12659

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AW/LSC/2017/0381**
Property	:	**117A Holland Road, London W14 8ASA**
Applicant	:	**Veronica Senior**
Representative	:	**In person**
Respondent	:	**Estmanco (Holland Road) Limited**
Representative	:	**Mr O'Connor, agent, Carringtons Property Management**
Type of Application	:	**For the determination of the liability to pay a service charge**
Tribunal Members	:	**Judge W Hansen (chairman)** **Mr J Barlow FRICS**
Date and venue of Hearing	:	**26 February 2018 at 10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**4 April 2018**

AMENDED DECISION

Pursuant to paragraph 50 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013

Decisions of the Tribunal

(1) The Tribunal determines that the Applicant is entitled to the following credits against her service charge liability:

(a) £248.84 (7.24% of £3,437) + £506.80 (being 7.24% of £7000) + £698.06 (22% of £3,173) + £114.13 = £1,567.83 for 2012;

(b) ~~£49.41~~ £150.15 (~~7.24~~ 22% of £682.50) for 2013;

(c) £49.96 (7.24% of £690) for 2014;

(2) The Tribunal makes an order under s.20C of the Landlord and Tenant Act 1985 in relation to the costs of these proceedings.

The Application

1. By an application dated 2 October 2017 ("the Application") the Applicant applied to the Tribunal for a determination of her liability to pay certain service charges relating to the years 2010, 2012, 2013 and 2014. This Tribunal is required to make a determination pursuant to section 27A of the Landlord and Tenant Act 1985 ("LTA 1985") as to the reasonableness and payability of the service charges in question. The relevant parts of the LTA 1985 are contained in the Appendix to this decision.

Background

2. The Applicant is the long leaseholder of 117A ("the Flat"), the lower ground floor flat within 117 Holland Road. The Flat is one of 5 within 117 Holland Road. Nos 109, 117 and 125 Holland Road are managed together as an estate. The Flat was originally let by the Greater London Council to a predecessor in title of the Applicant pursuant to a lease dated 5 June 1981 ("the Lease"). The Respondent was party to the Lease as the Management Company but is now also the freeholder.

3. By Clause 3 of the Lease the Applicant covenanted to pay an annual service charge of an amount determined in accordance with the provisions of Clause 4. Nothing turns on the precise mechanics of the service charge provisions but in outline the position is that the Applicant is obliged to pay a percentage of the costs expenses and outgoings incurred by the lessor which varies according to the nature of the expenditure. Thus

she is obliged to pay 22% of Main Block Expenditure as defined in Clause 4(3)(A) and Part 1 of the Sixth Schedule; 0% of Internal Block Expenditure and 7.24% of Estate Expenditure as defined in Clause 4(3)(C) and Part 3 of the Sixth Schedule.

Procedural Background

4. The Application is lacking in any meaningful detail. In most instances, the allegation is simply that the charges are unreasonable.

5. On 7 November 2017 Judge Mohabir gave detailed directions, including directions for statements of case and witness statements.

6. The statements of case that were served were largely useless. In the case of the Applicant her statement of case was supposed to provide the reasons for disputing liability to pay and/or the reasonableness of the charges. The Respondent's statement of case was supposed to be a proper response to the Applicant's case, justifying the sums claimed.

7. Making all due allowances for the fact that the Applicant is acting in person, her statement of case was singularly unhelpful. It made a series of assertions and then said, in relation to each assertion, "*Evidence to be provided at disclosure on 19 January 2018*". Disclosure has taken place but no further or amended statement of case or written submissions have been submitted which puts any flesh on the bones of the Applicant's case. A limitation point was raised but not argued at the hearing and in the circumstances we are not persuaded that there is any limitation point.

8. The Respondent's statement of case is even worse. It says nothing of any assistance as to the detail of the case. Again, it promises that relevant documents will be provided on disclosure. It is unsigned and undated.

9. The bundle is chaotic and contains significant duplication. We have had to search for relevant documents in the bundle with limited assistance from either side.

10. Neither side has served any witness statements. This has meant that there is a significant evidential hole in the case as it has been presented to the tribunal. There

are a number of issues where we would have benefited from some proper evidence. We have tried to fill the gaps in the case by reference to the documents but the whole case has been very badly prepared on both sides and very poorly presented. This has made our task much more difficult than it should have been but we have done our best on the material before us.

11. We made it clear at the hearing that we were going to confine ourselves strictly to the pleaded issues.

12. It is no wonder that the lessees who sat in the back of the Tribunal should have expressed exasperation at these proceedings. They asked us to make an order that prevents another dispute of this kind between these parties arising in the future in relation to other years. We cannot do that. It appears to us that no trust whatever exists between the Applicant and the Respondent. We believe that both sides bear some responsibility for this. It seems to us that the only way future disputes between these parties can be avoided is if the managing agent manages the estate and operates the service charge machinery strictly in accordance with the terms of the Lease and the RICS Service Charge Residential Management Code and does so in an entirely transparent way that the Applicant can understand. Regardless of the decision we make below, we would urge the parties to sit down together and attempt to work out some kind of modus vivendi.

2010

13. The first dispute here relates to what the Applicant says is an "*unaccounted for*" surplus arising of contract works initially priced at £37,500. The sum collected from the lessees was £41,244.84 but only £32,030.40 was actually paid out to the contractors (p.237). There was thus a surplus of £9,214.44. However, we are satisfied that it is not "*unaccounted for*" and has been expended on tanking works and other damp proofing work to the Applicant's flat (see pages 226 and 103). We dismiss this complaint.

14. The second dispute for this year relates to legal fees in the sum of £21,118.75. The Application and Statement of Case do not really explain the nature of the challenge. The Applicant puts in issue "*whether it is reasonable to charge these legal fees to the Service Charge Account and if so whether the fees were reasonably incurred*". These fees relate to fees incurred by the Respondent in County Court litigation against the

Applicant (page 154) and/or a provision for such fees. The sum of £21,118.75 is shown in the 2010 accounts but the Applicant's share (7.24%) was in fact demanded in a demand dated 16 May 2011 (pages 38-39). At the time that demand was made, it seems to the Tribunal that it was legitimate as the County Court proceedings (the Applicant brought a disrepair claim against the Respondent) were still on foot and at that stage no order had been made by the County Court under s.20C of the 1985 Act or to like effect. The figure was supported by actual bills and insofar as it was not, there is nothing to indicate that the provision was, at that stage, unreasonable. Having regard to the Application and the Statement of Case, the Applicant has not articulated any legitimate challenge to this item and its inclusion in the 2010 accounts, although, as will become apparent, the position in relation to the legal costs associated with that litigation changes later in 2011 and the Applicant is subsequently credited back with her share of the legal costs so the dispute about the 2010 accounts is really academic.

<u>2012</u>

15. The first dispute relates to bank charges of £194. We are satisfied that these charges were reasonably incurred and are reasonable in amount (see pages 162, 211 and the bank statements at page 213 and following).

16. The second dispute relates again to legal fees, this time in the sum of £10,437, which appear in the 2012 accounts. There are two distinct components to this sum. The first relates to a refund to the Applicant in the sum of £3,437. This sum represents 7.24% of £47,471.40, which sum had been expended by the Respondent on legal fees in dealing with the litigation against the Applicant. That litigation was settled by way of a Tomlin Order dated 12 August 2011, the material part of which (at paragraph 4) reads as follows:

> *"The Claimant shall not be liable for any legal costs incurred by the Defendant in respect of their representation in respect of this claim, either now or through any future service charges levied by the Defendant".*

17. This explains the refund to the Applicant in the sum of £3,437. The balance of £7,000 was a further provision for future legal fees (page 209). The difficulty for the Respondent is two-fold: firstly, having refunded the £3,437, on 21 June 2013, the Respondent demanded, inter alia, 7.24% of £10,437 back from the Applicant. It was thus giving with one hand and taking back with the other, in defiance of the letter and

spirit of the Court order referred to above. This is impermissible and unreasonable and the Applicant is entitled to a credit of 7.24% of £3,437 (=£248.84) against her liability for service charges in 2013. In our view, she is also entitled to a credit of £506.80 (being £7.24% of £7000) as no justification has been forthcoming for the provision of £7,000; indeed it seems to have been repeatedly carried forward and not expended.

18. The final dispute here relates to the sum of £7,399 included in the 2012 accounts under the heading "*Costs re 117A*". Again, there are two components to this cost (page 203). The first element, £3,173, relates to sums expended by the Applicant in paying contractors. This liability was that of the Respondent. The Applicant was therefore repaid this sum but then charged 22% of it by way of service charge. The Respondent contends that this is legitimate as it was, in substance, legitimate expenditure by the Respondent. The Tribunal accepts this argument in principle but the difficulty is that, on the facts, it appears that the Applicant has already paid her 22% share on this expenditure (see page 71). There was much debate about the meaning of this document. Some evidence would have helped. Doing the best we can, we have concluded that it shows that the figure of £3,173 refunded to the Applicant has already taken account of her liability to contribute 22% of main block expenditure. In these circumstances she cannot be charged twice and is entitled to a credit of 22% of £3,173 (=£698.06). The second element relates to a yet further refund made to the Applicant in connection with storage and other costs incurred by her when she had to move out of the Flat during the works. These charges totalled £4,339.79. The Applicant had to pay her 22% share of this but it was subject to a prior deduction of £518.75 for legal fees = £3,821.04 (page 75). 22% of this sum is £840.63 but the Applicant was in fact wrongly charged £954.76 (page 74). She is therefore entitled to a credit of £114.13 (£954.76 - £840.63).

2013

19. The Applicant incurred legal fees of £682.50 (page 225) relating to costs she incurred as a result of the Respondent's failure to properly implement the Tomlin Order. She was refunded this sum but then billed ~~7.24~~ 22% of £682.50. This falls foul of the Tomlin Order and amounts to giving with one hand and taking away with the other which we conclude is unreasonable. She is entitled to a credit of ~~7.24~~ 22% of £682.50 = £~~49.41~~ 150.15.

20. The other challenge here relates to the charge for the tanking works of £9,812.40. The Applicant does not contend that the work was not done to a reasonable standard or that the cost was unreasonable. She contends that she should have been billed service charge on this item at the rate of 20% because there are 5 lessees rather than her contractual rate of 22%. There is no substance to this complaint and we reject it.

2014

21. The challenge here relates to another legal bill, this time in the sum of £690, which relates to legal costs incurred by the Respondent in obtaining advice at how best to deal with another tenant (Mr Bhangra) and ongoing attempts at recovering service charges from him. It relates to legal work done by Alan Edwards & Co between 21 August 2013 and 28 January 2014. The Applicant's essential case was that the Respondent had already received advice on this matter from the same firm and that it was unreasonable to seek further advice on the same matter given the clear terms of the previous advice. The Respondent contended that this was the only bill relating to this matter and that it was reasonable to seek such advice. Again, the evidence in relation to this issue left a lot to be desired but doing the best we can, we have concluded that the Respondent was pursuing an enquiry with the solicitors in respect of which they had already received advice on two other occasions. That is what the solicitors' email dated 31 January 2014 (page 110) says and there is a further email from the solicitors dated 8 November 2013 which says this:

> *"I looked into this in some detail at the time and I am sure that I clearly advised that there was no way we could enforce it which is why it is referred to as a voluntary contribution. If you and your clients wish me to revisit that advice ... I will do that but my clear recollection is that I advised at the time that the sum was irrecoverable save on a voluntary basis. That being the case I would suggest that it would not be a good use of our client's money for me to review that advice".*

22. In the circumstances we therefore accept the Applicant's submissions on this item and find that the charge was not reasonably incurred. The Applicant is therefore entitled to a credit of 7.24% of £690 = £49.96.

23. The Applicant's service charge account will need to be credited with the sums set out above.

Other Applications

24. The Applicant made an application for an order under s.20C of the 1985 Act. The Respondent very fairly indicated that it would not in any event seek to add the costs of these proceedings to the service charge and was content for us to make a section 20C order. On that basis, and having regard to the fact that we consider it just and equitable to do so in any event, we make a s.20C order. There were no other applications.

Name: Judge W Hansen **Date:** ~~5~~ 4 April 2018

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.