



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

Case reference : **LON/00BD/LSC/2018/0442**

Property : **10 Stangate Mansions, Strawberry Hill, TW1 4PW**

Applicant : **Stangate Mansions Ltd**

Representative : **Mr G Hodkinson - Counsel**

Respondent : **Mr Behrouz Karbasi**

Representative : **Mr P Currie - Counsel**

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

Tribunal members : **Mr A Harris LLM FRICS FCI Arb
Mr H Geddes**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of decision : **11 March 2019**

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the claim for service charges in the sum of £11,105.30 fails.
- (2) The tribunal determines that the counterclaim in the sum of £11,538.78 succeeds.
- (3) The tribunal makes the determinations as set out under the various headings in this Decision.
- (4) 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.
- (5) The tribunal makes an order under rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 for the respondent to receive its costs of the tribunal proceedings, to be assessed if not agreed.
- (6) Since the tribunal has no jurisdiction over county court costs and fees, this matter should now be referred back to the Staines County Court.

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 the amount of service charges and (where applicable) administration charges payable by the Respondent in respect of the service charge years from October 2015 to date.
2. Proceedings for unpaid service charges were originally issued in the Staines County Court under claim no. E50YJ873. The claim was transferred to this tribunal, by order of Deputy District Judge Colquhoun on 23 November 2018.
3. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

4. A hearing was held on 11 March 2019 at 10 Alfred Place London. The Applicant was represented by Mr G Hodkinson of Counsel and the Respondent was represented by Mr P Currie of Counsel.

The background

5. The property which is the subject of this application is a block of 10 flats which are let on long leases. The respondent has two leases, firstly of flat 10 and secondly of the roof space above flat 10.
6. Photographs of the building were provided in the hearing bundle. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.
7. The Respondent holds two long leases which require the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease will be referred to below, where appropriate.

The issues

8. At the start of the hearing the tribunal identified deficiencies in the bundles provided which, despite the Directions of the tribunal, did not contain any service charge demands, invoices, certified accounts, estimates or section 20 notices.
9. Counsel for the respondent handed in a skeleton argument. The parties requested a short adjournment to allow for discussions which the tribunal granted.
10. The parties identified the relevant issues for determination as follows:
 - (i) The payability and/or reasonableness of service charges for the block since 26 October 2015.
 - (ii) Whether there should be a refund of overpaid service charges.
11. 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.

Service charges claimed in the total sum of £11,105.30 being outstanding in the litigation.

12. Counsel for the claimant presented no evidence and conceded that no service charges were due as no demands had been made complying with S21B(1) of the Landlord and Tenant Act 1985 in that the demands, such as they were, did not contain the summary of rights and obligations mandated by the Act.

The tribunal's decision

13. The tribunal determines that the claim fails as no valid demands had been made.
14. **Counterclaim for £11,538.78 in overpaid service and administration charges.**

The tribunal's decision

15. The tribunal determines that the counterclaim for overpaid service and administration charges in the sum of £11,538.78 succeeds.

Reasons for the tribunal's decision

16. Counsel for the applicant conceded that as no proper demands had been made for any service charges, any payments which had been made had not been lawfully demanded and the respondent was entitled to a refund. Counsel did however say that as the claimant only became the lawful owner of the property and therefore entitled to levy service charges in July 2016 it is only amounts from that date which should be refunded. This was accepted by the respondent.
17. The amounts paid in the relevant period are:

Date	Payment Description	Amount
04/04/2017	Windows /odd jobs	£ 50.00
30/05/2017	Block Insurance	£ 362.25
30/05/2017	drain repairs	£ 71.30
31/05/2017	rear lighting	£ 103.50
02/06/2017	Windows /odd jobs	£ 150.00
19/07/2017	maintenance	£ 1,500.00
19/07/2017	Emergency plumber	£ 110.00
19/07/2017	Insurance valuation	£ 1,104.00
19/07/2017	External decoration on account	£ 1,150.00
04/01/2018	odd jobs	£ 150.00
22/01/2018	Roof works	£ 9,387.78
	Total	£14,138.83

18. The respondent's counterclaim accepts that service charges and/or administration charges were due in the sum of £2602.05 and deducting

this figure reduces the overpayment to £11,538.78. The tribunal finds this sum should be refunded.

Application under s.20C and for Costs under Rule 13

Costs and Application under Rule 13

19. At the hearing the respondent made an application for costs under rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 to be assessed if not agreed. The basis of the application is that the applicant has failed to comply with the tribunal directions and produced no evidence in support of the claim. The claimant has acted unreasonably as the action was premature and fundamentally ill-founded which, as the landlord company was legally advised, they should have realised.
20. Under Rule 13 the tribunal may order costs “*if the person has acted unreasonably in bringing, defending or conducting proceedings...*”
21. The tribunal has considered the contents of the bundle supplied and of the legal arguments at the hearing. It is clear from the bundle that a number of the items claimed as service charges have not been calculated in accordance with the terms of the lease, statutory requirements relating to service charges have not been complied with and some of the correspondence from the Applicant to the Respondent is hostile.
22. For the Respondent, Counsel argued that Mr Elphick, a director of the Applicant was asserting a personal right to manage, irrespective of the vehicle used, and he fundamentally misunderstood the rights that were vested in the previous Right to Manage Company and in the applicant.
23. In mitigation, counsel for the Applicant stated that Mr Elphick had acted in good faith on behalf of the other residents in the block in taking on management responsibilities.
24. The tribunal is aware of the comments of the Upper Tribunal in the Willow Court case LRX/90/2015 where the tribunal said at paragraph 24 “*unreasonable conduct includes conduct which is vexatious and designed to harass the other side rather than advance the resolution of the case. It is not enough that the conduct leads to an unsuccessful outcome.... Would a reasonable person in the position of the party have conducted themselves in the manner complained of?*”
25. At paragraph 32 the Upper Tribunal said “*the behaviour of an unrepresented party with no legal knowledge should be judged by the standards of a reasonable person who does not have legal advice. The*

crucial question is whether in all the circumstances of the case the party has acted unreasonably in the conduct of the proceedings.”

26. At paragraph 35 the Upper Tribunal said *“it is important that parties in tribunal proceedings, especially unrepresented parties should be assisted to make sensible concessions and to abandon less important points of contention or even, where appropriate, the entire claim. Such behaviour should be encouraged, not discouraged by the fear it will be treated as an admission that the abandoned issues were unsustainable and ought never to have been raised, and as a justification for a claim for costs.”*
27. The tribunal notes that the Applicant was legally advised in bringing the proceedings in the County Court and that legal advice is claimed at a number of points in the claimed service charge account. It was only at the hearing that the Applicant abandoned its claim for service charges as having no legal basis.
28. The threshold for a decision on costs on the grounds of unreasonable conduct is a high one and in the circumstances the tribunal considers that the threshold has been passed and Respondents application for costs is a reasonable one. The Applicant is to pay the Respondents costs of the application to be assessed if not agreed.

Costs and Application under s.20C

29. At the hearing, the Respondent applied for an order under section 20C of the 1985 Act. Having heard the submissions from the parties and taking into account the determinations above, the tribunal determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the Applicant may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge.
30. The tribunal has no jurisdiction over county court costs. This matter should now be returned to the Staines County Court.

Name: Mr A Harris LLM FRICS FCIArb

Date: 11 March 2019

Valuer Chair

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 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).