



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

Case Reference : **LON/00AM/LSC/2019/0010**

Property : **Flats 2 and 1 88 Chatsworth Road
Hackney London E5 0LS**

Applicant : **Thomas Daniel Alexander (Flat 2)
and Perusi Kakaire (Flat 1)**

Representatives : **-**

Respondent : **Radcliffe Investment Properties
Limited**

Representative : **Warwick Estates**

Type of Application : **Reasonableness of and liability for
service charges under the Landlord
and Tenant Act 1985**

Tribunal Members : **Judge Professor Robert M. Abbey
Richard Shaw FRICS**

**Date and venue of
Paper Based Decision** : **18th March 2019 at 10 Alfred Place,
London WC1E 7LR**

Date of Decision : **18th March 2019**

DECISION

Decisions of the tribunal

1. The tribunal determines that the service charges for the property are reasonable and payable as follows:-

2017

Management fee. £ 125 plus VAT per flat.

Electrical testing. £Nil

General Minor repairs. £Nil

Risk management £Nil

Out of hours building services £Nil

Accountancy fees and accounts certification fee £60 and £18.75 per flat, (plus VAT where charged).

Electricity £35.75 per flat

Sundries £3.50 per flat

Reserve fund £125 per flat

Roof repairs £Nil

2. The reasons for our decisions are set out below.

The application and procedural background

3. The Applicant seeks a determination under section 27A of the Landlord and Tenant Act 1985 (“The Act”) as to whether service charges are reasonable and payable.
4. The relevant legal provisions are set out in the Appendix to this decision. Additionally, rights of appeal are set out below in an annex to this decision

The paper based decision

1. The tribunal decided that in view of the limited nature of the application that the decision could be taken on paper and without the

cost of an oral hearing. Written submissions were requested of the parties.

2. The tribunal had before it several letters, submissions and copy deeds and documents from the parties to the dispute as well as a pair of formal trial bundles.

The background

3. The parties hold long leases of the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge.
4. The claimed service charges amount to various amounts for the service charges year 2017. It is these sums that are in dispute and are the items referred to the tribunal.

The service charges claimed

5. Having read the submissions from the parties and considered all of the documents provided, the tribunal determines the issue as follows.
6. In regard to the claimed service charges the tribunal finds that the following service charges claimed are reasonable and payable by the applicant
7. Management fee. In the Respondent's statement of case the Respondent concedes a fee reduction for this charge down to £125 per flat plus VAT. (Initially the charge was in total for all four flats £750). This is a significant reduction and was said to be made as a gesture of goodwill on the part of the Respondent. The Tribunal sees management charges in many cases it has before it and believes that the concessionary charge in this case to be at the lower end of the range of fees seen by the Tribunal. In these circumstances the Tribunal is prepared to approve the charge.
8. Electrical testing. The Respondent stated in its statement of case that the electrical testing was yet to be done. No invoice was submitted and in the light of this information there can be no charge for this testing. Therefore, the Tribunal determines that the charge is set at £nil.
9. General Minor repairs. The Respondent stated in its statement of case that no general repairs were undertaken. There being no actual expenditure for these repairs in the service charge year under review the Tribunal determines that the charge is set at £nil.

10. Risk management. The Respondent stated in its statement of case that no risk assessment was undertaken pursuant to health and safety legislation. There being no actual expenditure for this aspect of property management in the service charge year under review the Tribunal determines that the charge is set at £nil. (The Respondent did point out that such a summary had now been carried out but of course the charge for this will arise in a later service charge year.)
11. Out of hours building services. In the Respondent's statement of case the Respondent concedes a fee reduction for this charge down to £nil per flat. (Initially the charge was in the sum of £15). This is a significant reduction and was said to be made as a gesture of goodwill on the part of the Respondent. The Applicant observed that no information has ever been given to the leaseholders about who they are expected to contact in an emergency. The Tribunal determines that the charge is set at £nil for the service charge year under scrutiny.
12. Accountancy fees and accounts certification fee. There are two charges in this regard. First, a charge in total of £240 for accountancy fees and secondly £75 for an accounts certification fee. As to the certification fee an invoice was included in the bundle from the Respondent issued by Chartered Certified Accountants Santry Davis. The Tribunal can therefore approve this fee of £18.75 per flat. With regard to the accountancy fees the Tribunal has taken this to be the fee charged for the preparation of the end of year accounts. These were within the bundle supplied by the Respondent. The accounts appeared to be in an appropriate format and without making comment on the contents it was clear to the Tribunal that accounts had been prepared. Therefore, the Tribunal can approve the fee of £60 per flat for this charge. These charges will be plus VAT where charged.
13. Electricity. In the Applicant's statement of case the Applicant has conceded that a sum of £35.75 per flat, (£143 in total) is acceptable. This does not seem to be contested by the Respondent and therefore the Tribunal can approve the sum of £35.75 per flat.
14. Sundries. The Applicant and the Respondent both agree that the sum of £3.50 per flat is accepted as a reasonable service charge in this regard. Therefore, the Tribunal can approve the sum of £3.50 per flat.
15. Reserve fund. Clause two of the second schedule in the lease of the flats in this property provides that "*Maintaining a sinking fund for future expenditure in accordance with advice tendered by the landlords managing agents or surveyor.*" The disputed amount is £125 per flat. The lessor thinks that this is a reasonable amount as a contribution towards future expenditure. As an annual charge this amount is approved by the Tribunal as representing a reasonable contribution towards a reserve or sinking fund. However, this claim should of course take into account any monies paid on account and should be

apportioned to take into account partial years. Moreover any amount received by the Respondent should be paid into a separate account with the monies being held in trust for the tenants.

16. Roof repairs. As was noted in the decision of the Tribunal regarding a dispensation application (see LON/00AM/LDC/2018/0003), the circumstances giving rise to this application are that in September 2017 the tenant of Flat 1 complained to the landlord that she had been experiencing water ingress in her living room thought to be caused by a leak in the roof. The landlord was advised that a complete flat roof renewal was required. The landlord carried out the works and also applied for dispensation from consultation requirements imposed by section 20 of the Landlord and Tenant Act 1985. This dispensation was granted on 14 February 2018.
17. The Respondent says that three quotes were obtained for these works and then instructed one contractor to carry out the works required to the defective roof. The Tribunal was shown a copy of the contractor's invoice dated 30 December 2017 from Oncall Property Services in the sum of £3360. Each flat owner was sent a service charge demand for £672 being one fifth of the invoice, i.e. for four flats and the commercial premises within the property.
18. Flat 4 in the property is in the ownership of Kingsley Lunt MRICS. Mr Lunt is a Chartered Building Control Surveyor. In the Applicant's trial bundle there was a letter that Mr Lunt wrote to the Tribunal about the roof repairs and how they did not comply with building control. The letter appears at page 139 and 140 in the bundle. This letter is a comprehensive critique of the work to the roof and makes it perfectly plain that the renewal was inadequate and not in accordance with the building control regulations affecting this kind of work. Mr Lunt finishes by observing that it would be unreasonable to pay any charges relating to the mismanagement of the works. Mr Lunt's last sentence reads "*If payment of any amount for works is to be made, it would be reasonable for Warwick Estates to provide a minimum of 20 year guarantee given standard industry practice for flat roofing works is to provide a guarantee of 20-25 years, and instruct a suitably qualified and experienced contractor who understands their legal obligations to comply with the Building Regulations, not fly tip materials or overstate the area of works undertaken on their quotes and invoices*". The works were plainly hugely deficient and there being no guarantee the Tribunal determines that the charge is set at £nil.

Application for a S.20c order

19. It is the tribunal's view that it is both just and equitable to make an order pursuant to S.20c of the Landlord and Tenant Act 1985. The tribunal therefore determines that the costs incurred by the landlord in connection with these 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 tenants. Having considered the conduct of the parties and taking into account the determination set out 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 that the costs incurred by the respondent in connection with these proceedings should not be taken into account in determining the amount of any service charge payable by the tenant.

20. With regard to the decision relating to s.20C, the Tribunal relied upon the guidance made by HHJ Rich in *Tenants of Langford Court v Doren Limited* (LRX/37/2000) in that it was decided that the decision to be taken was to be just and equitable in all the circumstances. The tribunal thought it would not be just to allow the right to claim costs as part of the service charge. The s.20C decision in this dispute gave the tribunal an opportunity to ensure fair treatment as between landlord and tenant in circumstances where costs have been incurred by the landlord and that it would be just that the tenant should not have to pay them by way of the service charge.
21. As was clarified in *The Church Commissioners v Derdabi* LRX/29/2011 the tribunal took a robust, broad-brush approach based upon the material before it. The tribunal took into account all relevant factors and circumstances including the complexity of the matters in issue and all the evidence presented.
22. It was apparent to the tribunal that there were significant communication issues affecting these service charges and roofing works regarding progress of the works and when and how the service charges would be due and or payable.
23. The tribunal is of the view that it did not appear to the tenants they were being kept informed of what works were being carried out and when they were to be charged and that therefore this is not good practice on the part of a landlord. For all these reasons the tribunal has made this decision in regard to this 20C application.

Name: Judge Professor Robert
M. Abbey

Date: 18th March 2019

ANNEX - RIGHTS OF APPEAL

1. 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.
2. 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.
3. 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.
4. 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.

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.

20 Limitation of service charges: consultation requirements

(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 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.