



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

**Case reference** : **LON/00AL/LSC/2018/0431**

**Property** : **26 Vicarage Park, London SE18 7SU**

**Applicants** : **Mr M. Komorowski (Flat 26A); Mr M. Saunders (Flat 26B); Ms N. Kaminskaya (Flat 26C)**

**Representative** : **Mr M. Saunders**

**Respondent** : **Elmdon Real Estates LLP**

**Representative** : **Pembroke Property Management Ltd (Retiring Managing Agent)**

**Type of application** : **Liability to pay service charges (Section 27A and Section 20C LTA 1985; Para 5 Schedule 11 CLARA 2002).**

**Tribunal members** : **Judge Lancelot Robson  
Mr K Ridgway FRICS  
Mr A Ring**

**Venue and Determination Date** : **10 Alfred Place, London WC1E 7LR  
14th February 2019**

**Date of decision** : **14th February 2019**

**DECISION**

## **Background**

1. By an application dated 11th November 2018, the Applicants seek orders under Section 27A and 20C of the Landlord and Tenant Act 1985, and para. 5 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002, as to the reasonableness of estimated service charges demanded by the Respondent on 15th October 2018, and a revised demand made on 4th December 2018, under the terms of a (specimen) lease (the Lease) dated 2nd July 1973. Directions for a hearing were given by the Tribunal on 26th November 2018.
2. The Applicants made a formal statement of case. The Respondent did not do so, but on 13th December 2018 its managing agent, Pembroke Property Management Ltd withdrew by letter the two service charge demands in dispute and informed the Applicants that it was retiring as the managing agent. On the morning of the hearing Mr Stonard and Ms A. Johnson of Pembroke Property Management Limited attended on behalf of the Respondent, having received specific authority to act for the Respondent to do so.
3. After a brief discussion of the background with the Tribunal, the parties agreed to the Decision set out below.
4. For ease of reference, extracts of relevant legislation are set out in Appendix 1 below.

## **Decision**

4. By Agreement, the service charge demands dated 15th October 2018 and 4th December 2018 having been withdrawn, the Tribunal decided that it had no further jurisdiction in this application. This decision was given orally to the parties at the end of the hearing, with this written decision to follow.
5. This decision is made without prejudice to any further demands for service charges which may be made and disputed (which will require a separate application to be made to the Tribunal).

## **Section 20C and Schedule 11 applications**

6. Mr Stonard raised the question of costs. His firm had incurred costs for attending the hearing. The Tribunal noted that it has a very limited jurisdiction relating to costs in such cases. In the circumstances, the Tribunal decided that it was appropriate for both parties to bear their own costs of the application. There appears to be no provision for the Respondent to recover its costs of this application in the Lease, but for the avoidance of doubt, the Tribunal made an order under Section 20C of the Landlord and

Tenant Act 1985 and under Para 5 of Schedule 11 to the Commonhold and Leasehold Reform act 2002, that that none of the Respondent's costs in this application shall be regarded as relevant costs to be taken into account in determining the amount of any service or other charge payable by the Applicants.

**Tribunal Judge: Lancelot Robson      Dated: 14th February 2019**

## **Appendix 1**

### **Landlord & Tenant Act 1985**

#### **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 21B**

- (1) A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges.
- (2) The Secretary of State 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 a service charge which has been demanded from him if subsection (1) is not complied with in relation to the demand.
- (4) Where a tenant withholds a service charge under this section any provisions of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.
- (5) and (6)....

### **Section 27A**

- (1) An application may be made to a Leasehold valuation 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 a Leasehold valuation 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 leasehold valuation 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 a leasehold valuation tribunal;
  - (b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation 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**

“Meaning of “administration charge”

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 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) .....

(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).....

Reasonableness of administration charges

2. A variable administration charge is payable only to the extent that the amount of the charge is reasonable

3. ....

Notice in connection with demands for administration charges

4.- (1) a demand for the payment of an administration charge must be accompanied by a summary of rights and obligations of tenants of dwellings in relation to administration charges.

(2) (3) and (4).....

Liability to pay administration charges

5.- (1) An application may be made to a leasehold valuation 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) (4) (5) and (6).....”

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