

13071



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

**Case Reference** : **LON/00AN/LSC/2018/0288**

**Property** : **Fla68 Hammersmith Grove London  
W6 7HA**

**Applicant** : **Ms Nicola Lesbirel**

**Representatives** : **-**

**Respondent** : **Ms Seema Sehgal and Ms Sara  
Taylor**

**Representative** : **-**

**Type of Application** : **Reasonableness of and liability for  
service charges under the Landlord  
and Tenant Act 1985**

**Tribunal Members** : **Judge Professor Robert M. Abbey  
Luis Jarero BSc FRICS**

**Date and venue of  
Paper Based Decision** : **14<sup>th</sup> November 2018 at 10 Alfred  
Place, London WC1E 7LR**

**Date of Decision** : **14<sup>th</sup> November 2018**

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**DECISION**

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## **Decisions of the tribunal**

1. The tribunal determines that the service charges for the property are payable as follows:-

2018

£ 618.40. The Tribunal finds that there is authority in the leases of the property for these service charges

2. The reasons for our decisions are set out below.

## **The application and procedural background**

3. The Applicant seeks a determination under section 27A of the Landlord and Tenant Act 1985 ("The Act") as to whether service charges are reasonable and payable.
4. The relevant legal provisions are set out in the Appendix to this decision. Additionally, rights of appeal are set out below in an annex to this decision

## **The paper based decision**

1. The tribunal decided that in view of the limited nature of the application that the decision could be taken on paper and without the cost of an oral hearing. Written submissions were requested of the parties.
2. The tribunal had before it several letters, submissions and copy deeds and documents from the parties to the dispute as well as a formal trial bundle.

## **The background**

3. The parties hold long leases of the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge.
4. The claimed service charges amount to £206.13 from Ms Sehgal and £412.27 from Ms Taylor in regard to damp-proofing and water-proofing works carried out to the basement flat. It is these sums that are in dispute and are the items referred to the tribunal.

## **The service charges claimed**

5. Having read the submissions from the parties and considered all of the documents provided, the tribunal determines the issue as follows.
6. In regard to the claimed service charges the tribunal finds that the service charges claimed for the damp proofing and water proofing are reasonable and payable by the applicant because they clearly form part of the landlord's responsibilities under the terms of the leases of the property. The Tribunal sets out below how this arises from the lease provisions
7. The Tribunal considered the lease terms and accepted that the leases were written in such a way so as to make the tenants only responsible for the interiors of the flats while reserving the main structures to the landlord. This is an entirely appropriate approach and one we would endorse as being completely suited to the nature of this building as a whole.
8. In detail and by reference to the lease dated 15 October 1979 of the garden flat a copy of which was in the trial bundle the tribunal first looked at the extent of the demised premises. This is defined in schedule one of the lease. The demise is of the garden floor of the property but there is a specific exception that states "BUT EXCEPTING.... (2) ALL THOSE the main structural parts of the property including the main walls....and timbers and the roof foundations ...".
9. So, this means that the garden floor flat demise does not include these parts of the building. They are reserved to the landlord. Then by the provisions of schedule five of the lease the landlord has an obligation to repair all structures and parts of structures that are not by the lease terms made the responsibility of the tenant. In particular the landlord must repair and maintain the foundations exterior walls interior walls and roofs used in common by the tenants. Please see clause 1 (a) (i) of Schedule five of the lease
10. The works of repair are described in the application as first the damp proof course in the basement flat exterior part walls. On this description it is quite clear to the tribunal that this must be a landlord's responsibility and will be a service charge payable by the tenants in accordance with the terms of their leases.
11. The second item listed is described as damp proof course in the basement to internal structural walls. On the assumption that the works are indeed to structural walls albeit in the flat itself it is still the case that these are the responsibility of the landlord. If the damp proof work is to a structural wall it does not matter where it is as the lease makes it clear that if structural then the landlord will be responsible and the works will form a service charge.

12. The third item is described as waterproofing to the upper surface or underside of the main front steps which form part of the roof of the basement flat. The demise of the flat in Schedule one of the lease excepts from the flat description all entrance steps and other parts used in common of two or more flat owners. So, roofs are excepted in the section quoted above. Therefore the Tribunal takes the view that the flat demise does not include the steps/basement roof. Consequently these elements must be the landlord's responsibility and must be repairable by the landlord as a service charge.

**Application for a S.20c order**

13. It is the tribunal's view that it is both just and equitable not to make an order pursuant to S. 20c of the Landlord and Tenant Act 1985. The tribunal therefore determines that the costs incurred by the landlord in connection with these proceedings are to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable, if any, by the tenants. Having considered the conduct of the parties and taking into account the determination set out above the tribunal determines that it is just and equitable in the circumstances for an order not to be made under section 20C of the 1985 Act. The effect of this is that the costs incurred by the landlord in connection with these proceedings should be taken into account in determining the amount of any service charge payable by the tenants.

**Name:** Judge Professor Robert  
M. Abbey

**Date:** 14<sup>th</sup> November 2018

## **ANNEX - RIGHTS OF APPEAL**

1. 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.
2. 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.
3. 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.
4. 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.

## **20 Limitation of service charges: consultation requirements**

(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 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.