to be payable. The same broker, Towergate, has been used to arrange the two disputed policies.

16. The respondent attaches copies of the policies and points out that the respondent's interest is noted under the "Endorsements Applicable" as "*we hereby note and agree that [sic] Mrs Jo Heaven is a leaseholder of the downstairs flat*". It is confirmed that the premium sought is the total of the premium, tax and brokers fee for each year.
17. As far as the extent of the property covered is concerned the respondent says that clause 2(5) requires the respondent to insure "the building" which is defined as 31 Cotesbach Road, Clapton London E5. Reliance is placed on a letter from Towergate dated 19 January 2018 confirming that the flat roof is noted as being less than 30% of the entire roof and is therefore covered.

### **The tribunal's decision**

18. I allow the insurance premiums in full.

### **Reasons for the tribunal's decision**

19. The premiums appear to me to be wholly reasonable in amount. I am satisfied on the basis of the evidence received from Towergate that the flat roof is covered by the policy and the insurance complies with the requirements of the Lease. The applicant's interest is noted on the policies.
20. There is no obligation in the landlord in the Lease to effect wording on the policy to enable the tenant to make a direct claim. The obligation is only to have the tenant's interest noted and I find that the endorsement on the policy fulfils that criteria. In any event paragraph 7 of the schedule to the 1985 Act sets out the statutory right of tenants to notify insurers of possible claims. It appears clear that the applicant is entitled to make a claim on the policy although the insurer is entitled to correspond with the landlord only as policy holder should it so chose. Given the particular history of this case I would hope that the respondent would encourage direct contact between the insurer and the applicant which may make speedier resolution possible in the future.

### **Management**

21. Ms Heaven challenges the management costs in full for the years ending 24 March 2016 and 2017.
22. There is no challenge to the payability of a management charge in principle but rather Ms Heaven objected to any payment on the basis that Ms Martins had not managed the building properly.

23. In the respondent's statement of case dated 9 February 2018 it was confirmed for the first time that Ms Martins seeks to recover not £500 but £250 for the year ending 24 March 2016 (the other £250 being an administration charge which I deal with below) and £50 for the year ending 24 March 2017. It is said that the respondent has limited experience in the ownership and management of residential property but has endeavoured to meet her obligations under the Lease. She refutes that she was negligent in relation to the cause of dampness suffered by the applicant. It is said that the applicant continues to be offensive, rude and aggressive in communications and that she has had to deal with around 221 items of correspondence either directly from the applicant or as a result of insurance claims for the years ending 24 March 2016 and around 127 items of the year ending 24 March 2017.
24. The respondent says that she made enquiries in spring 2016 with managing agents with a view to determining a competitive fee and to see if a managing agent could be instructed. However it is said that no agents were interested and the only agent prepared to take the property quoted an annual fee of £1,000 plus Vat. The management activities said to have been carried out include;
- a) Arranging insurance cover
  - b) Insurance claim management
  - c) Preparation of service charge accounts
  - d) Collection of rents
  - e) Obtaining estimates for works and repairs
  - f) Liaising with banks to set up a reserve fund (decided not to proceed)
  - g) Seeking an accountant (decided not to instruct)
  - h) Liaising and consulting prospective management agents
  - i) Dealing with complaints

### **The tribunal's decision**

25. I allow the management fees at £200 for the year ending 24 March 2016 and £50 for the year ending 24 March 2017.

### **Reasons for the tribunal's decision**

26. I am satisfied that paragraph 3 of the Third Schedule to the Lease makes provision for the landlord to recover through the service charge the reasonable fees of the landlord or the landlord's agent for the collection of rents of the flats in the building and for the general management thereof. Paragraph 4 of the Third Schedule entitles the landlord to recover fees and costs incurred in respect of the annual certificate of accounts kept and audits.
27. I am satisfied that Ms Martins has spent time on management activities. She has arranged insurance, prepared certificates and accounts and engaged in much correspondence. As far as the year ending 31 March 2016 is concerned however I note there were no repairs carried out and the accounts are simple. Ms Martins also has very little experience in residential management and although she may be spending much time in managing the property with the best of intentions it is not reasonable to expect the applicant to reimburse her for all of her time spent as an inexperienced landlord for what should be straightforward management. Having regard to the tribunal's expertise I consider a reasonable fee to be £200.
28. As far as the year ending 31 March 2017 is concerned a fee of only £50 is claimed which I consider is fair and reasonable in amount and is payable by Ms Heaven.
29. It would clearly be in the best interests of both parties if a professional managing agent could be appointed and given the respondent last investigated this possibility back in spring 2016 this may be something that the respondent will wish to further investigate.

### **Administration charge**

30. As mentioned above in the respondent's statement received on 9 February 2018 it was clarified that the demand for the year ending 24 March 2016 included an administration charge of £250. This was listed together with the management charges as a single item of £500. This is the first occasion on which this has been clarified with the respondent having confirmed at the case management hearing that this item represented a management charge only.
31. Solicitors for the respondent say that the demand included a summary of tenant's rights and obligations and the applicant has not asserted that this demand is not compliant.
32. In making this demand the respondent relies upon;
  - a) Clause 2(6)(a) which provides that the applicant is to pay "*all costs charges and expenses (including legal costs and fees payable to a surveyor) which may be incurred by the Lessor incidental to the*

*preparation and service of a notice under section 146 or 147 of that Act notwithstanding forfeiture may be avoided otherwise than by relief granted by the court” and*

- b) Clause 2(5) of the Lease which states that the applicant is to observe “*such other restrictions or regulations as the Lessor may from time to time reasonably make and publish*”.
33. The respondent says that the costs were incurred incidental to the preparation and service of a notice under section 146 or 147 in relation to the previous proceedings before the tribunal under reference LON/00AM/LSC/2015/0189. Attention was drawn to the Court of Appeal decision in *Freeholders of 69 Marina St Leonards-on-Sea Robinson, Simpson & Palmer v John Oram & Mohammed Hoorun [2011] EWCA Civ 1258*. It is said the proceedings were necessary “*for the enforcement of the liability of the service charge*” and were “*incidental to the preparation and service of a section 146 notice*”. It concludes that the respondent was entitled to apply an administration charge for her preparation and attendance at the case management hearing and 2 day hearing in January 2016.
34. In the alternative reliance is placed on clause 2(5) of the Lease and it is said that the demand referred to “*dealing with correspondence to and from the lessee*” and refers to the respondent’s previous practice of charging £5 per email or communication, £5 for an updated statement of account (£10 if sent by post), admin fees of £15 for postal communications and £25 for any lengthy postal communications. The respondent decided to cap this at £250 per annum.

### **The tribunal’s decision**

35. I do not find the administration charge of £250 to be payable or reasonable in amount and it is disallowed.

### **Reasons for the tribunal’s decision**

36. I am not satisfied that the administration charge in issue has been properly demanded. From the evidence before me the amount was first included in the Service Charge Certificate for the year ended 24 March 2016 as part of a global figure headed “*management/administration*”. No breakdown was provided to enable the tenant to see that she had been charged £250 for management and £250 by way of an administration charge although the certificate was accompanied by the required summary of tenant’s rights and obligations. The explanation of the heading lists what one would expect to see as general management activities and includes all the categories claimed by way of management fees save the attendance at the previous tribunal proceedings. In fact it was not until the respondent’s statement was



served on 9 February 2018 that this charge was highlighted at all. It is difficult to see how the applicant could possibly have challenged the administration charge in these circumstances.

37. Further the costs are said to relate to the time spent in defending the previous tribunal proceedings. The respondent says that they were necessary for "*the enforcement of the liability of the service charge*" and "*incidental to the preparation and service of a section 146 notice*". However the proceedings reference LON/00AM/LSC/2015/0189 were not in fact instigated by the landlord but were commenced by the applicant tenant. There is no evidence that the landlord has ever contemplated forfeiture or served a notice under section 146. Despite the tribunal having found the sum of £3,003.18 to be payable on 8 February 2016 it is understood that this sum remains outstanding and there is no evidence before me of any enforcement action having been taken.
38. In the alternative it is said that the costs relate to dealing with correspondence and reliance is placed on clause 2(5). This alternative argument is unattractive as it appears to be a post dated attempt to justify the charge. I do not consider that provision is aimed at allowing the landlord to introduce by the back door a scheme for administration charges which was not envisaged by the Lease. Clause 2(5) is clearly aimed at schemes of regulations relating to the use of the property.

#### **Application under s.20C and refund of fees**

39. In the application form the applicant applied for an order under section 20C of the 1985 Act. In case reference LON/00AM/LSC/2015/0189 the tribunal found that any costs which Ms Martins may have incurred are not service charges for the purposes of the Third Schedule to the Lease. The respondent now suggests that she is entitled to recover her costs and that the tribunal erred in its interpretation of the Lease in that decision. However the tribunal's finding on the recoverability of the respondent's costs as set out in the decision dated 8 February 2016 was not the subject of an appeal by the respondent and I am bound by that decision. For the avoidance of doubt however I consider that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the respondent may not pass any of her costs incurred in connection with the proceedings before the tribunal through the service charge.
40. Given that the tribunal has found the majority of the charges to be payable I do not consider an order for the reimbursement of fees should be made.

### **Paragraph 5A of the 2002 Act**

41. In the application form the applicant also applied for an order under paragraph 5A of the 2002 Act. The respondent says the application must fail as it does not relate to litigation costs incurred or to be incurred with proceedings begun before 6 April 2017. On that basis the respondent says that this cannot apply to the administration charge in issue. The respondent appears however to misunderstand the application which relates to the costs of these proceedings rather than to the administration charge of £250 dealt with above.

Paragraph 5A provides that;

*“(1)A tenant of a dwelling in England may apply to the relevant court or tribunal for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs.*

*(2)The relevant court or tribunal may make whatever order on the application it considers to be just and equitable.*

*(3)In this paragraph—*

*(a)“litigation costs” means costs incurred, or to be incurred, by the landlord in connection with proceedings of a kind mentioned in the table, and*

*(b)“the relevant court or tribunal” means the court or tribunal mentioned in the table in relation to those proceedings.”*

42. A modest sum was in dispute in these proceedings of £841.36. I have allowed the sum of £541.36 as reasonable. This was a simple matter which required only short statements to be made by the parties rather than long statements of case as indicated by the tribunal on several occasions. There was no need to instruct solicitors and for legal costs to be incurred. In such circumstances I consider it just and equitable to make an order under paragraph 5A. This means that none of the landlord's costs of these proceedings may be subsequently recovered from the tenant by way of an administration charge.

### **Rule 13 application**

43. The respondent's Rule 13 application was adjourned pending the issue of this decision. It is my preliminary view that there are insufficient grounds in this case to make an order under Rule 13 in respect of either party's costs having regard to the guidance in the Upper Tribunal decision in *Willow Court Management Company (1985) Ltd v Mrs Ratna Alexander* [2016] UKUT (LC). However if she wishes to pursue

an application the respondent may apply for directions within 14 days failing which it will be deemed withdrawn.

**Name:** Judge O'Sullivan

**Date:** 12 February 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 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).