

12046



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

Case reference : LON/00BE/LSC/2017/0474

Property : 12 Godman Road, London, SE15
3SR

Applicant : Ms Joanna O'Connor (Flat 1);
Mr Adam Smith (Flat 2)
Mr Ryan Wild & Ms Emily James
(Flat 6)

Representative : Ms O'Connor and Mr Wild in
person

Respondent : Assethold Limited

Representative : Mr Ronni Gurvitts

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

Tribunal Members : Judge Robert Latham
Miss Marina Krisko (Est Man)
FRICS

**Date and Venue of
Hearing** : 21 February 2018 at
10 Alfred Place, London WC1E 7LR

Date of decision : 23 February 2018

DECISION

Decisions of the Tribunal

- (1) The Tribunal determines that none of the sums demanded by the Respondent and which are subject to this application are payable.

- (2) 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 lessees through any service charge.
- (3) The Tribunal further makes an order under paragraph 5A of Schedule 11 of the Commonhold and Reform Act 2002 so that none of the landlord's costs of the tribunal proceedings may be passed to the lessees through any administration charge in respect of litigation costs.
- (4) The Tribunal determines that the Respondent shall pay the Applicants £300 within 28 days of this Decision, in respect of the reimbursement of the tribunal fees paid by the Applicants.

The Application

1. The Applicant tenants seek 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 the amount of service charges and (where applicable) administration charges payable by the Applicants.
2. On 21 December 2017, the Tribunal gave Directions. The Tribunal noted that the tenants were anxious for the application to be determined without delay as they were seeking to purchase the freehold and the landlord required all outstanding debts to be paid before the completion of the purchase. The tenants had asserted that the sums claimed had not been evidenced or itemised.
3. The Tribunal directed the Respondent to disclose on or before 15 January 2018 copies of all demands for payment, together with the summary of rights and obligations which the law provides should accompany such demands. The Respondent was further directed to disclose any relevant service charge accounts.
4. The Respondent has not complied with this Direction. On 29 January, it rather wrote to the Tribunal asserting that the Tribunal has no power to consider the sums claimed as these were not service charges or associated with service charges.
5. On 31 January, the Tribunal issued further Directions noting that the letter did not provide a satisfactory explanation as to why it had failed to comply with this Direction. The Tribunal further issued a Notice indicating that it was minded to debar the Respondent from taking further part in these proceedings pursuant to Regulation 9 of the Tribunal (Procedure) (First-Tier Tribunal) Property Chamber Rulers 2013.

6. On 5 February, the Respondent wrote to the Tribunal stating that they were “shocked” by the content of the letter. It repeated that the matter raised were outside the jurisdiction of the Tribunal and that the Applicants should withdraw the application.
7. The relevant legal provisions are set out in the Appendix to this decision.

The Hearing

8. The Applicants appeared in person. Ms Joanne O’Connor (Flat 1) appeared on behalf of herself and Mr Adam Smith (Flat 2). Mr Ryan Wild appeared on behalf of himself and Ms Emily James (Flat 6). Mr Ronni Gurvitts appeared on behalf of the Respondent. He is their office manager.

The Background

9. The property at 12 Goodman Road is a converted school building consisting of 8 flats. The three flats subject to this application each have two bedrooms.
 - (i) Ms O’Connor is the tenant of Flat 1. On 14 October 2005, Peckham Limited granted her a lease of the flat for a term of 105 years at a premium of £208,950.
 - (ii) Mr Smith is the tenant of Flat 2. On 1 September 2005, Peckham Limited granted him a lease of the flat for a term of 105 years at a premium of £211,000.
 - (i) Mr Wild and Ms James are the tenants of Flat 6. On 16 December 2005, Peckham Limited granted Michael Gravesande and Claudia McKenzie a lease of the flat for a term of 105 years at a premium of £218,500. On 26 February 2016, Mr Wild and Ms James took an assignment of the lease from the original tenants.
10. Mr Gurvitts informed the Tribunal that the Respondent acquired the freehold interest on about 4 May 2007.
11. On 24 January 2008, the tenants served a claim notice to acquire the right to manage pursuant to Part 2, Chapter I of the 2002 Act through 12 Godman Road RTM Company Ltd (“the RTM Company”). This application was opposed by the Respondent. On 13 March 2008, the RTM Company made an application to this Tribunal (LON/00BE/LRM/2008/0004). On 3 June 2008, the Tribunal allowed the application, and the RTM Company acquired the right to manage on 3 September 2018.

12. Mr Gurvitts claimed that various sums were owed by the RTM Company to the Respondent landlord arising from acquisition of the rights to manage. He further contended that the Applicants were personally liable for these debts. However, the Right to Manage was acquired more than 9 years ago. Were any sums to be payable, they would now be statute barred under the Limitation Act 1980. The Applicants deny that any sums are due.

The Tribunal's Decision

Ms O'Connor (Flat 1)

13. Ms O'Connor asks the Tribunal to determine whether the sums demanded in a letter dated 2 March 2009 (at p.37) are payable. The landlord demanded the following sums:
 - (i) £413.45: insurance
 - (ii) £176.00: management fee
 - (iii) £145.63: admin fee
14. Mr Gurvitts stated that the Respondent had made no demand for either the insurance or the management fee. He accepted that any such demands would be inappropriate given the Right to Manage acquired by the RTM Company.
15. The Tribunal finds that none of these sums are payable. The Respondent has failed to satisfy the Tribunal that any lawful demand has been made for these sums accompanied by the Requisite Summary of Rights and Obligations. The statutory requirements to serve such a Summary of Rights and Obligations are to be found in Section 21B of the 1985 Act (service charges) and Paragraph 4 of Schedule 11 of the 2002 Act (administration charges). Additional requirements are imposed by Section 47 of the Landlord and Tenant Act 1987 which requires the landlord's name and address to be contained in any demand.
16. Secondly, Mr Gurvitts has not satisfied the Tribunal that these sums are either payable or reasonable. Thirdly, any claim for service charges and related administration charges for non-payment would pre-date 16 June 2008 and would be statute barred by the Limitation Act 1980. The demand in the letter dated 2 March 2009 is more than six years old.
17. Mr Gurvitts stated to the Tribunal that other sums were owed by Ms O'Connor to the Respondent. He declined to give the Tribunal and details of these sums contending that they were outside the jurisdiction of this Tribunal. He suggested that these related to the Right to Manage application. If so, these would date back to 2008 and would be statute

barred. Ms O'Connor stated that she was unaware of any other demands against her by the Respondent. We accept her evidence.

Mr Smith (Flat 2)

18. Mr Smith asks the Tribunal to determine whether the sum of £1,730.24 demanded in a letter dated 18 February 2010 (at p.56) is payable. The landlord demanded payment of ground rent of £250 for the period December 2009 to 2010. Mr Smith paid this on 17 February 2010 (see p.53). It seems that the Respondent elected to set this payment against an administration fee for late payment, rather than against the rent for which it had been paid. It is not open to a landlord to do so. Mr Gurvitts was unable to give any particulars of the further sums demanded.
19. The Tribunal finds that none of these sums are payable. The Respondent has failed to satisfy the Tribunal that any lawful demand has been made for any of the sums demanded accompanied by the Requisite Summary of Rights and Obligations. Secondly, Mr Gurvitts has not satisfied the Tribunal that these sums are either payable or reasonable. It would seem that the bulk of the sums demanded relate to administration charges, possibly related to the late payment of ground rent. In any event, these sums demanded in 2010 would now be statute barred.
20. We record that Mr Gurvitts informed the Tribunal that apart from these sums, the account for Mr Smith is clear.

Mr Wild and Ms James (Flat 6)

21. Mr Wild asks the Tribunal to determine whether the sums demanded in a letter dated 21 July 2016 (at p.38) are payable. The landlord demanded the following sums:
 - (i) £240: admin fee for assignment
 - (ii) £3: land registration fee
 - (iii) £300 + VAT admin charge
 - (iv) £1,255.76: arrears
22. The first three items relate to costs which the landlord asserts are payable as a result of the tenants' acquisition of the lease on 26 February 2016. Section 98(2) of the 2002 Act provides that once a Right to Manage is acquired, any consents or approvals required under the lease are to be given by the RTM Company. The RTM Company is required to notify the landlord of any assignment.
23. The Applicants filed a copy of the lease with their application. The lease does not seem to require the consent of the landlord for any assignment of the whole of the flat. Clause 2(16)(d) rather requires the tenant

to give notice in writing to the Landlord's Solicitors of the assignment within 21 days after the assignment.

24. Mr Wild told the Tribunal that solicitors acted for him when he had acquired the flat. Solicitors were also acting for the RTM Company. The RTM Company informed the landlord of the assignment.
25. The Tribunal disallows the claim for these administration charges. First, the Respondent has failed to satisfy the Tribunal that any lawful demand has been made for these sums accompanied by the Requisite Summary of Rights and Obligations. Secondly, Mr Gurvitts has not satisfied the Tribunal that these sums are either payable pursuant to the terms of the lease. Thirdly, were any administration charges to be payable, the sums demanded are manifestly unreasonable.
26. Mr Gurvitts sought to argue that the sums demanded are not administration charges. We are satisfied that the sums demanded fall within the wide definition of "administration charge" provided by Paragraph 1 of Scheduler 11 of the 2002 Act, namely under subparagraph (b), namely an amount payable by a tenant "(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."
27. Mr Gurvitts was unable to provide any details of how the demand for the sum of £1,255.76 was computed. He stated that these were arrears of administration charges which were owed by the former tenants. He was unable to satisfy us that any lawful demand had been made for these sums. He has also failed to satisfy us that any such administration fees were either payable or reasonable. In so far as the administration charges relate to arrears of service charges, these would now be statute barred.
28. We accept the evidence of Mr Wild that his solicitors were assured during the pre-contract inquiries that the former tenants owed no sums to the Respondent.
29. We record that Mr Gurvitts informed the Tribunal that apart from these sums, the account for Mr Wild is clear.

Application under s.20C and Refund of Fees

30. At the end of the hearing, the Applicants made an application for a refund of the fees of £300 that they have paid in respect of the application. Having heard the submissions from the parties and taking into account the determinations above, the Tribunal orders the Respondent to refund any fees paid by the Applicants within 28 days of the date of this decision.

31. In the application form, the Applicants further apply for orders under (i) Section 20C of the 1985 Act so that the Respondent may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge; and (ii) Paragraph 5A of Schedule 11 of the 2002 Act, so that the Respondent may not pass any of its costs incurred in connection with the proceedings before the tribunal through any administration charge. We are of the view that such orders are not necessary given that the RTM Company has acquired the Right to Manage. However, for the avoidance of any doubt, we make such orders.

Judge Robert Latham

23 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 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 4

- (1) A demand for the payment of an administration charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to administration charges.
- (2) The appropriate national authority may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.
- (3) A tenant may withhold payment of an administration charge which has been demanded from him if sub-paragraph (1) is not complied with in relation to the demand.
- (4) Where a tenant withholds an administration charge under this paragraph, any provisions of the lease relating to non-payment or late payment of administration charges do not have effect in relation to the period for which he so withholds it.

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).