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

Case Reference : **LON/00AP/LSC/2018/0013**

Property : **Flat 1, 35 Mount Pleasant Road,
Tottenham, London N17 6TR**

Applicant : **Mr Chuba Obi**

Representative : **Mr Mason Counsel**

Respondent : **Hyde Lane Properties Ltd**

Representative : **Mr Fieldsend Counsel**

Type of Application : **Payability and reasonableness of
service charges**

Tribunal Members : **Judge Carr
Mr Roberts Dip Arch RIBA
Mr Ring**

**Date and venue of
Hearing** : **8th October 2018
10 Alfred Place, London WC1E 7LR**

Date of Decision : **21st November 2018**

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the service charges including legal fees included in the £49,619.78 paid by the Applicant are payable and reasonable. The remainder of the sum challenged by the Applicant comprises ground rent and does not appear any longer in issue.
- (2) The tribunal makes the determinations as set out under the various headings in this decision
- (3) The parties can make further applications in connection with costs in this matter.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") as to whether the service charge and legal fees element of the sum of £49,619.79 he paid on the assignment of his lease is reasonable and payable.
2. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

3. The Applicant appeared and was represented by Mr Ian Mason of Counsel at the hearing. The Respondent was represented by Mr James Fieldsend of Counsel. Mr Battersby director of the Respondent attended and gave evidence.

The background

4. Mr Obi, who is the former leaseholder of the property, applied to the tribunal in connection with the payability of a sum of £49,617.79 which he had been required to pay by the Respondent upon the sale of the property in July 2016 in order to discharge alleged service charge arrears, including legal costs incurred since 2001.
5. At the time of the payment of the monies Mr Obi had objected, arguing that the monies were not payable and that he had been provided with no evidence of their payability.
6. The sum of £49,619.79 included £1,906.56 court fee, legal fees of £4,008 and £1,014, ground rent of £17.50 and additional service

charges of £305.08. The balance of the sum related to accrued service charges.

7. At the Case Management Conference on 3rd May 2018, in agreement with the parties who were both in attendance, the tribunal identified the issues to be determined as follows:
 - (i) The payability and reasonableness of the legal costs set out in the schedule to the application
 - (ii) The payability of the remainder of the sum paid but limited to explaining the calculation, demonstrating there has been no double counting and properly accounting for payments made to the account.
 - (iii) It was agreed that there was no dispute as to the reasonableness of the service charges demanded and that there was no dispute over the ground rent.

8. Mr Obi provided a statement of case in compliance with the requirements of the directions. This statement followed the provision of invoices by the Respondent. Unfortunately the statement of case was not clear, it did not clearly relate to the issues identified in the directions and it contained statements indicating that Mr Obi reserved the right to raise other issues at the Tribunal.

9. The Tribunal made it clear to Mr Obi that he could not raise issues which had not been identified previously.

10. What was made clear in the statement of case was that Mr Obi's principal objection is to the legal fees demanded in connection with the numerous proceedings taken against him by the Respondent for the recovery of service charges.

11. At the hearing Mr Obi was represented by counsel. Counsel made it clear that what was at issue was the payability of the sums demanded, including the payability - but not the reasonableness - of the legal costs demanded.

12. There was also a problem with the preparation of the bundle for the hearing. Mr Obi had been directed to prepare the bundle. He did so, but omitting documents provided by the Respondent on the grounds of affordability. The Respondent therefore provided a further bundle to the Tribunal.

13. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

The Applicant's case

14. The Applicant provided a statement of case which it was difficult for the Tribunal to understand.
15. The first part of his case demanded the refund of monies paid at June 2008 but which Mr Obi alleged were included in the sum demanded in April 2016. He therefore argued that these should be refunded.
16. Mr Obi also asks for the refund of monies for legal and court fees paid from November 2008. The Tribunal began to go through the list of those charges provided by Mr Obi. It was able to find that the first 2 payments, which Mr Obi alleged did not relate to court proceedings were quite clearly related to court proceedings taken against him. It asked Mr Mason if he could clarify whether there was any substance to this claim, but no clarification was received and the Tribunal's attention was not drawn to any particular payment which might be substantiated as not relating to court proceedings.
17. The Tribunal struggled to understand the next section of the statement of case which did not seem consistent with the exclusion of the reasonableness of service charges from the issues in dispute.
18. Mr Obi also claimed that there were missing invoices and that as all arrears had been cleared in June 2008 he could not have been in arrears of £22,533.02 in June 2008 as the Schedule of April 2016 claimed.

The Respondent's answer

19. The Respondent's case is structured following the schema of issues identified in the Directions.
20. The Respondent therefore commenced by explaining the calculation of the arrears. The Respondent provided Mr Obi with a running account, ie as charges are demanded debits are made to the account and as payments are made they appear on the accounts as credits . As Counsel for the Respondent pointed out, this form of account is not uncommon. It appeared to confuse Mr Obi as he expected that when he made a payment to clear arrears the account should show a nil balance. Counsel for the Respondent and the Tribunal attempted to explain to Mr Obi that this was not the case, because other charges had accrued. Mr Obi did not accept this explanation.

21. In particular the Respondent was able to explain, to the Tribunal's satisfaction (if not to Mr Obi's), that the sum of £22,532.02 paid into Mr Obi's service charge account by his mortgagee, Mortgage Express had not been double counted.. It follows from this that the Tribunal is not concerned with legal fees demanded prior to June 2008 which form the first part of Mr Obi's statement of case.
22. While Mr Obi remained concerned that there had been double counting of charges the Respondent argued that Mr Obi had failed to identify any account entries which are duplicate charges or include duplication.
23. The Respondent argued that there has been a proper accounting of all payments paid. Mr Obi produced no evidence and indeed made no allegation of a payment having been made and not credited. The Respondent pointed out that there have been very few payments to the account. Aside from two payments made by Mr Obi's mortgagee, there were between 25th December 1998 and 11th July 2016 only 9 payments made to the account.
24. In relation to missing invoices, the Respondent says that it initially provided invoices relating to the schedule of charges challenged as appended to Mr Obi's application which only included charges up to 8th October 2013. In the statement of case Mr Obi requested invoices relating to legal charges subsequent to that date. The Respondent provided the relevant documents with its statement of case.
25. Legal fees were incurred as a result of Mr Obi failing to pay service charges from 1998, a failure which resulted in extensive court and tribunal proceedings.
26. There is an obligation in the lease upon Mr Obi to pay legal fees in contemplation of or any proceedings under section 146 of the Law of Property Act.
27. Mr Obi did not provide any evidence or argument to suggest that legal fees were not payable and consideration of reasonableness was ruled out by his Counsel at the commencement of the hearing and no arguments were presented on this aspect.

The tribunal's decision

28. The tribunal determines that the monies challenged are reasonable and payable.

Reasons for the tribunal's decision

29. The Tribunal provided Mr Obi with every opportunity to explain his case, consistent with the issues identified in the directions. Despite the fact that he was legally represented he could not clarify the case. There appeared to be no evidence to back up his claim. Indeed his statement of case was in substance an assertion that monies were refundable to him rather than providing an argument backed up with evidence.
30. The Tribunal accepts the explanation of the Respondent as to the monies owing, and its accounting system and that these demonstrate that there was no double counting. It also accepts its argument that the legal fees are payable under the lease and were demanded in connection with proceedings related to s.146 of the Law of Property Act and that the invoices provided related to court proceedings and court fees.
31. The parties are invited to make applications in relation to costs that they consider appropriate.

Name: Judge Carr

Date: 21st November 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 28day 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 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.

- (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).