



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

Case Reference : **CHI/29UG/LSC/2018/0093**

Property : **17B Milton Place & The Vault,
Gravesend Kent DA12 2BT**

Applicant : **Ms H Greenwood**

Representative : **In person assisted by Mr Nicholls**

Respondent : **Fairfield Rents Ltd**

Representative : **Mr J Davis of Counsel**

Type of Application : **S27A and s20C Landlord and
Tenant Act 1985**

Tribunal Members : **Judge F J Silverman Dip Fr LLM
Mr K Ridgeway MRICS**

**Date and venue of
Hearing** : **Chatham
29 April 2019**

Date of Decision : **07 May 2019**

DECISION

The Tribunal determines that:

1. The sums demanded by the Respondent in respect of insurance premiums for service charge years 2013 to 2018 inclusive as adjusted by the Tribunal and set out below are payable by the Applicant in the proportions set out in her respective leases.

Service charge year 2013: £1,325

2014: £1,360

2015: £1,500

2016: £1,400

2017: £1,600

2018: £1,638

2. The Tribunal makes Orders under s20C Landlord and Tenant Act 1985 and Schedule 11 para 5 Commonhold and Leasehold Reform act 2002 in favour of the Applicant. The order under the 2002 Act is limited to £500 inclusive of VAT.

REASONS

- 1 The Applicant is the tenant and long leaseholder of the property known as 17B Milton Place and The Vault Gravesend Kent DA12 2BT (the property) of which the Respondent is the landlord and reversioner.
- 2 The two parts of the property are held by the Applicant under separate but (save as to the description of the demised property) identical leases.
- 3 The application, together with a second application relating to s20C which the Tribunal has ordered to be heard concurrently, was dated 28 September 2018 but received by the Tribunal on 8 October 2018.
- 4 Directions were issued by the Tribunal on 8 November 2018.
- 5 The Tribunal inspected the property immediately prior to the hearing. The property comprises a five storey mid-terrace building (the building) currently divided into four apartments. The Tribunal was told that one apartment occupying the upper two floors had two bedrooms, the remainder were one bedroom flats. The building faces directly onto a quiet one way street close to the centre of Gravesend. A listed building, thought to have been constructed circa 1820, it faces a park and is close to the sea but has no garden or parking space and parking in the narrow surrounding streets is restricted. The property is of conventional brick and slate construction with period features, single glazed sash windows and a mansard roof. At the rear of the property a

concrete terrace area, bounded by an iron railing fence provides access to the entrance to Apartment 17C and a steep concrete staircase leading down to a vault area (the Vault) which extends under the main building, supporting and forming part of its structure. The Tribunal was unable to gain access to the main part of the building. Access to the vault was provided. This comprises an extensive L-shaped area with a concrete floor and low ceiling currently used as storage space. The Applicant said it had no electricity or services but the Tribunal noted that there was a bank of electric sockets running the length of one wall which suggested that power had at one time been connected. No damp or mould was visible. The area is not wholly secure as the single window is barred but unglazed and the entrance protected only by a padlocked iron barred gate.

6 The Applicant's application, made under s27A of the Landlord and Tenant Act 1985 only referred to the insurance premiums and the general situation relating to the Vault. She did however ask the Tribunal to enforce a previous decision made by the Tribunal in favour of another leaseholder which related to the building, and which had reduced the insurance premiums demanded by the Respondent. She also asked the Tribunal to vary the proportions in which her service charge was payable and in particular to revoke all the service charge demands relating to the Vault.

7 The Tribunal explained to the Applicant that it was unable to order the enforcement of a previous decision to which the Applicant had not been a party and further, that the power to enforce its decisions lay with the county court.

8 The Applicant appeared to expect the Tribunal to investigate all the service charges levied on the property from 2003 onwards and became distressed when the Tribunal said that they would not deal with charges prior to 2013 because firstly, there was insufficient evidence on which to base any decision for those years, secondly, it considered that these years could be statute barred and in any event the Applicant who had been in possession of the property for the entire period, had taken no steps previous to the current application to complain formally about any of the charges. Additionally, her application only asked the Tribunal to consider the insurance premiums and made no complaint about any other service charge items. Her bundle of documents prepared for the hearing contained no evidence concerning service charge items other than insurance and in relation to insurance contained only one alternative quotation for an entirely different property in a different location which did not in the Tribunal's opinion constitute an appropriate comparable.

9 At this point, the Tribunal decided that the Applicant was not in a fit state to continue the hearing and offered to take a brief adjournment to allow her to compose herself. She declined this offer. The Tribunal nevertheless adjourned the proceedings for 15 minutes after which Mr Nicholls assumed an advocacy role on the Applicant's behalf.

10 In relation to the insurance premiums for the years 2013-17 inclusive the Tribunal reminded the Respondent that a previous Tribunal decision to which the present Applicant had not been a party (CHI/29UG/LSC/2016/0066) (page 69) had determined that the

Respondent's insurance premiums for those years had been excessive and had reduced them accordingly. That decision had not been appealed. The Tribunal suggested that the same reasoning should apply in the present case which related to the same premiums and the same property. The Respondent conceded that the same reduction in premiums should apply to the Applicant for the years 2013-2017 resulting in the premiums for those years being payable as set out in the Decision above.

11 The Respondent agreed to apply the same principles to the 2018 premium resulting in a 54% reduction and a premium payable of £1,638 as set out in the Decision above. The 2019 premium has not yet been ascertained and so was not considered by the Tribunal.

12 The Applicant had asked the Tribunal to revoke all the service charge demands for the Vault as she said that she was not liable to pay any service charge at all on that part of the property. The Tribunal referred her to the lease of the Vault (page 265) Clauses 2 (1) and (2) of which impose a service charge liability of 'a fair proportion' of the 'costs expenses outgoing and matters' mentioned in the schedule to the lease. This clause is worded identically to that in the Applicant's lease of 17B (page 85). The Applicant was unable to produce any evidence to support her contention that, despite the clear wording of the lease, she was not liable to pay any service charges for the Vault. The lease therefore remains as drafted with the Applicant being responsible for her fair proportion.

13 The Applicant said that the current service charge apportionments made by the landlord added up to more than 100% which she asserted was illegal and asked the Tribunal to adjust the proportions for each unit as had been set out in the previous decision (Page 76). The Tribunal observed that the previous decision had noted the discrepancy in service charges and had recommended their alteration but the wording of the Decision had not made an Order to that effect. That decision had also been based on the assumption that all the residential units in the property were of equal size which the present Tribunal understands is not the case but had no evidence before it to show the floor areas attributable to each unit.

14 The Tribunal recognises the inequity of the present allocation of service charge percentages but irrespective of whether it may have jurisdiction under 27 Landlord and Tenant Act 1985 to effect an adjustment declines to make such an Order in the present case. Any adjustment in the percentages would directly affect all other leaseholders at the property, some of whom might suffer an increase in their service charge if the Applicant's proportions were reduced. The Tribunal does not consider that it would be equitable to adjust the proportions of service charge payable by other leaseholders who had not been notified of the present application and who had not therefore been given the opportunity to make representations about it. The Tribunal does not however support the Applicant's contention that the Vault should be exempt from all service charges. It is useable storage space forming part of the structure of and providing support to the main part of the building.

- 15 The Applicant asked the Tribunal to make orders under both S20C Landlord and Tenant Act 1985 and Sched 11 para 5 Commonhold and Leasehold Reform Act 2002. In relation to s20C the Applicant said that she had no choice but to bring the application because despite the previous decision the Respondent had failed to resolve the issues surrounding the insurance and other service charge matters and had a history of failing to supply information. The Respondent objected to the making of such an Order saying that the Applicant had only succeeded on part of her application and that her assertions relating the Vault had been ill-founded. On balance, the Tribunal determines that it will make an order under s20C. Although the Applicant's success in obtaining a reduction in her insurance premiums has been based entirely on the evidence put before a previous Tribunal and conceded by the Respondent, the present Tribunal is concerned by the apparent failure by the Respondent to implement the recommendations contained in that previous decision which highlighted the excessive premiums for insurance and the problematic situation with the apportionment of service charges.
- 16 For the same reasons the Tribunal also makes an order under Schedule 11 (administration charges made by the Respondent) limiting any costs charged to £500 inclusive of VAT.

17 **The Law**

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).

Section 47 Landlord and Tenant Act 1987

(1) Where any written demand is given to a tenant of premises to which this Part applies, the demand must contain the following information, namely—

(a) the name and address of the landlord, and

(b) if that address is not in England and Wales, an address in England and Wales at which notices (including notices in proceedings) may be served on the landlord by the tenant.

(2) Where—

(a) a tenant of any such premises is given such a demand, but

(b) it does not contain any information required to be contained in it by virtue of subsection (1),

then (subject to subsection (3)) any part of the amount demanded which consists of a service charge [F10r an administration charge] (“the relevant amount”) shall be treated for all purposes as not being due from the tenant to the landlord at any time before that information is furnished by the landlord by notice given to the tenant.

(3)The relevant amount shall not be so treated in relation to any time when, by virtue of an order of any court [F2or tribunal], there is in force an appointment of a receiver or manager whose functions include the receiving of service charges [F3or (as the case may be) administration charges] from the tenant.

(4)In this section “demand” means a demand for rent or other sums payable to the landlord under the terms of the tenancy.

21B Notice to accompany demands for service charges

(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)Regulations under subsection (2) may make different provision for different purposes.

(6)Regulations under subsection (2) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Judge F J Silverman as Chairman
Date 07 May 2019

Note:
Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

